

**COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
Common Law & Equity Division  
2021/CLE/gen/00759**

**IN THE MATTER of The Bahamas Union of Teachers Constitution and  
Governance Manual  
AND  
IN THE MATTER of Order 29 Rule 1 of the Rules of the Supreme Court (RSC  
and/or under the inherent jurisdiction of the Court)**

**BETWEEN**

**CYRIL MORRIS  
*[Members of Executive Committee of The Bahamas Union of Teachers]*  
Plaintiff**

**AND  
BELINDA WILSON  
TIFFANY BURRELL ROBERTS  
KATRESS WELLS  
TIFFANY DELANCEY-LAING  
CEDRICA ROLLE  
LORRAINE KNOWLES  
JACQUELINE McKENZIE  
JUDD WILLIAMS  
VERNINCHA SIMMONS  
WAYNE THOMPSON  
QUINTIN LARODA  
VERNON RODGERS  
ELDECIA THOMPSON  
ANN STRACHAN  
*[Members of Executive Committee of The Bahamas Union of Teachers]*  
Defendants**

**Before Hon. Mr. Justice Ian R. Winder**

**Appearances:      Kelphele Cunningham for the Plaintiff  
Kahlil Parker with Roberta Quant for the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 9<sup>th</sup>,  
10<sup>th</sup> and 12<sup>th</sup> named defendants  
Maria Daxon with Joel Seymour for the 4<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 11<sup>th</sup>, 13<sup>th</sup>  
and 14<sup>th</sup> named defendants**

**10 August 2021**

**RULING**

## **WINDER, J**

[1.] This is the plaintiff's application for mandatory interlocutory injunctive relief.

[2.] This action arose out of the passing of a resolution by the Executive of the Bahamas Union of Teachers (the Union) on 30 June 2021. That resolution, it is said, cancelled the 74<sup>th</sup> Annual General Meeting (AGM) of the Union. The plaintiff is an elected executive member of the Union and the defendants are the remaining members of the executive Union. Six of the defendants, although named as defendants, support the plaintiff's application. The remaining eight defendants represent the majority of the executive of the Union.

[3.] The action was commenced by Originating Summons seeking the following relief against all of the defendants:

- (1) A Declaration that the cancellation of the AGM was illegal and ultra vires.
- (2) A mandatory injunction holding the AGM during the Summer Vacation 2021 and to give 28 days' notice to the Union.
- (3) An order that the Candidates Committee, the Appeals Committee and the Ethics Committee purportedly appointed by the executive committee be declared null and void and ultra vires the constitution.
- (4) A mandatory injunction to hold elections of the Candidates Committee, the Appeals Committee and the Ethics Committee at the AGM by secret ballot.

[4.] By ex parte Summons dated 8 July 2021 the Plaintiff has sought the following:

- (1) A mandatory injunction holding the AGM during the Summer Vacation 2021 and to give 28 days' notice to the Union; and,
- (2) A mandatory injunction to hold elections of the Candidates Committee, the Appeals Committee and the Ethics Committee at the AGM by secret ballot.

[5.] Since the commencement of this action, a new resolution was passed by the executive members of the Union on 3 August 2021. That resolution provided that the Union will hold an Emergency General Meeting (EGM) by secret ballot to elect the Candidates Committee, the Ethics Committee, the Appeals committee and the Elections Committee. The passing of the new resolution, it would seem, acknowledges that the third relief sought in the Originating Summons, relating to the purported appointment of the membership of the Candidates Committee, the Ethics Committee and the Appeals Committee has been conceded. The plaintiff nonetheless insists on proceeding with his application for mandatory injunctive relief, namely:

- (1) a mandatory injunction holding the AGM during the Summer Vacation 2021; and,
- (2) a mandatory injunction to hold elections of the Candidates Committee, the Appeals Committee and the Ethics Committee at the AGM by secret ballot.

[6.] The AGM was cancelled last year, in 2020, due to the pandemic. It would have been, as it is now, unlawful for large gatherings to take place. In her submissions, Counsel for the plaintiff says that, at the time, much was still unknown as to the Covid-19 virus. She says that the world now has a better understanding of the virus. The plaintiff accepts that they have until March of next year to have these committees' members in place.

[7.] The plaintiff says that the EGM is inadequate as such a meeting will be limited to the matters on the Agenda. He says that the members of the Union will still be unable to understand what is actually going on in the Union. The plaintiff says that the members will be deprived of the reports of the various organs in the Union, going into an election year.

[8.] The plaintiff's case is that the majority of the executive got it wrong and that their decision to postpone the AGM, or have an Emergency AGM when permissible, is not the best one for the Union. He cites ulterior motives in his fellow members of the executive. Ultimately, he says that the Union could hold the meeting virtually and conduct the secret ballot virtually or by some hybrid method.

[9.] The affidavit of the plaintiff, filed since 8 July 2021, speaks to the loosening of restrictions. His written submissions add that the emergency orders have been "tremendously relaxed". Much has changed in the month since the making of that affidavit by the plaintiff. It has not escaped the Court's judicial notice that our country presently is in the heart of the darkest part of the pandemic: Curfews have been tightened by 2 hours; the daily rate of new infections and deaths are at its zenith since March 2020; over 1000 new infections have been recorded in the last week; churches are restricted from convening for more than an hour; and, the members of this very union must ply their trade virtually as face to face teaching has been suspended.

[10.] The essence of what the plaintiff seek is that the Court interrogates the decision of the executive committee and to determine whether it is an appropriate decision in the circumstances.

[11.] Respectfully, this is not the role of the Court on an interlocutory application.

[12.] This is not a judicial review application where the Court is exercising supervisory jurisdiction over some inferior body or tribunal. The Union is a private unincorporated body albeit given some recognition under the Industrial Relations Act. It is not amenable to judicial review. Even, had this been a judicial review application and the court found the decision to be ultra vires, the Court would not substitute its decision for that of the public body. The decision would be remitted to the public body for reconsideration. By the mandatory injunction, the plaintiff seeks for the Court to substitute the decision of the Union's executive to hold the

emergency general meeting with a decision to hold the AGM by virtual or hybrid means.

[13.] More importantly, this is an interlocutory application. The plaintiff, quite rightly, concedes that if I grant the relief sought in the interlocutory summons, there would be no need to hear the originating summons. This poses a challenge as the normal rule is that in the absence of the agreement of the parties, in circumstances where there are factual disputes, interlocutory applications should not determine court action. The reason is obvious, a litigant would be deprived of his opportunity to defend a claim effectively determined without a trial. (See: ***Hanbury & Martin, Modern Equity 12<sup>th</sup> ed § 28-022***). The plaintiff seeks that I make factual findings as that the AGM may be accommodated by hybrid or virtually. The constitution of the Union do not specifically provide for virtual or hybrid AGMs. The defendants will have an opportunity to advance their position on the factual questions to be decided at a trial.

[14.] The defendants and the plaintiff have been duly elected to the executive of the Union. It is their collective decision making which must determine the direction of the Union. It would not be appropriate for the Court to determine the correctness of that decision making process, on an interlocutory basis.

[15.] The plaintiff relies on the decision in ***Mortimer et al v Weir et al (as the executive membership of the Bahamas Lawn Tennis Association) 2020/CLE/gen/00611***. In that case ***Klein J***, refused injunctive relief to applicants seeking to restrain the holding of the Bahamas Lawn Tennis Association's AGM. This was an application for a prohibitory injunction not a mandatory injunction. In the BLTA case the decision of the executive was that it could hold the AGM safely and within the legal framework. The situation here is quite the opposite, the Union has a few thousand members, numbers which dwarfs the Lawn Tennis Association's membership, and it is the executive here which says that it is

unsafe to hold the AGM. I am therefore satisfied that BLTA case is distinguishable.

[16.] The grant of mandatory injunctive relief is entirely discretionary. On ***American Cyanamid*** principles, I refuse the application on the basis that I am not satisfied that in all the circumstances this is a good case for the grant of interlocutory mandatory injunctive relief. I will set the trial of the action on 5 November, 2021 near to the scheduled expiry of the existing emergency orders.

[17.] I reserve the question of costs to the determination of the substantive action.

Dated this 23<sup>rd</sup> day of August, 2021



Ian R. Winder

Justice