COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law and Equity Division
Claim No. 2024/CLE/gen/00858

(1) APRIL ANN HUBAL
(2) RICHARD TOUCHETTE
(3) CATHERINE YAQUE
(4) KENNETH CARDILLO
(5) REBECCA GAINZA
(6) LORETTA GARRETSON
(7) TAMMY MASICOTTE
(8) JUKKA EFRAIMSSON
(9) PETER GRANTHAM
(10) SHARI KLESSIG

Claimants

AND

DELAPORTE POINT LIMITED

Defendant

Before The Honourable Mr. Justice Leif Farquharson

Raynard Rigby KC and Shaquille Dean for Claimants/Applicants
Gail Lockhart-Charles KC and Tatyanna Maynard for Defendant/Respondent

30 October 2026, 25 November 2026

RULING

1. This is an application by the Claimants for urgent further injunctive relief pending the hearing and determination of the trial in this action or until further Order. A brief outline of the background facts and the previous order of this Court serves to put the application in context.

Factual Background

2. The Claimants are all owners of residences at Delaporte Point, a well-known gated community in western New Providence. Delaporte Point is comprised of 72 townhouses and a 36-unit condominium complex known as "*Block G*". The Claimants emphasise that their residences do not form part of Block G.

3. The Defendant is a company incorporated under the *Companies Act*, whose membership is comprised of property owners within Delaporte Point. There is a sharp dispute as to the scope of the Defendant's powers. It appears nonetheless to be common ground that it manages the "*Amenity Areas*" within the Delaporte Point community, which are said to comprise a jetty, a swimming pool or pools, parking areas, common garden areas, a sewerage treatment plant, roads, paths and walkways. Block G itself is separately managed.

4. In July and August of 2024, the Defendant introduced a series of measures affecting owners and residents within Delaporte Point. These included, among others: (i) imposition of a 90-day minimum rental period for residences, effective as of 1 September 2024; (ii) introduction of an "*Application for Family and Friends Accommodations Fee Waiver*", which essentially required owners offering their properties as accommodation to family or friends at no charge to make a formal application to the Defendant for a waiver or exemption from fees which would otherwise be exigible; and (iii) introduction of hefty fines for violations of the measures promulgated, including, it appears, a fine of $1,000 per violation for breach of the prohibition against short-term rentals (referred to interchangeably as "***STRs***").

5. In September of 2024, the Claimants commenced proceedings before the Court challenging the lawfulness of the measures prohibiting STRs and the Defendant's exercise of various other powers on both substantive legal and procedural grounds, including alleged *ultra vires*, breach of its constituent documents, and breach of the terms of the Claimants' conveyances and title documents. The Claimants seek an array of declarations both affirming their rights as property owners within Delaporte Point and confirming the unlawfulness of the Defendant's actions. They also seek orders setting aside any purported fines and penalties imposed by the Defendant, damages for loss of revenue and profits, and permanent injunctive relief. Two of the declarations sought illustrate the broad nature of the Claimants' contentions:

> *"(iv) A Declaration that the Defendant cannot and has no power, right, authority or jurisdiction to impose any restriction(s) on the usage of the property (save for the Amenity Areas) vested in the Claimants as owners of the various Houses in the said Community (and their lawful guests, invitees or visitors)."*
>
> *"(vii) A Declaration that any and all of the Defendant's purported rules, regulations, byelaws, forms, applications or procedures which seek to restrict, limit, prohibit, regulate and/or control the ability of the Claimants to rent, lease or contract for the rental or lease of their Houses and in particular the Defendant's purported rules titled "Rental Modifications as of 29 July 2024" are and amount to unlawful and wrongful restrictions on the Claimants' (their tenants, servants, visitors and licensees) use and enjoyment of their Houses (properties) as fee simple owners and the Amenity Areas."*

6. The Defendant vigorously opposes the claim. It asserts that it is empowered to impose and enforce rules concerning use of the Amenity Areas, which include the access and internal roadways and all portions of Delaporte Point outside the boundaries of any dwelling house; that it has a duty to ensure access to Delaporte Point is restricted to purposes of domestic use only; and it has lawful power to prohibit access over and along the roadways within the community for short-term hotel-type activities, such as Airbnb rentals, which can create a nuisance, security risk and increased cost burden to the Defendant and other property owners and users of the Amenity Areas. It further asserts that the challenged measures were introduced after proper consultation and voted on by the community, and that the $1,000 fine for STR violations was reasonably introduced as a deterrent and to encourage compliance with the rules. The Defendant denies that the effect of the measures is to eliminate short-term rentals, but rather is to "*eliminate use of the Amenity Areas, including the access roads, by persons renting for a period of less than 90 days*". It further disputes that Airbnb and hotel-type rentals, which the measures are geared at, form part of the custom or usage of properties within Delaporte Point as alleged. In the end result, the Defendant maintains that it has at

all material times acted within the scope of its lawful powers and is not liable to the Claimants in any way.

7. The matter was originally with Ellis J. On 5 February 2025, he granted an injunction in favour of the Claimants restraining the Defendant, its servants and agents, pending trial or further Order:

> *"(a) from seeking to and otherwise disturbing, interfering, curtailing, obstructing and/or limiting the right of the Claimants to rent or lease or enter into rental arrangements of their Houses to third parties for any such period as they determine in their sole discretion;*
> *(b) from denying the lawful invitees, licensees and tenants of the Claimants access and enjoyment of the Community and the Amenity Areas;*
> *(c) from seeking to enforce any fines or penalties by disconnecting the water supply of the Claimants or by any other means."*

8. The trial was then scheduled for 17–20 February 2026, but did not proceed because Ellis J. was reassigned to another division. The file was then transferred to me. The new trial date is 15–17 March 2027.

9. The present application arises from events in March 2026. While Ellis J.'s order was in force, the Defendant introduced a new set of rules and regulations for Delaporte Point (hereinafter the "***2026 Rules***"). The stated purpose of the 2026 Rules is to "*establish the basic standards of the conduct required of all residents of the Delaporte Point Community in order that every Homeowner may enjoy to the fullest his/her individual rights, while respecting the rights of others to the quiet and peaceful environment of their home*". These addressed a range of issues, including: the reporting and fixing of water leaks; the common toilet system; parking; security; pets or animals; garbage collection; and hurricane procedures. The 2026 Rules also addressed STRs and, perhaps most significantly, made provision for an increased fine in the amount of $3,500 for violations of the prohibition against STRs. The 2026 Rules also include a section entitled "*Fines and Liens*" containing a schedule or listing of fines for various infractions (hereinafter "***Section 39***"). Section 39 purports to impose a $1,000 late fee and 10% monthly interest charge for fines that remain unpaid for over 30 days. It also states that "*When the circumstances require, liens may be placed on Units*" by the Defendant. Section 39 further provides for "*challenges to violations*" by owners to be resolved through arbitration. The 2026 Rules also contain an arbitration clause for the resolution of disputes generally.

The Claimants' Application

10. By Notice of Application filed on 15 June 2026, the Claimants seek relief pursuant to Section 21(1) of the *Supreme Court Act*, CPR 17.1(1)(b) and/or the inherent jurisdiction of the Court, restraining the Defendant, its servants or agents, pending determination of trial or further Order of the Court, from:

> *"(i) ....implementing and enforcing against the Claimants the provisions of the Delaporte Point Limited Property Manual containing the Information, Rules, Regulations and Guidelines (updated 2026) (the "2026 Rules and Regulations"), particularly, those provisions related to short-term rentals, the increase of fines and/or all matters connected thereto;*

(ii) *.... directly or otherwise interfering with the status quo maintained prior to and since the commencement of this claim inclusive of the imposition of new fines and rules relating to short term rentals; and*

(iii) *....directly or otherwise implementing and enforcing pre-emptive, retaliatory, and/or punitive fines and other such similar measures against the Claimants for commencing this claim."*

Affidavit Evidence of the Parties

11. The Claimants primarily rely on two affidavits each from Shari Klessig and April Hubal to support their application.

12. In her first affidavit, Ms. Klessig, the tenth claimant, states (*inter alia*) that the 2026 Rules were introduced without adequate consultation, substantially increased rental-related penalties, and created uncertainty about notification, escalating charges and possible liens. She says the Claimants altered their rental practices to avoid accumulating fines. She also describes an incident in March of 2026 which resulted in Barbara Rolle, the authorised agent of Ms. Hubal, encountering delay in accessing her (Hubal's) residence. The parties' accounts of the circumstances resulting in this delay differ, but they agree that access was ultimately granted to Ms. Rolle.

13. In her first affidavit, Ms. Hubal, the first Claimant, exhibited an email by the Delaporte Point property manager dated 2 July 2026, containing an attached statement recording fines totalling $108,000 against her name for alleged violations of the STR prohibition. She disputes the accuracy of the entries in the statement, including its designation of visitors and family members as renters. Of note, the email expressly states that the Defendant is *"not presently seeking to enforce payment of these fines or take enforcement action in relation to these fines while the Injunction Order made on February 5, 2025 remains in effect".*

14. In her second affidavit, Ms. Hubal refers to an incident on 3 September 2026 during which a security officer questioned a guest of hers. She exhibits messages recording the guest's concern about further disturbances and expresses fear of the guest's early departure, lost income and reputational damage. She does not confirm whether the early departure or any cancelled bookings in fact occurred.

15. The Defendant primarily relies on an affidavit sworn to by Michele Luzi, a long-standing member of its board of directors, in opposing the application. His central position is that the existing injunction provides sufficient protection to the Claimants, the Defendant has not *"enforced"* the disputed STR fines, and the additional relief prayed for would unjustifiably interfere with community administration.

16. Mr. Luzi states that homeowners voted at the Defendant's AGM on 13 March 2024 in favour of prohibiting rentals lasting fewer than 90 days, by 44 votes to 33, with one abstention. He maintains that the prohibition reflects restrictive covenants limiting use of properties for domestic purposes as a "*dwelling house*". He characterises the Claimants as a disgruntled minority pursuing their own commercial rental interests, rather than representing the wider community.

17. Relying on counsel's note of the February 2025 hearing, Mr. Luzi contends that Ellis J. permitted fines to continue accruing while deferring payment until resolution of the claim. He says the Defendant has merely recorded rental activity and associated fines and has taken no steps to collect fines from the Claimants. He further explains: the disputed fines are not treated as income for the Defendant's budgeting purposes

and are excluded from homeowners' arrears calculations; no interest is charged while the fines remain unenforceable; the Defendant uses rental-registration information to record a fixed fine for each STR; owners receive notices or periodic summaries and may request further information concerning all fines; individual fines may still be challenged at enforcement, even if the Defendant succeeds in establishing its general authority to prohibit STRs. He emphasises that the fines will only become payable if the Defendant succeeds at trial and will fall away if the Claimants succeed. He regards continued short-term letting pending trial as a commercial risk for the individual Claimants.

18. Mr. Luzi denies that the 2026 Rules were introduced to target or retaliate against the Claimants as alleged. Rather, he says they followed lengthy board discussions intended to make all sanctions proportionate to the seriousness of different breaches. He exhibits internal correspondence, board minutes and the revised Rules in support. He also identifies unauthorised building works, specifically construction of a jacuzzi by a homeowner without approval, as the principal driver behind introduction of the 2026 Rules.

19. Mr. Luzi states that the references to liens in the 2026 Rules did not introduce a new sanction and appeared in previous iterations of the rules. He also describes a lien as a sanction to be invoked as a last resort, only imposed after an owner has had opportunities to remedy a breach and lesser sanctions have failed.

20. Mr. Luzi accepts that Barbara Rolle's entry to Delaporte Point was initially delayed. He attributes this to verification procedures and confirms that she was ultimately allowed access to Ms. Hubal's residence. He accordingly denies that the incident demonstrates interference with the Claimants' access rights. He also discusses the incident involving the questioning of Ms. Hubal's guest by security, explaining that the inquiries may have concerned guest registration, which applies to both long- and short-term rentals and serves security and emergency-safety purposes.

21. Finally, he expresses his view that the proposed injunction is excessively broad, as it could exempt the Claimants from rules addressing a range of matters unrelated to STRs, including noise, parking, development controls, management fees and safety. He maintains that the existing injunction already preserves the relevant position of the parties pending trial and asks the Court to dismiss the application. He also offers on the Board's behalf an undertaking to continue complying with the existing order.

22. Ms. Klessig's second affidavit, filed on 9 October 2026, is responsive to Mr. Luzi's affidavit. She maintains that consultation and justification for the 2026 Rules were lacking, the trackers recording guest stays are inaccurate, requests for information remain unanswered, and the 2026 Rules were intended to pressure the Claimants to stop renting. She, again, disputes the Defendant's authority to impose liens on the Claimants' residences and the suggestion that they are seeking to be exempted from rules governing the community. In all the circumstances, she asks that fines be capped at the amounts applicable before the 2026 Rules.

23. Both sides also generally rely on the affidavits placed before Ellis J. in connection with the first application, which I also take into account.

Meaning and Scope of Previous Order

24. Ellis J. heard the first application under circumstances of urgency. He did not give detailed reasons for his decision. The Defendant's counsel's note of the hearing

before him was also not agreed. The notes on file nonetheless suggest that he granted relief with a view to giving effect to the prayers in paragraphs (a) and (b) only of the Claimants' application notice. These essentially sought to restrain the Defendant, its servants or agents from (i) disturbing, interfering, curtailing, obstructing and/or limiting the right of the Claimants to rent or lease or enter into rental arrangements of their townhouses to third parties for such period as they determined, and (ii) denying lawful invitees, licensees and tenants of the Claimants access and enjoyment of the Community and the Amenity Areas.

25. An injunction must be framed in clear and precise terms so that the party bound knows exactly what it may do and not do (see e.g. Attorney General v. Punch Ltd. [2003] 1 All ER 289, per Lord Nicholls at para.35). On my reading of the Order, paragraph (a) protects the Claimants' right to rent or lease their residences to third parties for periods of their choosing. Paragraph (b) protects lawful invitees', licensees' and tenants' access and enjoyment of the Community and Amenity Areas. Paragraph (c) restrains the Defendant "*from seeking to enforce any fines or penalties by disconnecting the water supply of the Claimants or by any other means*". Read as a whole, I do not construe paragraph (a) as prohibiting the recording of disputed fines whose enforcement paragraph (c) restrains. I also do not read the Order as restraining the general body of the Defendant's members from adopting resolutions or similar measures addressing the level of fines or other community-related issues, so long as these do not breach paragraphs (a) and (b). The alleged deterrent effect of the increased fines nonetheless remains relevant to whether further protection is required.

26. I now consider the factors affecting further injunctive relief.

Material Change in Circumstances

27. Chanel Ltd. v. F W Woolworth & Co. Ltd. [1981] 1 WLR 485 recognises that interlocutory disputes should not ordinarily be refought in the absence of significant changed circumstances or material facts which could not reasonably have been discovered earlier.

28. The increased fines introduced under the 2026 Rules (which significantly increase the scale of any potential contingent liability), the vacated trial date before Ellis J. and the resulting longer exposure on the part of the Claimants are, in my view, sufficiently material changes to warrant considering the question of further injunctive relief. I therefore consider the application on its merits rather than dismiss it solely as relitigation.

29. I note in passing that the Defendant in its submissions refers to the fine for STR violations prior to the 2026 Rules being $2,000, while Ms. Klessig's first affidavit states the amount of such fines to be $1,000. The schedule annexed to Ms. Hubal's first affidavit also contains numerous references to fines of $2,000 for STR violations in the period leading up to implementation of the 2026 Rules. This discrepancy was never cleared up during the hearing. In any event, whether the earlier fine was $1,000 or $2,000 per infraction does not affect my conclusion on material change.

Applicable Principles and Serious Issue

30. Both sides invoke the well-known guidelines postulated in American Cyanamid Co. v. Ethicon Ltd. [1975] 1 All ER 504: a serious question to be tried; adequacy of

damages; the balance of convenience; and relevant special circumstances. These considerations are to be applied with some degree of flexibility depending on the circumstances of the case (see e.g. Olde Nassau Holdings Ltd. and Anor. v. Nassau Airport Development Co. Ltd. and Anor. [2025] 2 BHS J No.144, para.36, per Klein J., citing Kerr LJ in Cambridge Nutrition Ltd. v. BBC [1990] 3 All ER 523).

31. In short, there are plainly serious issues to be tried concerning the Defendant's power to restrict rentals, impose fines and assert a security interest. The serious issue threshold is therefore satisfied. At this stage, I neither determine the substantive questions nor assume that either side will succeed. I also make no determination as to the Defendant's legal authority to create proprietary security in the form of a lien or when conditions for attachment are satisfied.

Adequacy of Damages and Balance of Convenience

32. The Claimants assert that they have already adjusted their STR practices and, in some cases, refrained entirely from engaging in STRs pending determination of the claim. They further state that, if ultimately successful, an award of damages will be uncertain and difficult to quantify, and that the Defendant is not in a position to pay any substantial damages.

33. I accept that the accumulation of fines may deter the Claimants from engaging in short-term rentals, even without immediate collection or enforcement. Moreover, the cancellation of accrued fines at some date in the future would not, of itself, restore income from lost rentals. However, the Claimants' evidence does not sufficiently identify bookings or losses affected by the increase in STR fines arising from the 2026 Rules, or why any resulting rental losses could not reasonably be assessed. Nor does the evidence sufficiently demonstrate any lasting harm to goodwill.

34. I accept that losses of revenue or profit are not always capable of precise calculation. However, subject to proof, reduced rental income for a townhouse is in principle capable of assessment. Although the facts of the case admittedly differed from the present, the following comments of Card-Stubbs J. in Yvette Prince v. Nassau Cruise Port Ltd. 2026/CLE/gen/00055, at para.43, serve to illustrate the point:

> *"I take into account what is said to be the Claimant's loss. On the pleaded case and by her evidence, it seems to me that the principal loss is financial: interruption of sales, loss of profits, moving and storage expenses, loss of goodwill and the financial consequences of re-establishing the business. These are losses ordinarily susceptible to assessment. Trading records can provide a basis for estimating net profits during an interruption; reasonable relocation and fitting-out expenditure can be identified; and a continuing reduction in profitability may be assessed against the position which would have obtained without wrongful displacement."*

35. Following a similar approach, monthly rental and related records in respect of the Claimants' townhouses should assist in an assessment of any lost net earnings sustained over the period following implementation of the 2026 Rules. The suggestion that the Defendant may not be able to meet a damages award is lacking in evidential support. More specifically, the evidence before me does not sufficiently link the Defendant's financial position to the likely scale of any damages award so as to establish a material risk of non-payment (see e.g. West End Commercial Ltd. v. London Trocadero (2015) LLP [2017] EWHC 2175 (Ch), paras.47-55).

36. In these circumstances, I am satisfied for present purposes that damages would provide adequate compensation to the Claimants for financial loss proved to result from any unlawful implementation of the 2026 Rules relating to STRs.

37. Having concluded that damages would adequately compensate the Claimants and that no sufficient basis has been established for doubting the Defendant's ability to satisfy an award, I would ordinarily refuse further interim relief on that ground. It is therefore unnecessary to determine whether the Defendant would be adequately compensated under the cross-undertaking. Nevertheless, in case my conclusion concerning the Claimants' remedy is wrong, I also consider the balance of convenience.

38. The Claimants' concern about their potential exposure to increased fines is legitimate. Against this, if they are successful at trial, any fines recorded against their names will fall away. In addition, there is already in place an existing restraint on enforcement of any STR fines and no late fees or interest are being charged. An order which has the effect of extinguishing otherwise recoverable fines for the intervening period may also affect the substantive rights of the Defendant. Relatedly, given the existing restraint and other circumstances referred to, I am not satisfied that additional protection to suspend the increased STR fines is appropriate. Whether the relevant restrictions on short-term rentals and fines are legally authorised all remain matters for the substantive trial.

39. I have considered the incident involving Ms. Hubal's agent and Delaporte security personnel on 26 March 2026, together with the other incidents referred to by the Claimants. I am not satisfied that, individually or collectively, they establish continuing interference warranting the additional injunctive relief sought. I have also considered the timing and scale of the increased STR fines. Considered with the evidence as a whole, these do not in my view establish a need for further interim protection.

40. In conclusion, I am not satisfied that the recording of disputed fines, without their enforcement, justifies the further restraints sought. Any broader restraint of the 2026 Rules generally could impact a host of issues unrelated to STRs and potentially affect wider administration of the Delaporte Point community. Considering both parties' positions and their evidence, retaining the existing protection under Ellis J's Order and refusing the further relief sought, in my view, carries the lower risk of injustice.

Disposition

41. The application for further interim injunctive relief filed on 15 June 2026 is dismissed. The Order of 5 February 2025 remains undisturbed. I reiterate that this dismissal neither validates the 2026 Rules nor determines the Defendant's authority to restrict rentals, impose fines, establish security or the accuracy of any fines recorded against the Claimants' names. I also emphasise that nothing in this ruling authorises enforcement or interference with rentals or access contrary to the existing Order.

42. The Claimants shall pay the Defendant's costs of this application, to be summarily assessed unless agreed.

FARQUHARSON, J.