

IN THE COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law and Equity Division

2026/CLE/gen/FP/00117

IN THE MATTER of the Declarations of Condominium in respect of the condominium properties known as the Inn at Old Bahama Bay I, the Inn at Old Bahama Bay II and the Inn at Old Bahama Bay III, situate at Old Bahama Bay, West End Settlement Area, Grand Bahama Island, one of the Islands of the Commonwealth of The Bahamas

AND IN THE MATTER of the Law of Property and Conveyancing (Condominium) Act, Chapter 139 of the Statute Laws of the Commonwealth of The Bahamas

BETWEEN

ISLAND VENTURES RESORT & CLUB LTD.

First Claimant

AND

GRANDE HARBOUR AT OLD BAHAMA BAY RESORT LTD. (suing on its own behalf and on behalf of all other persons being owners for the time being of the Units comprised in the Inn at Old Bahama Bay Condominium I, Condominium II and Condominium III)

Second Claimant

AND

THE INN AT OLD BAHAMA BAY CONDOMINIUM I ASSOCIATION

Third Claimant

AND

THE INN AT OLD BAHAMA BAY CONDOMINIUM II ASSOCIATION

Fourth Claimant

AND

THE INN AT OLD BAHAMA BAY CONDOMINIUM III ASSOCIATION

Fifth Claimant

AND

OLD BAHAMA BAY RESORT & YACHT HARBOUR LTD.

Sixth Claimant

AND

LRA OBB LIMITED

Defendant

AND

THE TREASURER OF THE COMMONWEALTH OF THE BAHAMAS

Interested Party

AND

MINISTER OF TRANSPORT

Second Interested Party

Before: The Honourable Madam Justice Constance Delancy

Appearances: Mark Flowers for the Claimant
Michael R. Scott, KC with Marinque Knowles for the Defendant
Kenria Smith with Perry McHardy for the Interested Parties

Hearing date(s): 1 September 2026

RULING

DELANCY, J

[1.] This matter involves a dispute over the control and operation of the Old Bahama Bay Resort and Marina, Grand Bahama (“the Resort”). The Claimants seek interim prohibitory and mandatory injunctive relief pending the determination of their claims for declaratory and other relief.

Background

[2.] Although the Court will not address the substantive issues which are properly reserved for trial, a brief procedural history is necessary to provide context for the present application.

[3.] By Order granted 24 December 2018 (“2018 Order”) in action 2018/CLE/gen/FP/01424 between the First Claimant (“IVRC”) and the Defendant (“LRA”) and another party, the Court declared that the Lease dated 1 June 2012 (“2012 Lease”) between LRA and the IVRC “*has expired and is null void and of no further effect*”; ordered that the LRA be given vacant possession forthwith by IVRC; directed LRA to use best reasonable endeavours to enter into a transitional license or other short term arrangement for management of the premises; ordered costs in favour

of LRA and included a penal notice warning that IVRC, John MacDonald and James Culmer could be held in contempt of court if the order were disobeyed.

[4.] By a Supplemental Order granted 14 January 2019 (“2019 Order”) the Court amended its 2018 Order. The terms of the 2019 Order are summarised as follows:

- (i) the Court confirmed that the 2012 Lease was terminated;
- (ii) that IVRC has no right to operate, manage, access, or control the leased premises;
- (iii) preserved rights of the Unit Owners of the Inn at Old Bahama Bay Condominiums I, II and III by ordering access to amenity areas on LRA’s property listed in the 2019 Order, but only on terms LRA considers commercially practicable and without creating any perpetual or enforceable entitlement for those unit owners;
- (iv) the Court separated ownership and operational rights with respect to the marina: IVRC lost rights over the leased premises generally, it retained the right to rent the dock slips owned by it at the Old Bahama Bay Marina;
- (v) the Court also set trial dates for the hearing of the substantive issues between the parties and issued case management directions.

[5.] IVRC initially filed this application on 14 August 2026 by ex parte Notice of Application seeking interim prohibitory and mandatory injunctions; the Court directed that the application be heard inter partes.

[6.] On 26 August 2026, IVRC and the other Claimants filed a Standard Claim Form and Statement of Claim seeking injunctive, declaratory, and related relief. They also amended the Notice of Application to add the other Claimants and expand the relief sought.

[7.] The Claimants seek (a) prohibitory relief restraining obstruction of roadways, walkways, services, and beach access appurtenant to the units and exclusion from common property; (b) mandatory relief requiring removal of barricades, restoration of keys, access codes, and utilities, and reinstatement of IVRC to management of the units; and (c) directions for inspection of flooded units in Building 15 and preservation of the property.

[8.] The Application is supported by the First Affidavit of John McDonald filed 21 August 2026 and a Second Affidavit of John McDonald filed 1 September 2026 (“the McDonald Affidavits”) and the First Affidavit of James Culmer filed 14 August 2026 (“the Culmer Affidavit”). The Defendant’s evidence consists of the First Affidavit of Daniel Baker filed 28 August 2026 and a Second Affidavit of Daniel Baker filed 3 September 2026 (“the Baker Affidavits”) and the Affidavit of Inishka Lloyd filed 1 September 2026 (“the Lloyd Affidavit”).

Issues

[9.] The Court must decide whether:

- (i) IVRC's subscription-based management and licensing position justify restoration of access to the Resort notwithstanding expiration of the bare licence.
- (ii) the Second Claimant, Grande Harbour At Old Bahama Bay Resort Ltd.'s ("GH") ownership of Units and appurtenant rights independently support injunctive relief.
- (iii) the Third, Fourth and Fifth Claimants, The Inn At Old Bahama Bay Condominium I Association, The Inn At Old Bahama Bay Condominium II Association and The Inn At Old Bahama Bay Condominium III Association ("Condominia Associations") statutory corporate capacity and common-property responsibilities justify injunctive relief; and
- (iv) the Sixth Claimant, Old Bahama Bay Resort & Yacht Harbour, Ltd. ("OBBRY") asserted trademark and goodwill claims justify any interim injunctive relief.

Evidence

[10.] IVRC is a company incorporated under the laws of The Bahamas, John McDonald is the President and a subscriber thereof. IRVC asserts contractual rights granted by 58 Unit Owners of Condominia under subscription agreements to *inter alia* manage the bookings of their respective Units. IVRC's rights over the marina facilities at the Resort arise out of a 1 July 2012 Lease ("WERL Lease") between IVRC and West End Resort Ltd.

[11.] GH is a company incorporated under the laws of The Bahamas and the owner of 3 units in the Condominia and covenantee under a development agreement, John McDonald is the President. It also purports to act in a representative capacity on behalf of all Unit Owners in Condominia, although no application was made for its appointment or recognition in that capacity in these proceedings.

[12.] Condominia Associations are the bodies corporate under the respective Declarations with the duty to maintain and repair the common property, the buildings, and structures appurtenant thereto and insure the Units and their insurable properties.

[13.] OBBRY is a company incorporated under the laws of The Bahamas. Mr. McDonald is its President, sole director, sole shareholder, and Secretary. OBBRY brings this claim as proprietor of the trademark and goodwill under which the Resort has traded.

[14.] LRA (formerly Ginn-LA OBB Limited) is an incorporated Bahamian company and the owner of properties being a part of the Resort.

[15.] LRA and IVRC entered into a Lease on 1 June 2012 over of LRA's property within the Resort ("2012 Lease"). IVRC asserts that it has managed and operated the Resort continuously since about 2012, including hotel and marina operations, staffing, maintenance, assessment collection, and guest bookings.

[16.] In 2019 LRA and IVRC entered into a bare licence which superseded the 2012 Lease between the parties. The Bare Licence was renewed on several occasions May 2019, January 2021 and 31 July 2022 (copies exhibited to the Lloyd Affidavit). IVRC disputes that its original occupation of the Resort was by a “bare license”. IVRC also disputes that it owes real property taxes as alleged by LRA.

[17.] The McDonald Affidavits and Culmer Affidavit alleges that after LRA or its agents erected barricades on 4 August 2026 LRA and/or its agents dispensed fuel stocks purchased by IVRC without authorization. LRA and/or its agents are processing guests’ bookings and not accounting for the revenue, funds have been removed, locks were changed and the Resort’s surveillance equipment was dismantled. LRA’s actions excluded IVRC’s staff which has negatively impacted its business and the surrounding community.

[18.] LRA’s barricading entrance to the Resort also prevented IVRC and its staff from maintaining and preserving the Unit Owners’ property. On 28 August 2026, IVRC was contacted with reference to flooding in Building 15 as LRA or its agents were unable to shut off the water supply. IVRC was not allowed to assess the damage to the affected Units. LRA’s actions has damaged the Resort’s goodwill and reputation.

[19.] Mr. McDonald also alleges the Defendant continuing to conduct business at the Resort under OBBRY, a registered company owned by him, has caused irreparable harm to the Company’s reputation and goodwill.

[20.] The Baker Affidavits assert that the 2018 and 2019 Orders determined that the 2012 Lease expired, is null and void, and that IVRC had no right to operate, manage, access, or control its property for any purpose whatsoever. After the 2019 Order LRA and IVRC’s operative arrangement was a Bare Licence granting non-exclusive right of occupation subject to the terms and conditions set out there. The Bare Licence was not a continuation of the 2012 Lease as the same no longer existed. The Bare License was not renewed after it expired on 30 September 2022.

[21.] On 11 February 2025 LRA gave notice to IVRC requiring it to cease operations and vacate by 28 March 2025. IVRC did not comply, LRA also complained of outstanding sums totaling B\$2,214,741.35 and incidents involving unauthorized entry, damage to, and removal of items from LRA’s property by persons identified as acting for or on behalf of IVRC. On 20 November 2025 IVRC purported to entered into a Lease over LRA’s property within the Resort and surrounding areas with Ricardo Pratt (“Pratt Lease”) (exhibited to the Lloyd Affidavit). LRA asserts that the Pratt Lease is fraudulent and therefore IVRC cannot claim any rights thereunder.

[22.] After 4 August 2026, OBB Hospitality Limited assumed control of the Resort amenities on LRA’s property. IVRC had no exclusive right to operate the Resort or control and access after the expiry and withdrawal of its licence. The Resort was not wholly closed, certain operations were

only temporarily restricted, and Unit Owners continued to have access to the Resort including short-term rental services.

[23.] Post 4 August 2026 Customs and Immigration continued to operate at the Resort. Signage about a temporary and partial closure was displayed for approximately 2 weeks at the request of the Department of Labour. The signs were not intended to exclude Unit Owners or their guests from entering their properties or that all operations had ceased. Mr. McDonald has not been denied access in his capacity as a Unit Owner.

[24.] LRA or OBB Hospitality Limited did not disconnect or instruct the disconnection of electricity, water, or any other utility services to the Resort or Condominia properties as alleged and Grand Bahama Utility Company continued to supply, meter, and invoice utilities.

Law and Discussion

[25.] The Supreme Court Act, Section 21 provides that the Court has the discretion to grant interlocutory or final injunctions “*in all cases in which it appears to the Court to be just and convenient to do so*”. Part 17 of the Supreme Court Civil Rules sets out the procedural provisions governing interim remedies applications. The Claimants seek interim prohibitory and mandatory injunctive relief. While the Court has the discretionary powers to grant interim injunctions and mandatory injunctions, the thresholds and the considerations applied by the Court differ.

[26.] In **American Cyanamid Co. Ltd. v Ethicon** [1975] AC 369 *Lord Diplock* identified the criteria which should be considered when determining whether to grant an interim injunction which are summarized as follows:

- (1) whether there is a serious issue to be tried;
- (2) whether damages would be an adequate remedy for the party injured by the grant or refusal of the injunction;
- (3) where the balance of convenience lies if damages are not an adequate remedy; and
- (4) whether there are any special factors that might affect the court’s consideration of the matter.

[27.] In **Satish Daryanani v Leon Griffin and Others** 2020/CLE/gen/00594, *Klein, J.* at para. [55] adopted the dictum in **O. Brien and another v TT Moneycorp** with respect to principles which apply in interlocutory relief applications:

The general principles regarding the grant of interlocutory relief have been admirably summarized by Mr. Christopher Hancock, QC (sitting as a High Court judge) in the recent case of *O. Brien and another v. TTT Moneycorp* [2019] EWHC 1491 (Comm.), which was cited by Mr. Rigby, and which I am happy to adopt:

- (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 least irreparable 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.

[Emphasis added]

[28.] Counsel for the Claimants submits that the evidence before the Court demonstrates that there is a serious issue to be tried as the Court must decide whether IVRC’s occupation and

continued performance of the management and operation of the Resort with LRA's acquiescence subsisted as a periodic tenancy. Even after the Notice in February 2025 purporting to terminate the 2021 Licence, IVRC remained in open, exclusive possession and management of the resort operations for approximately 16 months. Further that IVRC has nexus to the operations of the Resort by virtue of its subscription agreements with Unit Owners for hotel rental accommodation and the WERL Lease with respect to the marina.

[29.] Counsel for the Claimants contends that IVRC has sufficient standing as it has an interest directly related to the subject matter per *Dunkley, J. (Acting) in Re Harris* (1998) BHS J. No.182.

[30.] Counsel for the Claimants also submits that the Defendant has “*taken into its own hand what it could only lawfully have taken by order of this Honourable Court*” and the Claimants rights should be preserved pending the determination of the matter. Further the 2018 and 2019 Orders do not bind the Unit Owners or their authorized agents.

[31.] Counsel for the Defendant submits that IVRC has no standing as the 2012 Lease is null and void and the subsequent Bare Licence has expired. Further the Claimants have not raised any triable issues against it. The Bare Licence expressly permitted either party to terminate for any reason upon 30 days' notice. The notice given to IVRC was in excess of 30 days. Further IVRC cannot convert business licenses into proprietary or possessory entitlements. There was no automatic right to renew the bare licence. IVRC permitted occupation of the Resort does not automatically create a periodic tenancy. Counsel draws the Court's attention to the dictum of *Patten, LJ in Barclays Wealth Trustees (Jersey) Ltd. v Erimus Housing Ltd.* (2014) 2 P. & C.R.4 at para. [23]:

When a party holds over after the end of the term of a lease he does so, without more, as a tenant on sufferance until his possession is consented to by the landlord. With such consent he becomes at the very least a tenant at will and his continued payment of the rent is not inconsistent with his remaining a tenant at will even though the rent reserved by the former lease was an annual rent. **The payment of rent gives rise to no presumption of a periodic tenancy. Rather, the parties' contractual intentions fall to be determined by looking objectively at all relevant circumstances.**

[Emphasis added]

[32.] Counsel for the Claimants submits with respect to the Unit Owners and Condominia Associations, that as landowners whose title is not at issue are “*prima facie entitled to an injunction to restrain a trespass whether or not the trespass harmed him (them)*”, and that subject only to exceptional circumstances in which the Court might properly decline it, per *Balcombe L.J. in Patel v W H Smith (Eziot) Ltd.* [1987] 2 All E.R. 569.

[33.] The Court has reviewed the subscription agreements between IVRC and the individual Unit Owners who are the fee simple owners. The Court is reluctant at this stage to conclude that the

Condominia common property or rights belonging to individual Unit Owners automatically establish a right on the part of IVRC to occupy or exercise operational control over LRA's property.

[34.] Counsel for the Claimants submits that damages would be inadequate and the adequacy of damages is a critical factor in determining irreparable harm. The evidence of the Claimants illustrates that there is a question as to whether the Condominia, its common property and amenities, are being properly maintained and managed. The Defendant's actions has caused irreparable damage to the goodwill of the Resort and has adversely affected the livelihood of staff and the wider community. Further, the Claimants have also suffered economic loss due the depletion of fuel resources, flood damage to several units and loss of revenue from bookings.

[35.] Counsel for the Defendant counters that it has not interfered with the Unit Owners, and their authorized agents access to the property. The Claimants have not produced any evidence beyond bare assertions. Since the Defendant's agent assumption of the management of Resort's operations that Unit Owners have continued to access amenities and to book short term rentals.

[36.] The Court must be satisfied that a mandatory injunction is the course least likely to cause irreparable harm and that it is just and convenient to grant the relief sought. The Court must carefully assess the practical consequences of such an order. A mandatory injunction would compel the Defendant to take positive steps, which may result in significant expense or inconvenience. The Court must exercise greater caution and a "*high degree of assurance*" that the Claimants will establish their respective rights at trial.

[37.] The Court must also balance whether the harm caused by denying a mandatory injunction is irreparable by assessing whether the injury is substantial and incapable of being adequately remedied by an award of damages or other remedies, and whether the refusal of the injunction would result in grave and irreversible consequences (see the dictum of *Hoffmann J. in Films Rover International Ltd v Cannon Film Sales Ltd* (1986) at paras. 680F–H and 681A–B).

[38.] A party seeking injunctive relief from the Court has a duty to provide the Court with proof of the means to meet any award of damages. IVRC/Mr. McDonald offered the usual undertaking to abide by any order as to damages by the Court; and that its ability to pay an award of damages is fortified by the financial records and accounts which discloses the revenue generated by IVRC during the course of its management of the Resort.

[39.] The Court finds that while Mr. McDonald purports to give an undertaking on behalf of the Claimants there is no cogent evidence of the Claimants' financial position to conclude that they have the ability to pay any damages if called upon to do so. Further, based on the evidence the Court is not entirely convinced that Mr. McDonald has the authority to make such an undertaking on behalf of all of the Claimants.

[40.] The Court must also consider whether the Claimants could adequately be compensated in award of damages should it refuse to grant the injunctive relief sought and they are successful at the trial of the action. The Court notes that the Defendant did not give a cross undertaking in damages but rather choose to advance an application to strike out the claim based on the 2018 and 2019 Orders.

[41.] Based on the evidence the Court is reluctant to conclude that damages would be an adequate remedy for either party herein. Further there is insufficient evidence to quantify loss of goodwill at this juncture of the proceedings.

[42.] The **American Cyanamid** guidelines caution the Court that should its decision on the issue of damages as an adequate remedy prove inconclusive the Court ought to consider the balance of convenience. The Privy Council in **National Commercial Bank of Jamaica v Olint Corp. Ltd.** (2009) UKPC 16 at para. [17] highlighted the dilemma faced by the Court assessing the issue of adequacy of damages:

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 the injunction should not have been granted or withheld, as the case may be. **The basic principle is the same, namely, the court should take whichever course of action seems likely to cause the least irremediable prejudice to one party or the other.**

[Emphasis added]

[43.] The Court considered the Claimants' argument that refusal of their application for injunctive relief may result in deterioration of the Units and common property and adversely affect their respective property rights. Conversely, the Court must also consider the effect of granting injunctive relief on LRA's interests in the Resort based on its assertion that the Bare Licence has expired.

[44.] The Court finds based on the 2018 and 2019 Orders it may conclude as follows:

- (i) The 2012 Lease between LRA and IVRC expired and was declared null and void and of no further effect.
- (ii) The rights of the Unit Owners, inclusive of Units owned by Mr. McDonald and GH, were recognized and preserved;
- (iii) The Unit Owners shall continue to access amenities on LRA's property subject to certain conditions;
- (iv) IVRC and some of Unit Owners of the Condominia have a contractual relationship with relation to the management of the bookings of those Units.
- (v) IVRC retains the right to rent the dock slips owned by it at the Old Bahama Bay Marina.

[45.] The Court makes no determination on any issues of taxes asserted or otherwise as the same is before another forum and this Court does not assume any jurisdiction related thereto.

[46.] The Court is cognizant of the volatility of the situation, the importance of the matter not only to the parties but to the surrounding community. The Court reminds itself of the differing capacities of the Claimants (a) IVRC was previously actively involved operating and managing the Resort, and the booking related certain Units in Condominia prior to 4 August 2026; (b) the Defendant is entitled to deal with and exercise control over its property within the Resort; (c) the Unit Owners are entitled to freely access and preserve their property rights over their freehold Units and common areas appurtenant thereto; (d) the rights and obligations of the Condominia Associations related to the common areas of the Condominia; and (e) OBBRY assertions of trademark rights.

[47.] The Court having read and considered the Statement of Claim, the parties' Affidavit evidence, the Submissions and authorities finds that the issues related to title and the management of the Resort, its resources and amenities related thereto cannot be determined at this interlocutory stage. The Court notes such issues also arose in the 2018 action which were not ventilated at a trial to bring closure to this long-standing dispute between the parties. The Court is not persuaded having considered the evidence from all sides that the balance of convenience lies in favour of granting the Claimants the interim injunctive relief sought and therefore dismisses the application.

[48.] The costs awarded to the Defendant to be assessed if not agreed.

Dated the 22 day of October 2026

[Original signed and sealed]

Constance Delancy
Justice