

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT**

COMMON LAW AND EQUITY DIVISION

2023/CLE/gen/00345

BETWEEN

MAURICE CLIVE RUSSELL

Claimant

AND

MARK E. MUNNINGS

*(In his capacity as Judicial Trustee of the Assets of the late **STANFORD GUSTAVUS OUTTEN** also known as **STANDORD GUSTAVOUS OUTTEN, GUS OUTTEN, GUSTAVIOUS OUTTEN** or **BIG JEW**)*

First Defendant

AND

TIPHANEY C. RUSSELL

*(In her capacity as Assistant Judicial Trustee of the Assets of the late **STANFORD GUSTAVUS OUTTEN** also known as **STANFORD SUSTAVOUS OUTTEN, GUS OUTTEN, GUSTAVIOUS OUTTEN** or **BIG JEW**)*

Second Defendant

AND

BRADLEY OUTTEN also known as BRAD OUTTEN

*(As Executor of the estate of the late **STANFORD GUSTAVUS OUTTEN** also known as **STANFORD SUSTAVOUS OUTTEN, GUS OUTTEN, GUSTAVIOUS OUTTEN** or **BIG JEW**)*

Third Defendant

AND

MARJORIE OUTTEN

*(In her capacity as Personal Representative of the Estate of the late **STANFORD GUSTAVUS OUTTEN** also known as **STANFORD SUSTAVOUS OUTTEN, GUS OUTTEN, GUSTAVIOUS OUTTEN** or **BIG JEW**)*

Fourth Defendant

Before:

Her Ladyship The Honourable Madam Senior Justice

Deborah Fraser

Appearances:

Ms. Lisa Clarke-Esfakis for the Claimant

Mrs. Michaela Ellis for the First and Second Defendants

No Appearance for the Third Defendant

Ms. Terrel Butler for the Fourth Defendant

Judgment Date: 28 July 2023

Application to extend interim injunction – Rule 17.(1)(b), (e) and (h)(ii) and (iii) of the Supreme Court Civil Procedure Rules, 2022 – Interim Injunction - Serious Issue to be tried - Balance of Convenience – Adequacy of Damages – Special Factors to be considered – Interim Orders

JUDGMENT

1. This is an application brought by Mr. Maurice Clive Russell (“**Claimant**”) for an extension of an interim injunction made on 22 May 2023 and a request for further interim orders.

Background

2. By an Order made on 13 July 2021 in the Consolidated Supreme Court Action of the late Stanford Gustavus Outten (also known as Standord Gustavous Outten, Gus Outten, Gustavious Outten or Big Jew)(“**Deceased**”), Mr. Mark E. Munnings (“**First Defendant**”) was appointed the Judicial Trustee of the Deceased’s estate and Ms. Tiphany C. Russell was appointed to assist the First Defendant in his duties as Judicial Trustee (“**Second Defendant**” and collectively, “**Judicial Trustees**”). By virtue of the Judicial Trustees’ appointments, they were empowered to make all inquiries in an effort to locate and secure all assets in the Deceased’s estate.
3. During the course of the Judicial Trustees’ duties sanctioned by the court, various entities (such as banks, insurance companies and governmental agencies) were contacted in an effort to ascertain the true ownership of several assets in the Deceased’s estate. A report relating to such findings was subsequently made and submitted to the court in compliance with the Judicial Trustees’ duties to keep the court apprised of all dealings/inquiries relating to the Deceased’s estate.
4. During the Judicial Trustees’ management of the Deceased’s estate, the Claimant asserted ownership of a 2007 Kenworth Orange Truck bearing the VIN No. #3WKDAB8X8F171619 (“**Kenworth Truck**”) and the 2007 International White Semi Truck bearing the VIN No. #2HSCNCR27C386483 (“**White Truck**” and collectively, “**Trucks**”).
5. Despite these assertions, information gathered by the Judicial Trustees from the Government of The Bahamas revealed that the Deceased was the owner of

Trucks for the purposes of his business formerly known as “Gus Outten Trucking”.

6. It was established that the Claimant did import the Kenworth Truck, but that it was subsequently sold to the Deceased through a Bill of Sale. This was confirmed from the records of Department of Road Traffic which revealed that the Deceased possessed a license, insurance and registration in relation to the Kenworth Truck.
7. Attorneys who purportedly represented the Claimant approached the Judicial Trustees and demanded delivery of one of or both of the Trucks to the Claimant. The Judicial Trustees informed the attorneys that transfer of ownership of the Trucks was not within their purview and that they would need to approach the Supreme Court for a determination of the true ownership of the Trucks (as there were competing ownership claims). The Trucks were listed in the Will of the Deceased and, as mentioned above, government records reflected that the Deceased was indeed the true owner.
8. By sanction of the court, the Judicial Trustees sought to sell the assets of the Deceased (including the Kentworth Truck) in efforts to settle the statement of accounts of the Deceased’s estate.
9. Consequently, the Claimant filed an Application without Notice supported by a draft Order on 18 May 2023, inter alia, for an injunction preventing the sale of the Trucks.
10. On 22 May 2023, an interim injunction (“**Interim Injunction**”) was granted in the following terms:

“IT IS HEREBY ORDERED AND DIRECTED that:

a. The Defendants, individually and jointly, or by their agents or servants or otherwise and howsoever be restrained from posting, selling or transferring or otherwise dealing with or disposing of the 2007 Kenworth Tractor Truck (VIN #3WKDAB8X87F171619) vehicle and the 2007 International 9400 Semi Truck (VIN #2HSCNSCR27C386483) vehicle, for a period of twenty-eight (28) days from the date of this order or until the further order of this Honorable Court.

b. The Defendants immediately notify the Claimant of the location of the 2007 Kenworth Tractor Truck (VIN# 2HSCNSCR27C386483) vehicle.

c. The Claimant is hereby granted leave to inspect the 2007 Kenworth Tractor Truck (VIN#3WKDAB8X87F17619) vehicle and the 2007 International 9400 Semi Truck (VIN# 2HCNSCR27C386483) vehicle, to ascertain their current condition and state.

d. The Claimant do file a Claim in the Supreme Court of The Bahamas within fourteen (14) days from the date of this order;

e. The Claimant to file an Affidavit in this cause exhibiting evidence of ownership of the said 2007 Kenworth Tractor Truck VIN#3WKDAB8X87F171619) vehicle and the 2007 International 9400 Semi Truck (VIN# 2HSCNSCR27C386483) vehicle on or before 25 May 2023.

f. The Claimant do personally serve each of the Defendant with this order, the Affidavit in Support and with notice of the date and time on which the court will further consider this application.”

11. The Interim Injunction then expired (as it only remained in effect for twenty-eight days). Consequently, on 09 June 2023, the Claimant filed a Notice of Application requesting the following:

“(a) An Order that the Defendants, whether individually or collectively, or by their agents or servants or otherwise and howsoever be restrained from posting, selling or transferring or otherwise dealing with or disposing of the 2007 Kenworth Tractor Truck (VIN#3WKDAB8X87F171619) vehicle and the 2007 International 9400 Semi Truck (VIN# 2HSCNSCR27C386483) vehicle

(b) An interim Injunction Order that the Defendants, whether individually or collectively, or by their agents or servants or otherwise and howsoever be restrained from accessing, dissipating, distributing or otherwise using any proceeds of sale or rental income derived from the sale and or rental of the 2007 Kenworth Tractor Truck VIN#3WKDAB8X87F171619) vehicle and the 2007 International 9400 Semi Truck (VIN# 2HSCNSCR27C386483) vehicle, for a period of twenty-eight (28) days from the date of this order or until the further order of this Honourable Court.

(c) An Order that the Defendants immediately notify the Claimant of the location of the 2007 Kenworth Tractor Truck VIN#3WKDAB8X87F171619) vehicle and the 2007 International 9400 Semi Truck (VIN# 2HSCNSCR27C386483) vehicle;

(d) An Order granting the Claimant access to inspect the 2007 Kenworth Tractor Truck VIN#3WKDAB8X87F171619) vehicle and the 2007 International 9400 Semi Truck (VIN# 2HSCNSCR27C386483) vehicle, to ascertain their current condition and state of disrepair.

(e) An Order that the Claimant do file a Claim in the Supreme Court of The Bahamas within fourteen (14) days from the date of this order;

(f) That a date be fixed for the further consideration of this application;

(g) That the Claimant do personally serve each of the Defendants with this order, the Affidavit in Support and with notice of the date and time on which the court will further consider this application.

(h) An Order that the Court make any order as to costs that it considers just in relation to any order made in this application.”

ISSUE

12. The issue that this Court must decide is whether the Court ought to grant the interim orders sought by the Claimant?

Claimant's Evidence

13. The Claimant filed the Affidavit of Maurice Clive Russell (“**Russell Affidavit**”) where he provides that: (i) he is the proprietor of Maurice Russell t/a MLR Earthmoving & Heavy Equipment in New Bight, Cat Island and is a veteran in the heavy equipment business with twenty-three years’ experience; (ii) he is the owner of the Trucks; (iii) He met the Deceased in or about 2001 and they began business together as they both owned heavy equipment businesses and used their respective equipment for various projects; (iii) an oral agreement was made between the Claimant and the Deceased whereby the Deceased agreed to allow the Claimant to use the Deceased’s property to store the Claimant’s heavy equipment in Nassau, The Bahamas; (iv) the Claimant’s heavy equipment was used by the Deceased (with consent from the Claimant) on various projects and the Deceased would share the profit with the Claimant; (v) the Deceased would assist in the sale and lease of the Claimant’s equipment; (vi) the business arrangement between the Claimant and the Deceased was known to the Deceased’s family; (vii) the Claimant purchased the Trucks as part of his heavy equipment business; (viii) On 02 November 2017, the Claimant imported the Kenworth Truck (information relevant to such importation is exhibited) and stored it on the Deceased’s property; and (ix) the Claimant purchased the White Truck and the Deceased offered to clear it with the Customs Department (with exhibits evidencing such purchase attached).
14. Further, the Russell Affidavit states that: (i) the business relationship lasted until the Deceased’s death on 29 January 2021; (ii) after an appropriate amount of time for the Deceased’s family to grieve, the Claimant contacted Mr. Shonario Outten (son of the Deceased) regarding the Trucks; (iii) the Claimant was informed by Mr. Shonario Outten that there were inquiries being made on which assets belonged to the Deceased and which ones did not; (iv) a letter prepared and signed by the Claimant’s wife were sent to the Deceased’s then attorney and the Mr. Bradley Outten’s (“**Third Defendant**”) attorney advising them that the

Trucks belonged to the Claimant (the letters are exhibited to the affidavit); (v) By order dated 13 July 2021 the First and Second Defendants were appointed Judicial Trustee and Assistant Judicial Trustee respectively of the Deceased's estate; (vi) Approximately nine (9) months after the Deceased's death, the Claimant visited the Deceased's property and found that the Trucks were not being regularly repaired/maintained; (vii) the Claimant was advised by the Deceased's family not to remove the Trucks from the Deceased's property as court proceedings regarding the Deceased's estate were still ongoing; (viii) by letter 01 October 2021 to the Deceased's then attorneys, the Claimant reiterated his ownership of the Trucks and requested permission to enter the Deceased's property to remove the Trucks; and (ix) shortly after, the First Defendant called the Claimant and informed the Claimant that his name was on one of the Trucks' ownership documents.

15. In addition, the Russell Affidavit provides that: (i) in October of 2022, the Claimant transported the White Truck to Potter's Cay Dock to be shipped to Cat Island, but prior to being shipped, the White Truck was removed from Potter's Cay Dock by the First Defendant; (ii) the Judicial Trustees discontinued an action against the Third Defendant and by order dated 06 October 2022, the Third Defendant was granted leave to obtain a Grant of Probate in the Deceased's estate; (iii) Marjorie Outten and Shonario Outten (both beneficiaries of the Deceased's estate) communicated to the Claimant their concerns involving the significant legal expenses incurred by the Deceased's Estate and resulting from the First Defendant's actions; (iv) Marjorie Outten and Shonario Outten undertook to have final negotiations with the First Defendant regarding the Trucks to avoid any further legal expenses; (v) On 17 November 2022, the Claimant filed a Caveat in the probate application for the Deceased's estate; (vi) subsequently, the Claimant obtained a copy of a flyer advertising the assets of the Deceased's estate for sale (including the Trucks) by sealed auction; (vii) there would be irreparable damage suffered by the Claimant's business if the Trucks are sold, thus damages would be inadequate in the circumstances; and (viii) the Claimant intends to file a claim and plead, inter alia, damages for Fraud, Loss of Bargain, Loss of Use, General Damages and Damages for cost of repairs in relation to the Trucks.

Judicial Trustees' Evidence

16. On 15 June 2023, the Judicial Trustees filed the Affidavit of Mark E Munnings ("**Munnings Affidavit**"). It provides that: (i) the First and Second Defendants were appointed by the court as Judicial Trustee and Assistant Judicial Trustee respectively with authorization to make necessary inquiries to locate and secure all assets in the Deceased's estate; (ii) the Judicial Trustees made inquiries with several banks, insurance companies and governmental agencies and reported findings regarding the Deceased's assets to the Court (in 3 separate reports); (iii) the Judicial Trustees received a letter from the Claimant asserting his claim of the Trucks; (iv) notwithstanding the Claimant's assertions, the Judicial Trustees

received information from governmental agencies confirming that the Deceased owned the Trucks; (v) email correspondence from the Deceased's attorney (Ms. Mikia Cooper) indicated that the White Truck was removed from the Deceased's estate; and (vi) On 09 August 2021, an agent of the First Defendant visited the Deceased's residence where the Trucks were and parked on the property.

17. The Munnings Affidavit further provides that: (i) On 18 October 2022, an agent of the First Defendant, with the assistance of the police, retrieved the White Truck from Potter's Cay Dock after the First Defendant was advised by the Third Defendant that the White Truck was about to be transported to Cat Island; (ii) on 19 October 2022, an agent of the First Defendant also seized the Kenworth Truck (with the assistance of the police) and both Trucks are now at the residence of the Third Defendant on Farrington Road; (iii) by letter dated 26 October 2022 from the First Defendant's attorneys to the Claimant, the First Defendant's counsel invited the Claimant to join the consolidated action and provide affidavit evidence confirming the Claimant's ownership of the Trucks so that the court could make a finding as to the ownership of the Trucks and other assets of the Deceased; and (iv) the First Defendant's attorneys never received a response to that letter.
18. In addition, the Munnings Affidavit states that: (i) the First Defendant and his agent, Deloitte, incurred significant expenses in this matter and by order of the court dated 24 November 2021 and filed on 14 October 2022, the Judicial Trustees were granted permissions to sell the assets of the Deceased's estate to settle their statement of account (the order is exhibited to the affidavit); (ii) on 17 and 20 April 2023, the Judicial Trustees advertised the sale of certain assets in the Deceased's estate; (iii) on 15 May 2023, Ms. Terrel Butler, the attorney for Marjoire Outten, Shoanrio Outten, Standord outten Jr., Shavanna Outten and Shekira Outten sent an email to the Judicial Trustees demanding that certain assets purportedly belonging to the Outtens (such items purportedly being a part of the Deceased's estate) be returned to them failing which, court action would take place; (iv) a request for an extension of time to respond to Ms. Terrel Butler's email was made but refused; and (v) The Judicial Trustees have no objection to the vehicles being inspected and assessed at the Claimant's expense and request the Court to review all evidence regarding ownership of the Trucks and make a determination on the true ownership of the Trucks.

Claimant's Submissions

19. The Claimant's counsel submits that, based on the circumstances of the matter, the Court ought to exercise its powers as permitted under rule 17 of the Supreme Court Civil Procedure Rules, 2022 ("CPR"). Specifically, counsel would like the Court to grant interim orders as outlined under rule 17.1(b),(e)(h)(ii) and (h)(iii) of the CPR. Those rules (along with rule 17.1(2) of the CPR) provide:

"17.1 Orders for interim remedies: relief which may be granted.

(1) The Court may grant interim remedies including —

- (b) an interim injunction;
- (e) an order directing a party to provide information about the location of relevant property or assets or to provide information about relevant property or assets which are or may be the subject of an application for a freezing order;
- (h) an order for the —
 - (ii) detention, custody or preservation of relevant property;
 - (iii) inspection of relevant property...

(2) In paragraph (1)(e) and (h), “relevant property” means property which is the subject of a claim or in relation to which any question may arise on a claim.”

20. Counsel then draws the Court’s attention to the **United Kingdom’s Civil Procedure Rules 1998, on CPR 25 r. 25.1** (which is nearly identical to our rule 17) “**The Effect of the Rule**” which states:

“In r. 25.1(1) an attempt is made to list all of the interim remedies for which a party may wish to apply (including some available before proceedings are commenced) and which the Court, in the exercise of its discretion, may be prepared to grant. It is possible that the list is not exhaustive. Consequently, r. 25.1(3) states that the fact that a particular kind of interim remedy is not listed in para (1) does not effect any power that the Court may have to grant that remedy. Sub paragraph (o) was added to r. 25.1 by the Civil Procedure (Amendment) rules 2002 (SI 2002/2058).....IN certain circumstances, some of the remedies listed in r. 25.1 and described as “interim” may be granted after final judgment....Thus the power to grant “a freezing injunction” after judgment is preserved.”

21. In relation to an interim injunction and principles which the court must consider when granting same, Counsel relies on the well-known decision of **American Cyanamid v Ethicon [1975] A.C. 396** (“**American Cyanamid**”). The principles may be summarized as follows:

- (i) Whether there is a serious issue to be tried?
- (ii) Where does the balance of convenience lie?
- (iii) Whether damages would be an adequate remedy?
- (iv) Whether there are any special factors which should be taken into account?

22. Counsel submits that the purpose of the principles is to ensure that there is justice between the parties, regardless of the final determination of the trial, while not reducing a party’s freedom of action needlessly and without remedy.

23. Counsel for the Claimant then proceeds to apply these principles. She submits that there is a serious issue to be tried and intends to plead that the purported Bill

of Sale of the Trucks from the Claimant to the Deceased is fraudulent. She submits that there is evidence confirming the true ownership, which will be relied on at the trial of the action. Counsel asserts that the legality of the purported transfer of title of the Trucks from the Claimant to the Deceased is a serious issue that needs to be ventilated and considered by the Court.

24. Counsel then cites the case of **Head v Forte Nassau Beach Hotel et al BS 1994 SC 118, Head (1994)** for the proposition that an interim injunction (which has already been granted) ought to be preserved in relation to assets until a final determination of the matter in order to preserve the status quo.
25. Counsel further asserts that damages would not be an adequate remedy. The Claimant's counsel submits that the Claimant timeously informed the First Defendant about the Claimant's ownership of the vehicle since 01 October 2021, yet the matter remains extant. Counsel submits that, as the matter remains unresolved to date, the Claimant has suffered financial loss and serious mental distress in managing his business and fulfilling financial and emotional obligations to his family.
26. In relation to the balance of convenience, the Claimant's counsel submits that the balance of convenience lies in favor of restraining the Judicial Trustees from parting with the Trucks. Counsel asserts that the assets must be preserved for the time being in order to prevent irreversible harm.
27. The Claimant then advances the case of **Associated Newspapers Group Ltd v Wade [1979] 1 WLR 697 at 698-699** for the following pronouncements:

“...that on balance of convenience the injunctions should be continued until trial or further order, for although (per Lawton and Geoffrey Lane L.J.J.) section 17 (2) of the Act of 1974, as amended, obliged the court, before exercising its discretion whether or not to grant an interim injunction, to “have regard to the likelihood” of the defence succeeding at the trial in establishing the protection of, inter alia, section 13, the losses which the plaintiffs had already suffered and would suffer if the injunctions were discharged so greatly outweighed any temporary interruption of the union's campaign (which would cost practically nothing in money or effort) that it was clear beyond doubt that the balance was in favour of the plaintiffs and that the injunction be continued.

[per Geoffrey Lane L.J. at p 719]..... Our task as I see it is to set the balance fairly between the opposing parties during the period up to the trial of this action.The paramount consideration is fairness..... To reach that objective it is first necessary to look at that which each side stands to lose in the event.... The balance of convenience or hardship (call it what you will) is so overwhelmingly in favour of continuing the injunction that the defendants. To my mind, would need to show that they had a very strong likelihood of success before it would be fair to discontinue the injunction.”

28. With regard to special factors, counsel submits that there are special factors which the Court ought to consider. According to Counsel, the special factors are:
- a) The Judicial Trustees had notice of the Claimant's purported ownership of the Trucks three months into their trusteeship, yet have not resolved the matter to date.
 - b) The Judicial Trustees have been dilatory and have put the estate to further expense when this issue could have been resolved since 2021.
 - c) The Judicial Trustees have endangered the Trucks by failing to store and maintain them.
 - d) The Judicial Trustees have not apprised the Claimant of any findings regarding the ownership of the Trucks and have necessitated the Claimant's engagement of and expenses relating to legal counsel.

29. Counsel then cites **Lewin on Trust paragraph 13-46** for the role of trustees:

"The general principle guiding the court in the exercise of its inherent jurisdiction is the welfare of the beneficiaries and the competent administration of the trust in their favor. In cases of positive misconduct, the court will, without hesitation, remove the trustee who has abused his trust; but it is not ever mistake or neglect of duty or inaccuracy of conduct on the part of a trustee that will induce the court to adopt such a course. Subject to the above general guiding principle, the act or omission must be such as to endanger the trust property or to show a want of honesty or a want of proper capacity to execute the duties, or want of reasonable fidelity."

30. Finally, the Claimant's counsel concludes by requesting the Court to grant the reliefs sought.

Judicial Trustees' Submissions

31. The Judicial Trustees' counsel submits that it would not be in the interest of justice to grant an interim injunction. She cites section **21(1) of the Supreme Court Act, 1997**, which states:

"The Court may be order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases in which it appers to the Court to be just and convenient to do so".

32. Further, she cites **rule 17.3(3) of the CPR**, which provides:

"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.”

33. Counsel submits that the Claimant failed to disclose that, according to his evidence, his only communication asserting his purported ownership was a letter dated 01 October 2021 over a year and a half ago to the Deceased’s then attorneys (Sears & Co). Counsel asserts that, even after the Judicial Trustees and the Third Defendant took over possession of the vehicles, the Claimant did not contact the Judicial Trustees or seek to obtain relief from the Court.
34. Counsel further asserts that, the Claimant’s failure to act in a timelier manner demonstrates that, at the time of the initial granting of the Interim Injunction, there was no matter of urgency and no such urgency exists to date.
35. Counsel too relies on ***American Cyanamid*** for relevant principles relating to when an interim injunction ought to be granted.
36. With respect to whether or not there is a serious issue to be tried, counsel asserts that there is no serious issue to be tried and that the action is frivolous and vexatious. She advances the case of **Sherise Hamilton and others v Lanatha Williams and others 2018/PRO/cpr/00055 (“Sherise Hamilton”)** for the following proposition:
- “...the Court on an interlocutory application is not to decide the issues raised by a mere review of the evidence and without testing the same but to simply determine whether or not based on the evidence submitted that there is a serious issue to be tried”**
37. Counsel contends that, while allegations of fraud are serious, such allegations are not for the Judicial Trustees to answer. The role of the Judicial Trustees, counsel submits, is simply to collect and account for all assets in the Deceased’s estate and to assist the Third Defendant in his duties as executor of the Deceased’s estate.
38. To buttress this position, the Judicial Trustees’ counsel directs the Court’s attention to **section 9 of the Judicial Trustee Rules, 1970** which reads:
- “9. (1) A judicial trustee must, unless in any case the court considers that it is unnecessary, as soon as may be after his appointment, furnish the court with a complete statement of the trust property, accompanied by an approximate estimate of the income and capital value of each item.**
- (2) It shall be the duty of the judicial trustee to give such information to the court as may be necessary for the purpose of keeping the statement of the trust property correct for the time being.”**
39. Counsel submits that the Judicial Trustees were acting within the ambit of their duties by contacting local authorities in order to ascertain ownership of assets in

the Deceased's estate. Based on the Judicial Trustees' investigations, the evidence showed that the Trucks belonged to the Deceased.

40. Based on this, counsel asserts that the Claimant has not provided substantial evidence confirming his ownership of the Trucks, thus confirming that the Judicial Trustees have an arguable defence to the allegations made in the Munnings Affidavit.
41. In relation to the adequacy of damages, counsel asserts that damages would be adequate as the Claimant's substantive claim (to be imminently filed) includes damages concerning the loss of the Trucks. Counsel asserts that it is not difficult to assess damages for loss of the Trucks as any wrongs determined by the Court are recoverable through financial compensation.
42. She further asserts that even if the court is not persuaded that damages are an adequate remedy, the Court should bear in mind the dissenting judgment of Lord Toulson in **PJS v News Group Newspaper [2016] A.C. 1081 para. 92**:

"...while adequacy of damages as a remedy is a reason to refuse an injunction, you cannot turn the argument on its head and say that inadequacy of damages is a positive reason to grant an otherwise inappropriate injunction."
43. With respect to the balance of convenience, counsel asserts that the Court should follow the reasoning in the Privy Council decision of **National Commercial Bank of Jamaica v Olint Corp Ltd. [2009]** and make a decision likely "*to cause the least irremediable prejudice to one party or the other*".
44. The Judicial Trustees' Counsel contends that the balance of convenience lies overwhelmingly in favor of the Judicial Trustees as there are many deficiencies concerning the Claimant's purported ownership. According to Counsel, the Claimant elected not to do anything for over a year regarding the Trucks even after an agent of the Judicial Trustees prevented the Claimant from transporting the Trucks from New Providence to Cat Island.
45. Counsel concludes by requesting the Court to refuse the reliefs sought by the Claimant.

DISCUSSION AND ANALYSIS

(I) Whether the Court ought to grant the interim orders sought by the Claimant?

46. The Claimants seek to invoke the powers of the Court in relation to interim orders prescribed under rule 17 of the CPR – specifically, rule 17.1(b),(e),(h)(ii) and (h)(iii).
47. As both Counsel correctly highlight and reference, the benchmark case of **American Cyanamid** highlights all the relevant principles that must be considered when granting an interim injunction. Each factor will be considered.

Serious Issue to be tried.

48. Based on the evidence provided in the Russell Affidavit, allegations of fraud have been made in relation to the Bill of Sale for the Kenworth Truck. I agree with the Judicial Trustees' counsel that allegations of fraud are not to be taken lightly. The Court cannot (and must not) delve too deeply into such allegations until the substantive trial of the action.
49. The Court does keep to the forefront of its mind the pronouncements made by Stewart J in the ***Sherise Hamilton*** decision and echo them here – Interlocutory applications are not the proper forum for the Court to decide issues raised in evidence without testing the same. The Court's role in such proceedings is merely to determine whether or not, based on the evidence submitted, that there is a serious issue to be tried.
50. The Russell Affidavit exhibits documents which suggest that the Claimant may very well be the true owner of the Trucks. A cursory view of the Bill of Sale also indicates that the Deceased is the owner. There is a clear conflict here which the Court ought to determine after considering and hearing evidence at the substantial trial. The subject matter of the trial will be ownership of the Trucks – which both parties agree are in substantial dispute.
51. In the circumstances, I rule that there is, indeed, a serious issue to be tried.

Adequacy of Damages

52. The next factor the Court is tasked to consider is the adequacy of damages. The Russell Affidavit states that damages would be inadequate due to the financial losses already suffered and likely irreparable harm to come if an injunction is not granted. These bare statements alone are insufficient to convince this Court that damages would not be sufficient.
53. As the Judicial Trustees' Counsel correctly submits, damages would be adequate as it is damages which the Claimant intends to plead. This is based on the Russell Affidavit, that, through the Claimant's own admission, he will be seeking damages.
54. It is curious that the Claimant would find damages inadequate when he intends to ask the Court for such a remedy. Specifically, the Claimant intends to plead damages for Fraud, Loss of Bargain, Loss of Use, General Damages and Damages for cost of repairs. All of these can be considered at the substantive trial and subsequently assessed if granted.
55. Further, the Claimant's counsel appears to try to give evidence in her submissions. She asserts that the Claimant suffered mental distress due to the inability to use the Trucks which has financially affected his business and his family. None of these assertions were evidenced in the Russell Affidavit and even if it was, these are matters for the substantive trial.
56. Based on the evidence before me, I rule that damages would be adequate in the circumstances.

Balance of Convenience

57. As I ruled that damages would be adequate in this case, I need not consider this factor. I will, in any event, still consider the balance of convenience.
58. In essence, when considering the Balance of Convenience, it requires the Court to determine whether it would be in the interest of justice, despite the competing interests, to grant the injunction or not. In other words, who should the balance lay in favor of? Would it be more detrimental/prejudicial to grant an injunction or less detrimental/prejudicial to do so?
59. Both parties are of the view that the balance lay more in their favor. Based on the Court's understanding of the matter, the balance of convenience would lay in favor of the Judicial Trustees. Paragraphs 12 and 17 of the Munnings Affidavit state:

"12. By letter dated the 26th October 2022, our attorneys, GrahamThompson, requested that the Claimant become a party in the Consolidated Action and that he should provide the Court with an affidavit setting out the particulars of his ownership so that the Court could make a finding as to the ownership of the assets claimed by the Claimant....

17. We [the Judicial Trustees] have no objection to the vehicles being inspected and assessed at the Claimant's expense. We would like the court to review the evidence regarding the ownership of the Kenworth Orange Truck and the International White Semi Truck and advise whether those vehicles make up a part of the Estate."

60. Accordingly, the Judicial Trustees invited the Claimant to prove his ownership. They also seek the Court's assistance in clarifying such ownership. Refusing to grant an injunction, in the circumstances, would not prejudice any party as the Judicial Trustees appear fully prepared to comply with any order of the Court and to work with the Claimant.
61. In fact, the Judicial Trustees' counsel stated (during the hearing of this application) that the Judicial Trustees are prepared to provide an undertaking that the Trucks will not be sold until final determination of the matter. In the circumstances, I see no need to grant any injunction relating to the Trucks.

Special Factors to be considered

62. Though the Claimant's counsel mentioned a few items she believed to be special factors to be considered, the Court was not persuaded by the arguments advanced. As the Judicial Trustees' counsel submits, the Claimant had over a year to approach the Court for intervention and failed to do so. To now try and blame the Judicial Trustees for any delay in acting in determining the true ownership of the Trucks cannot stand, as the Claimant was also dilatory in acting.

Other Matters

63. Though counsel did not provide any substantive discussion on the application of rule 17.1.(b),(e) and/or (h)(ii) and (h)(iii) of the CPR, the Court does find helpful guidance on the subject from the **Supreme Court Civil Procedure Rules, 2022 - Practice Guide – March 2023 (“CPR Practice Guide”)**.
64. In relation to rule 17.1(b) of the CPR, the Court needs no guidance as the principles from the *locus classicus*, **American Cynamid**, are more than sufficient to address the matter (and have been addressed above).
65. In relation to rule 17.1(e) of the CPR, the **CPR Practice Guide at page 111** states:

“CPR 17.1(1)(e) – orders directing the provision of information

In **Emmerson International Corporation et al v Viktor Vekselberg (eccourts.org) – ClaimNo. BVIHCM2013/0160 Wallbank J** (at para. [60]) observed that CPR 17.1(1)(e) is in materially identical terms to r.25.1(1)(g) of the English CPR and subsequently adopted the analysis applied by the English Court of Appeal in **JSC Mezhdunarodniy Promyshlenniy Bank v. Pugachev [2015] EWCA Civ 139** <http://www.bailii.org/ew/cases/EWCA/Civ/2015/139.html> which held that consideration of an application for disclosure under the rules involves two stages, viz.: First, a jurisdictional threshold needs to be satisfied, namely, whether there is ‘some credible material’ on which an application might be based. Secondly, the court effects a general exercise of discretion aimed at deciding whether it is just and convenient, in all the circumstances, to make the order sought.

Wallbank J stated further that: “The scope of CPR 17.1(1)(e) is wide, but not boundless. It first enables the Court to order a party to provide information about the location of relevant property as so defined. This part of the rule can be used to assist a party who claims a proprietary remedy, as well as one who brings personal claims.....The provision contains no express guidance as to the type and extent of information that can be disclosed under the second part. That does not mean any and all information should necessarily be disclosed. The overriding objective of the CPR provides necessary guidance. The type and extent of information to be disclosed depends upon what is proportionate in the circumstances of each case, for its just and fair disposition....(emphasis added).”

66. Based on the above mentioned guidance and the evidence that is before me, I believe there is some credible material regarding the Claimant’s purported ownership of the Trucks. He provides several pieces of evidence in the Russell Affidavit which purport to confirm ownership of the White Truck, namely - Copies of the Commonwealth of Kentucky Certificate of Title, Transfer of Title by Owner

and The State of Florida Motor Vehicle Title Reassignment Settlement Certificate from the initial owner to the Claimant relating to the White Truck. The Court views this as credible material upon which the Claimant may bring this application.

67. I note that there is mention of a Customs Vehicle Information Invoice of the Kenworth Truck, but this does not necessarily mean that the Claimant is the owner of it. In any event, the Judicial Trustees are prepared to allow the Claimant access to the Trucks. Accordingly, there should be no issue in the Judicial Trustees providing information on the present location of the Trucks to the Claimant.
68. Further, it is reasonable, just and convenient for the Claimant to request and be given information on the whereabouts of the Trucks as the evidence contained in the Russell Affidavit confirm that he and the Deceased were in a business arrangement involving the Trucks and would understandably want to know the current location and condition of the Trucks.
69. In relation to rule 17.1 (h) (ii) and (iii) of the CPR, the CPR Practice Guide does not appear to have any guidance notes on the matter. In any event, the Judicial Trustees are prepared to provide an undertaking that the Trucks will not be sold and to permit inspection of the Trucks by the Claimant, at his own expense.
70. The Judicial Trustees are officers of the Court and are obliged to comply with any order of the Court and report to the Court. Based on what is before, they have done so and are obliged to continue to do so.
71. Lastly, the Court notes that the Third nor the Fourth Defendant provided any submissions or evidence in relation to this application. It is unclear if they resisted the application or adopted the arguments of either the Claimants or the Judicial Trustees. In any event, the Court has made its determination based on what is before it.

CONCLUSION

72. In the circumstances and based on the authorities referred to above, the Court is prepared to exercise its powers under rule 17.1(e), and (h)(iii) of the CPR. As the Judicial Trustees' Counsel has provided an undertaking that the Trucks will not be sold until final determination of the matter, I will not grant the interim injunction.
73. Accordingly, the Order will read as follows:
 - a) The First, Second and Third Defendants shall notify the Claimant of the location of the 2007 Kenworth Tractor Truck VIN#3WKDAB8X87F171619) vehicle and the 2007 International 9400 Semi Truck (VIN# 2HSCNSCR27C386483) vehicle within seven (7) days from the date of this order.

- b) The First, Second and Third Defendants shall provide the Claimant with access to the 2007 Kenworth Tractor Truck VIN#3WKDAB8X87F171619) vehicle and the 2007 International 9400 Semi Truck (VIN# 2HSCNSCR27C386483) vehicle – at the Claimant’s expense – to inspect them and ascertain their current condition and state of disrepair. Such access and inspection is to occur within sixty (60) days from the date of this order on an agreed date and time of the Parties.
- c) The Parties are at liberty to apply.
- d) No order as to Costs.

Senior Justice Deborah Fraser

Dated this 28th day of July 2023