

IN THE SUPREME COURT OF BELIZE, A.D. 2022

CLAIM NO. 30 of 2022

BETWEEN

**COROZAL SUGAR CANE PRODUCERS
ASSOCIATION**

APPLICANT

AND

**EVERALDO UK
GUSTAVO KU
JUDITH SALAZAR
SALVASTRIANO TECK
URBANO LÓPEZ
DANIEL EDUARDO ESPINOZA
GUILLERMO CHI
LEONARDO KU
AURELIO TAN
ANTONIO ZETINA**

**FIRST RESPONDENT
SECOND RESPONDENT
THIRD RESPONDENT
FOURTH RESPONDENT
FIFTH RESPONDENT
SIXTH RESPONDENT
SEVENTH RESPONDENT
EIGHTH RESPONDENT
NINTH RESPONDENT
TENTH RESPONDENT**

BEFORE The Honourable Madam Justice Geneviève Chabot

Hearing Date: March 17, 2022

Appearances

Virginia L. Requeña, Counsel for the Applicant

Allister T. Jenkins, Counsel for the Respondents

JUDGMENT

Overview

1. The Applicant, the Corozal Sugar Cane Producers Association (the “Association”), seeks an interim injunction restraining the Respondents from presenting themselves as Board Members, Directors, and/or Members of the Association, from conducting business on behalf of the Association, and from accessing the Association’s property until the final disposition of the underlying claim. The Applicant further seeks an order from the Court related to correspondence exchanged between some of the Respondents on behalf of the Association and the Atlantic Bank Limited Corozal Branch.
2. The Respondents oppose the granting of the interim injunction on the basis that there are no serious issues to be tried. The Respondents contend that the Applicant remains in control of its property and bank account, and that they have taken no further action in this matter since obtaining legal advice. The Respondents also argue that the Applicant failed to provide full and frank disclosure to the Court. The balance of convenience, argue the Respondents, therefore lies in their favour.
3. The Application is granted in part. There are serious issues to be tried. Damages would be inadequate to compensate either party because of the intangible nature of the potential losses. On the balance of convenience, the interim injunction must be granted to preserve the *status quo*.
4. The scope of the orders sought is too broad. The First Respondent is enjoined from accessing the Association’s property, and all of the Respondents are enjoined from presenting themselves as Board Members, Directors, and/or Members of the Association and from conducting business on behalf of the Association until trial of the claim. The Court declines to make an order in relation to correspondence exchanged between the Respondents and the Atlantic Bank. The Applicant must file a claim within 14 days of this Judgment.

Background

5. The leadership of the Corozal Sugar Cane Producers Association is embroiled in a dispute which came to a head on January 9, 2022. On that day, a Special General Meeting was held and a new Board of Directors was purportedly elected to oversee the Association. The Applicant disputes the validity of the Special General Meeting on the basis that it did not comply with the Bylaws of the Association as adopted in 2019 (the “2019 Bylaws”).

6. In their written materials and at the hearing of the Application, counsel for both sides provided some helpful background as to the events that ultimately led to the contentious January 9, 2022 meeting. The chronology of events is largely undisputed. Briefly, the Association was formed in 2015. The First Respondent was elected Chairman of the Association, while the affiant for the Applicant, Vladimir Puck, was elected as Director. The Association was initially governed by a first set of Bylaws (the “2015 Bylaws”). In order to comply with the requirements of the *Sugar Industry Act*, and at the urging of funders, the Association decided to create Zones for which elections would be held on a rotating basis starting in 2017.
7. In 2018, the First Respondent was removed from the Board of Directors and Vladimir Puck became its Chairman.
8. In 2019, the Applicant engaged in a Bylaw revision exercise. The revised Bylaws were presented at the 2019 Annual General Meeting (“AGM”) of the Association. The parties dispute whether the 2019 Bylaws were legally adopted at the AGM. The vote on the 2019 Bylaws does not formally appear as an order of business on the Agenda for the AGM. The Applicant is of the view that the 2019 Bylaws were properly brought to a vote under the “Other Business” part of the Agenda. The Respondents disagree. The issue of whether or not the 2019 Bylaws were validly adopted is not before this Court at this time. What is important to note, however, is that from that point on the parties disagree as to what set of Bylaws regulate the Association.
9. The parties also dispute whether elections were held at the 2019 AGM. The Applicant contends that the Board who presided over the 2019 AGM automatically became the inaugural Board of Directors under the newly-adopted 2019 Bylaws. The Respondents dispute that elections were held at the 2019 AGM.
10. On December 31, 2019, the First Respondent was expelled from the Association. The issue of the First Respondent’s expulsion is currently before the Court in Supreme Court Claim 56 of 2020. The First Respondent is currently not listed as a member of the Association.
11. Around October 2021, the Association conducted a “re-registration exercise” whereby members of the Association were invited to reaffirm their membership status with the Association. The Applicant notes that the Second, Third, Seventh, Eighth, and Ninth Respondents did not re-register.
12. The Applicant alleges that it sought to hold elections in the fall of 2021. However, no elections were held. In a letter dated November 11, 2021, the Applicant informed the

Chairman of the Sugar Industry Control Board (“SICB”) that the current members of the Board of Directors would continue to serve as such.

13. It is not disputed that on January 2, 2022, the First Respondent sought permission from the Minister of Health and Wellness for an exemption on restriction of gatherings for the purpose of holding a Special General Meeting of the Association. Permission was granted by the Minister via letter addressed to the First Respondent dated January 5, 2022.
14. On January 7, 2022, the First Respondent emailed Vladimir Puck to request that a Special General Meeting be convened on January 9, 2022 for the purpose of holding a general election. The next day, the Applicant sent a letter to the First Respondent informing him that the Special General Meeting would not be sanctioned by the Association and that nothing that would take place at that meeting would be recognized as having legal effect on the Association.
15. The Special General Meeting was held on January 9, 2022. The next day, the First Respondent wrote to Vladimir Puck to inform him of the results of the elections. In that letter, the First Respondent identifies himself as Chairman of the Board of Directors, and lists the other Respondents as Directors and members of the Surveillance Committee of the Association. The First Respondent also requested that the Association’s office be handed-over by January 12, 2022.
16. On January 11, 2022, the First Respondent contacted the Atlantic Bank Corozal Branch in his capacity as “Newly elected Chairman for Corozal Sugar Cane Producers Association” to request that disbursements to all the former Board Members of the Association be frozen. The Bank responded 10 days later via their attorneys, noting that the results of the elections held on January 9, 2022 were disputed and that the Bank would therefore continue to act in accordance with the existing mandate in order to preserve the *status quo*.

The Application

17. This Application was initially filed as an Urgent Without Notice Application under Rules 17.1(1)(a), 17.2(1)(a) and (b), 17.2(2)(b), and 17.3(2) of the *Supreme Court (Civil Procedure) Rules* 2005. On February 17, 2022, Madam Justice Sonya Young ordered that pleadings be exchanged prior to the hearing of the Application. On February 25, 2022, the Respondent filed an Affidavit in response to the Notice of Application and on March 10, 2022, the Applicant filed its Reply. The hearing of the Application proceeded on an *inter partes* basis before the undersigned on March 17, 2022.

18. The Applicant seeks the following orders:

- (1) An interim injunction restraining the Respondents, until the trial of the Claim or further Order of the Court, whether by himself, his servants or agents or otherwise whosoever, from entering upon the property being the Office of the Corozal Sugar Cane Producers Association, Mile 84 Phillip Goldson Highway, Ranchito Village, Corozal District, Belize (“the Property”), from authorizing any person to enter upon the Property and from doing any alteration to the Property to gain access at any time on any date, from authorizing any person to occupy or in any other way trespass on the Property, from authorizing any person to interfere with the Applicant’s interest in the Property or interfere with the Applicant’s servants or agents, who enter the Property to carry on the usual business of the Applicant.
- (2) An interim injunction restraining the Respondents, his servants or agents, until the trial of the Claim or further Order of the Court, from presenting themselves as Board Members and/or Directors and/or Members of the Association, from conducting or authorizing any person to conduct and transact business, whether oral or written, directly or indirectly, for and on behalf of the Association.
- (3) An order granting permission to the Applicant for time to file and serve a Claim Form on the Respondents within 14 days of the hearing of this Application.
- (4) An Order that the First Respondent and any other Respondent who affixed his/her signature on correspondence(s) to Atlantic Bank Limited Corozal Branch under the auspice of being a legitimate and duly elected Board of Director, issue a letter of revocation of all correspondence(s) between themselves acting as Chairman and/or Board of Directors of the Applicant Association and Atlantic Bank Limited Corozal Branch and/or any other financial institution.
- (5) Such further or other relief the Court deems just.
- (6) That the costs of this Application be costs in the cause.

Legal Principles

19. Section 27 of the *Supreme Court of Judicature Act* and Part 17 of the *Supreme Court (Civil Procedure) Rules 2005* empower this Court to grant interim remedies, including an interim injunction, at any time. However, where a claim has yet to be made, as is the case here, Rule 17.2(2)(b) provides that the interim remedy can only

be granted if the matter is urgent, or it is otherwise necessary to do so in the interests of justice.

20. The leading case of *American Cyanamid Co. v Ethicon Ltd.*, [1975] AC 396 establishes guidelines upon which courts may rely in the exercise of their discretion to grant or refuse an interim injunction. Under these guidelines, courts should consider whether there is a serious issue to be tried; whether the applicant would be adequately compensated by damages; whether the defendant would be adequately protected by the applicant's undertaking in damages; and, the balance of convenience.
21. These guidelines are, however, just that; they are not principles of universal application. As noted by the English Court of Appeal in *Cambridge Nutrition Ltd v British Broadcasting Corp.* [1990] 3 All E.R. 523 at 534-535, "the only such principle is the statutory power of the court to grant injunctions when it is just and convenient to do so". Courts must therefore examine the particular circumstances of the case in order to determine the consequences of granting or not granting the injunction (*Belize Telemedia Limited v Speednet Communications Limited*, Civil Appeal No. 27 of 2009 at para. 52). As stated by the House of Lords in *National Commercial Bank Jamaica Ltd. v. Olint Corp Ltd (Jamaica)*, [2009] UKPC 16, "the basic principle is that the court should take whichever course seems likely to cause the least irremediable prejudice to one party or the other".

Submissions

The Applicant's Submissions

22. The Applicant submits that the Application should be granted because the integrity of the Association is threatened by the actions of the Respondents. The Applicant notes that the Respondents have made repeated attempts to interfere with the Association's business.
23. In his First Affidavit, Vladimir Puck deposes that the First Respondent disrupted the 2019 AGM by becoming "vocal and aggressive". The commotion caused by the First Respondent led to a delay of 4 hours and to a number of members walking out of the meeting. The disruption also raised concerns on the part of Fairtrade International, one of the Applicant's funders, who was present at the AGM.
24. The Applicant further deposes that on December 31, 2019, the First Respondent was expelled from the Association due to continued misconduct towards the Association. In its letter to the First Respondent, the Association describes what it refers to as "attacks" on the Association dating back to 2018, after the First

Respondent was removed as Chairman of the Association. Vladimir Puck states that he has personally heard the First Respondent make untrue allegations against the leadership of the Applicant on radio stations and that he was aware of other efforts to sabotage the Applicant's good standing within the sugar industry through the deliberate spreading of misinformation.

25. In or around the month of November 2019, the Applicant received two documents purporting to be Petitions calling for the reinstatement of the First Respondent as Chairman of the Association and for the holding of elections. The Applicant is of the view that these documents do not comply with any procedures laid out in the 2019 Bylaws. The Applicant notes that some of the signatories of the Petition dated November 23, 2021, were no longer members of the Association. It also questions the validity of certain signatures on the Petitions. The Applicant attached to the First Affidavit of Vladimir Puck a Report from Genoveva Marin, a Forensic Analyst, analyzing some of the signatures on the Petition dated November 15, 2019. The Applicant acknowledges that Ms. Marin has not been qualified as an expert before this Court.
26. The Applicant also notes that it received a letter dated June 19, 2019, signed by "Members of the Association", listing several demands along with an ultimatum whereby the undersigned members would resign if their demands were not met.
27. The Applicant did not hold elections in 2020 or 2021, which it attributes to delays caused by the pandemic and a late permission granted by the Minister of Health and Wellness for public gatherings to facilitate the elections. In a letter to the SIBC dated November 11, 2021, the Applicant advised that the current Board of Directors would therefore remain in place.
28. In his Affidavit, Vladimir Puck states that he was the victim of a physical attack on December 27, 2021 at the Belize Sugar Industry's sugar factory compound where he says that several of the cane farmers who did not re-register, including the First Respondent, violently assaulted him.
29. The Applicant states that it came to its attention that the First Respondent had unilaterally applied to the Ministry of Health and Wellness for permission for a mass gathering for the purpose of conducting a Special General Meeting of the Association. The Applicant provided a copy of the letter, which it describes as "framed in such a manner to suggest that the First Respondent had applied on behalf of the Association". The Applicant alleges that as a non-member, the First Respondent had no legal standing to do so.

30. On January 7, 2022, the Applicant received an email from the First Respondent requesting Vladimir Puck's presence at the January 9, 2022 Special General Meeting. In his email, the First Respondent refers to the November 23, 2021 Petition sent to the Applicant and calling for the holding of elections.
31. The next day, the Applicant responded to the First Respondent's email indicating that the Applicant did not authorize the First Respondent to apply to the Ministry of Health and Wellness for permission for a mass gathering in order to hold any official meeting of the Association; that the First Respondent had no standing in the Association; that the 2015 Bylaws, under which the requisition had been made, have been replaced by the 2019 Bylaws; and that notice of the meeting was of less than 48 hours. As a result, the Applicant concluded that "the proposed meeting will not be sanctioned by the Association" and that "whatever transpires at this Sunday's meeting it will have no legal effect on the Association moving forward".
32. On January 10, 2022, the First Respondent wrote to Vladimir Puck informing him that the First Respondent had been elected as Chairman of the Association, along with the other Respondents as Directors and members of the Surveillance Committee, and requesting the handing-over of the Association's offices.
33. On January 11, 2022, Vladimir Puck and the other members of the Applicant's Board of Directors responded to the First Respondent via their attorneys contesting the validity of the January 9, 2022 meeting and the results of the elections because of non-compliance with the 2019 Bylaws of the Association. In their response, Mr. Puck and the other members of the Board of Directors raised the issue of the validity of many of the signatures appearing on the November 23, 2021 Petition.
34. According to the Applicant, the First Respondent subsequently published a post on Facebook in response to the Applicant's attorneys' letter. In this post, the First Respondent published a letter addressed to the Applicant's attorneys stating that the current Board of Directors was "illegitimate" because it had refused to call for elections since 2018 without valid reasons, in contravention of the 2015 Bylaws. In that same letter, the First Respondent contested the validity of the 2019 Bylaws and concluded by asking the attorneys to inform their clients that they were "now the legally and duly elected board of the CSCPA and advice [*sic*] them to vacate the offices immediately". The Applicant contends that this letter was never sent to their attorneys.
35. Vladimir Puck further deposes that the First Respondent declared on radio stations based in Orange Walk that he proposed to move into the Association's headquarters and assume control of the Association very shortly. The Applicant adds that on January 10, 11, and 12, 2022, the Respondent appeared with a group of individuals

at the entrance to the Association's compound and that comments were uttered to the effect that they would shortly be entering to take over the compound and affairs of the Applicant. At the hearing, the Applicant clarified that the Respondents caused a ruckus, but that measures had been taken so that they never did enter the Association's premises.

36. The Applicant states that on January 17, 2022 it received information according to which the First Respondent had contacted the Atlantic Bank's Corozal Branch with a view to freezing the Association's bank account. Vladimir Puck and other members of the Association went to the Bank and were told they did not have access to the Association's account. They informed the Branch Manager of what had transpired and indicated that none of the Respondents were empowered to represent the Association in its dealings with the Branch. At the hearing, Counsel for the Applicant clarified that the Association experienced delayed access, but that access was eventually restored.
37. The Applicant submits that it has satisfied the grounds pursuant to Rule 17.2(2) for the granting of an interim remedy before its claim has been made because the integrity of the Association has been challenged multiple times based on false allegations.
38. The Applicant claims that there are serious facts in dispute, and as such serious issues to be tried. Those issues relate to the validity of the Special General Meeting held on January 9, 2022, which it asserts contravened the 2019 Bylaws. So long as the Respondents continue to operate in contravention of the 2019 Bylaws, a real cause of action remains with good arguable case on the evidence.
39. With regard to damages, the Applicant argues that damages would not suffice since loss is not quantifiable in this particular case. The Applicant is seeking to retrain the Respondents from accessing its property and to protect its integrity.
40. As to the balance of convenience, the Applicant agrees with the Respondents that the *status quo* must be preserved, however in this case it fears that without an injunction there will remain a constant threat of disruption of the *status quo* based on the past behaviors of the First Respondent. The balance of convenience therefore lies in favour of the Association in an effort to preserve the *status quo*. The Applicant notes that the only reason the Respondents did not go further is because it lodged this Application, thus demonstrating its very necessity.
41. Finally, with regard to the issue of undertaking as to damages, the Applicant reasserts that this is not a case where damages can be quantified and as such, it submits that the absence of such an undertaking should not be interpreted as being

a bar to the granting of the interim injunction it seeks. According to the Applicant, it is at the discretion of the Court, based on the facts before it to consider whether or not the usual undertaking would suffice and make a further order as to undertaking.

42. In response to the Respondents' argument that it had failed to make full and frank disclosure to the Court, the Applicant submits that it was not aware that the attorneys for the Atlantic Bank had responded to the First Respondent, as it was not a party to the correspondence and the Bank refused to disclose any information. It only became aware of the correspondence when the First Respondent disclosed it in his Affidavit. The Applicant adds that should this Court find that there was some material non-disclosure, not granting the injunction as a result of such would not be proportionate to the offence.
43. According to the Applicant, it is the Respondents who have not made full and frank disclosure by failing to disclose the letter to the Minister of Health and Wellness requesting permission to hold a Special General Meeting and the First Respondent's letter to the Atlantic Bank requesting information on how to appoint new signatories to control the account.

The Respondents' Submissions

44. The Respondents are of the view that the 2015 Bylaws still govern the Association. In his Affidavit, the First Respondent explains that the 2015 Bylaws were not validly amended because proper process was not followed, and as such the 2019 Bylaws have not been formally adopted.
45. The First Respondent admits that he is vocal at annual general meetings of the Association, as is his right as a member, but disputes that he was aggressive at the 2019 AGM. The First Respondent states that he proposed an adjournment of the meeting after considerable debate and disagreement in relation to the proposed budget for the 2020 financial year, which was carried out and passed. A majority of the members of the Association thereafter left the AGM, with only 30 or 35 members remaining in the meeting. It was after the adjournment and with the remaining members present that the Chairman of the Association adopted the 2019 Bylaws. However, the Minutes of the 2019 AGM do not reflect what truly transpired at the meeting.
46. Because the 2019 Bylaws are invalid and of no effect, the First Respondent maintains that he cannot be expelled from the Association pursuant to those Bylaws. The First Respondent admits that the issue of his expulsion is not a matter for determination in these proceedings.

47. The First Respondent deposes that as of the date of the 2019 AGM, the directorship of the members of the Board of Directors had already expired. There were no elections held at the 2019 AGM at which members of the Board of Directors were re-elected.
48. Even prior to the 2019 AGM and the First Respondent's purported expulsion from the Association, the First Respondent claims that members of the Association urged the Board of Directors to call for elections since none have been held since 2015. The First Respondent refers to letters dated June 19, 2019 and November 15, 2019 signed by a number of members of the Association. The First Respondent denies that any of the signatures were forged or falsified, as claimed by the Applicant. Despite the Petitions, the Chairman failed to call a meeting at which an election of the Board of Directors could be held, in breach of the 2015 Bylaws.
49. As for the re-registration process, the First Respondent deposes that this procedure was provided neither under the 2015 Bylaws, nor the 2019 Bylaws. In addition, under the *Sugar Industry Act* none of the cane farmers could be expelled from the organization for not re-registering, as this could only be effected in accordance with the Bylaws of the Association. The expulsions for refusing to participate in the re-registration exercise were therefore unlawful and of no effect.
50. The First Respondent maintains that elections of the Board of Directors were due to be held in 2018. Since the pandemic and the prohibition on public gatherings was not effected until 2020, this is not a valid excuse for failing to call elections, in breach of the 2015 Bylaws. The Respondent notes that the Chairman continues to refuse to hold elections, despite permission being granted by the Minister of Health and Wellness on November 1, 2021.
51. The First Respondent denies the Applicant's allegation that Vladimir Puck was subjected to a physical attack against his person on December 27, 2021. On that day, there were issues with the delivery of sugar cane by farmers, including the 34 cane farmers who had purportedly been expelled by the Association, to the factory. A meeting was held with the various cane farmers associations and the SICB to resolve the issues. Vladimir Puck was present at the meeting. In the ensuing hours, Mr. Puck approached the 34 cane farmers that had been expelled and hurled insults at them. When asked to apologize, he started a fight and got into an altercation with a female cane farmer. No one brandished any weapons and the altercation was caused by Mr. Puck's deliberate attempts to provoke the cane farmers.
52. Since the Chairman failed or refused to call a general meeting at which elections could be held, as requested by 138 members of the Association, these members decided to call the meeting on their own. They sought and were granted permission

by the Minister of Health and Wellness for the holding of a general meeting of the Association. On January 9, 2022, members of the Association, including the First Respondent, held a Special General Meeting and passed a resolution to appoint a new Board of Directors.

53. In his Affidavit, the First Respondent admits that upon the appointment of the new Board of Directors, he wrote to the Atlantic Bank to request that any disbursement for the former members of the Board be frozen. This request was refused by the Bank, who communicated the information by email dated January 21, 2022. The Association's bank account is not frozen and the Association maintains control over it. By failing to disclose this, the Association has failed to provide full and frank disclosure to the Court.
54. Save for the letter to the Atlantic Bank, the First Respondent deposes that the Respondents have taken no further steps in terms of directorship of the Association. At no point in time did the Respondents try to take control of the Association's headquarters or its property.
55. The Respondents submit that the Applicant failed to show that it has a serious issue to be tried or a *prima facie* case. They note that since no Claim Form and Statement of Claim has been filed, the Court now has to ascertain what cause of action or what claim the Application will make from the affidavit evidence.
56. According to the Respondents, while the Applicant seeks to prevent them from taking control of the Association and making false statements about the Association in public, there is no evidence that the Respondents have in fact taken control of the Association or caused any loss or damage to the Association. There are also no allegations of libel or defamation made against the Respondents. There is therefore no justiciable interference with any of the Applicant's rights.
57. In the Respondents' view, even if this Court were to find that the Applicant has shown that there is a serious issue to be tried or a *prima facie* case, damages would be an adequate remedy. If there were to be any interference with the Applicant's business, or if the Applicant is prevented from conducting business with third parties, any such loss would be readily quantifiable and could be adequately remedied in damages.
58. On the balance of convenience, the Respondents argue that the *status quo* has not been disrupted: the current Board of Directors remains in control of the Association; its bank accounts are not frozen; there is no evidence of any attempt by the Respondents to physically take over control of the Association's compound or headquarters or any other property belonging to the Association; and save for letters

to the Chairman of the Association and to the Atlantic Bank, no further steps have been taken by the Respondents. In addition, the Respondents note that no evidence has been adduced regarding the 2nd to the 10th Respondents. Granting a blanket injunction would therefore be unfair and prejudicial. As a result, the balance of convenience lies in favour of refusing the interim injunction sought.

59. The Respondents further argue that in considering all of the circumstances of the case, the Court ought to take into account the fact that the Applicant failed to make full and frank disclosure because it did not disclose to the Court that the Atlantic Bank had informed the Respondents and the Applicant that it would not freeze the account without a Court order. According to the Respondents, it is only after the Respondents provided evidence to the Court that the accounts were not in fact frozen that the Applicant stated that it experienced delayed access as a result of the Respondents' action. The Respondents submit that the Applicant must come to this Court with clean hands given the equitable nature of the injunctive relief.
60. The Respondents note that the Applicant failed to give an undertaking in damages if it is later determined that the injunction was wrongly granted and this is fatal to the application being sought. On this point, the Respondents cite *Caribbean General Insurances Co. Ltd v The St Lucia Coconut Growers Association Limited*, HCVAP 2008/004 at paragraphs 20-21:

[20] The amended order with the inserted undertaking, done in the absence of the respondent/claimant and his counsel, would appear to make an undertaking mandatory for the grant of an injunction, except where a party satisfies the court that an undertaking is unnecessary or inappropriate. This certainly is not the case. In *F. Hoffman*, Lord Diplock explained at page 361:

“The court has no power to compel an applicant for an interim injunction to furnish an undertaking as to damages. All it can do is to refuse the application if he declines to do so. The undertaking is given to the court itself. Non-performance of it is contempt of court, not breach of contract, and attracts the remedies available for contempts, but the court exacts the undertaking for the defendant's benefit.”

[21] The purpose of requiring an undertaking in damages when granting an injunction is so that the court can prevent abuses of its process. It follows on principle that the court must also prevent ordering an inquiry as to damages based on the fiction that the respondent/claimant gave the court an undertaking which clearly was never given.

61. The Respondents note that while the undertaking in damages is stated in the grounds of the Notice of Application, no undertaking is given by the affiant in the supporting Affidavit. As a result, the Court is unable to ensure that there would not be an abuse of its process.
62. Finally, the Respondents argue that the Applicant has failed to provide any evidence showing that the matter is urgent or otherwise in the interests of justice to justify the granting of an interim injunction prior to the claim, as required under Rule 17.2(2)(b) of the *Supreme Court (Civil Procedure) Rules 2005*.

Analysis

Whether the Interim Injunction should be granted

Serious issues to be tried

63. This Court has no difficulty finding that there are serious issues to be tried in this matter. While the Respondents are correct in noting that no Claim Form and no Statement of Claim have been filed as of yet, this does not prevent this Court from being able to ascertain, on the evidence and the submissions of the Applicant, the serious issues giving rise to a cause of action. There is nothing irregular in the Court having to “decipher” from the evidence and the submissions what the Applicant’s claim or cause of action is; any application under Rule 17.2(1)(a) would require the Court to engage in such an exercise.
64. Under the *American Cyanamid* guidelines, at this stage the Court must simply be satisfied that the claim is not frivolous or vexatious, and that the Applicant has a real prospect of success for a permanent injunction at the trial.
65. The background to this Application, as well as the immediate events giving rise to it, support the Applicant’s submission that the validity of the Special General Meeting held on January 9, 2022 is a serious issue that needs to be tried. On the strength of his belief that the elections held at that meeting were legitimate, the First Respondent took concrete steps for the purpose of taking over control of the Association, including writing to Vladimir Puck to request the “smooth handing-over” of the Association’s offices and writing to the Atlantic Bank as the “Newly elected Chairman for Corozal Sugar Cane Producers Association” to request the freezing of any disbursement to all the former Board Members on the account of the Association.
66. While at this stage the Court refrains from making any determination on the issue of the validity of the January 9, 2022 Special General Meeting, the concerns raised by

the Applicant about the regularity of the process followed by the First Respondent to convene that meeting are sufficient to raise a prospect of success for its claim. Section 51 of the 2019 Bylaws provides for a specific process to be followed for the calling of a Special General Meeting, including 14 days' notice being given to the members and notification via radio, television, or personal contact. There is no evidence to support that this process was followed in the days leading up to the Special General Meeting.

67. The Respondents take a narrow view on the question of the serious issues to be tried. In their view, since they took no further steps to take control of the Association after they obtained legal advice, and because the Association remains in control of its property, there is no longer any issue to be addressed. At the hearing, they even took the surprising position of "saying nothing" on the issue of the validity of the Special General Meeting and of their position as Chairman and Board Members of the Association. It is clear to the Court that this does not reflect the contemporaneous view of the Respondents around mid-January 2022, when they presented themselves to both the current Board of Directors and the Atlantic Bank as the "newly elected Board". The fact that the Respondents are not currently taking steps to enforce the results of the January 9, 2022 elections does not erase the issues that these elections have created for the Association.

68. The Respondents have been very clear that they do not consider the 2019 Bylaws as having been validly adopted. While at this stage the Court must look at the serious issues to be tried from the Applicant's perspective, it has become clear during the hearing of the Application that from the Respondents' point of view the broadest underlying issue is the validity of the 2019 Bylaws and the governance decisions made by the Board of Directors under these Bylaws. These are serious issues which are likely to surface during the trial of the claim.

Whether the Applicant would be adequately compensated by damages

69. The Court agrees with the Applicant that it would not be adequately compensated by damages. Loss is not quantifiable in this case, as no monetary value can readily be assigned to issues related to the governance and the reputation of the Association. This case is not unlike Claim no. 861 of 2009 *Zenaida Moya Flowers v Phillipa Griffith Bailey et al.*, in which Hafiz J. (as she then was) noted the following in relation to an applicant who had been removed from the membership of an association:

41. Would it be just to confine the Applicant to her remedy in damages? I agree with the submissions by the Applicant's Counsel that the case does not involve monetary claims or monetary loss. The case is about her

removal from membership which she says will affect her prestige, standing, reputation and prospects for election to national office. The Applicant has been removed from the second highest decision-making body of her political party, namely, the NPC. The Applicant's evidence is that there is a live option in her political career and future that she will offer herself as a candidate for national office. Further, to run for national office this entails strategic political positioning and clout within her political party. As such, it is my view that it will not be just to confine the Applicant to her remedy in damages. I find that damages will not be an adequate remedy for the Applicant.

70. Similarly, in this case there are no monetary claims or monetary losses. This case is about threats to the integrity and the reputation of the Association. This Court finds that damages would not be an adequate remedy to compensate for such intangible loss should the interim injunction be denied.

71. While the Respondents argue that any loss resulting from an interference with the Applicant's business would be readily quantifiable and could be adequately remedied in damages, this argument lacks specificity and ignores the intangible nature of the losses alleged by the Applicant. In any event, no evidence has been put forward to prove that the Respondents would in a position to pay for any loss of business on the part of the Association.

Undertaking in damages

72. Having concluded that damages would not be adequate to compensate the Applicant for the intangible losses it may sustain should the Respondents continue in their conduct, the Court must then consider whether the Respondents would be adequately compensated under an undertaking by the Applicant as to damages should it be established at trial that they have a right to do what the Applicant is seeking to enjoin.

73. The Respondents make much of the fact that the Applicant failed to give an undertaking in damages, and go as far as to say that this is fatal to the Application. The Court disagrees. The *Caribbean General Insurances Co. Ltd v The St Lucia Coconut Growers Association Limited* decision, cited by the Respondents in support of their position on this point, does not go that far. Indeed, at paragraph 6 of the decision the Court opines that "an undertaking in damages is *usually* required by the court when an interim injunction is granted, *subject to some limited exceptions*" [emphasis added]. The circumstances of this case fall within the scope of those limited exceptions.

74. First, the Applicant did give an undertaking in damages, which appears at paragraph 20 of the Notice of Application. While it is true that the undertaking is not contained in the Affidavit in support of the Application, and therefore does not form part of the evidence, the Applicant should not be penalized for this technicality because it is clear that it is not refusing to give an undertaking in damages. This undertaking is sufficient to alleviate any concerns with regard to a potential abuse of the process.
75. Second, and more importantly, the losses the Respondents would suffer should it be later determined that the injunction was wrongly granted are as intangible as the losses the Applicant would suffer should the interim injunction not be granted. No evidence has been adduced to the effect that the Respondents would derive any financial benefits from occupying positions on the Association's Board of Directors, or would sustain any quantifiable losses should they be wrongly prevented from doing so pending the trial of the claim. As in *Zenaida Moya Flowers v Phillipa Griffith Bailey et al.* cited above, it appears that what the Respondents are seeking are the intangible benefits which come from occupying leadership positions within the Association. In the Court's view, requiring an undertaking in damages in the circumstances of this case is unnecessary.

Balance of convenience

76. Since damages would be inadequate to compensate either party in this matter, the question of the balance of convenience arises. On the evidence, the Court finds that granting an injunction, albeit more limited than the injunction sought by the Applicant, is necessary to preserve the *status quo* until the trial of the claim.
77. The Respondents argue that an interim injunction is unnecessary because the *status quo* has not been disrupted. They note that the Association is currently in control of its property and bank account, and that save for letters to the Chairman of the Association and to the Atlantic Bank, they have taken no further steps to take control of the Association.
78. An interim injunction is necessary in this matter because the Applicant has established that there exists a credible threat that the *status quo* may be disrupted should the interim injunction not be granted. The Respondents' course of action up until the filing of this Application on January 19, 2022 is sufficient to persuade the Court that without its intervention the Respondents may continue to seek to take control of the Association pending trial of the claim. The fact that the Respondents have paid heed to the advice of their counsel and ceased to take active measures to take control of the Association pending the determination of this Application does not provide sufficient assurances that they would not resume in their endeavor should this Application be denied.

79. This Court takes note of the *dictum* in *National Commercial Bank Jamaica Ltd.* that “the court should take whichever course seems likely to cause the least irreparable prejudice to one party or the other”. It also notes that with regard to the question of the *status quo*, the Privy Council in *American Cyanamid* (p. 408) explained that “if the defendant is enjoined temporarily from doing something that he has not done before, the only effect the interlocutory injunction in the event of his succeeding at the trial is to postpone the date at which he is able to embark upon a course of action which he has not previously found it necessary to undertake”.
80. Since the Respondents are not currently in possession of the Association’s property and bank account, and there exists uncertainty as to their status as new Board Members of the Association, the least prejudicial course in the circumstances is to grant an interim injunction pending the trial of the claim. Should the Respondents later be found to be the validly elected Board Members of the Association, the only effect of the interim injunction would be to postpone the date at which they can act as such. In view of what has transpired in this matter to date, under Rule 17.2(2)(b)(ii) it is in the interests of justice to grant the interim injunction before the claim has been made.
81. The Court declines to make a finding with regard to the issue of full and frank disclosure in this matter. There is no evidence that the Applicant was aware of the fact that the Atlantic Bank had decided not to freeze the account without a Court Order prior to filing this Application. The Applicant’s evidence is that the Atlantic Bank refused to provide it with information about the Respondents’ request. The email from the Atlantic Bank’s counsel informing the First Respondent of its position on the issue is dated January 21, 2022. The Application was filed 2 days before on January 19, 2022. There is simply no evidence that the Applicant knew or could have known about the Bank’s position prior to that date.

The Scope of the Interim Injunction

82. While the Court is prepared to grant an interim injunction pending the trial of the claim in this matter, the scope of the order sought is impermissibly broad.
83. There is insufficient evidence to grant the first order sought in full. The evidence shows that the First Respondent is the leader of a small group of cane farmers who seek to take over the leadership of the Association. However, every material steps that have been taken so far to reach that goal have been taken by the First Respondent. There is no evidence that any of the 2nd to the 10th Respondents have taken an active role in attempting to take possession or interfere with the Association’s property, beyond attending the January 9, 2022 Special General Meeting. In addition, some of the Respondents remain members of the Association

and may need to attend the Association's premises in order to access services. The first order sought is therefore impermissibly broad and will be restricted to the First Respondent.

84. The second order sought is granted in full, as there is sufficient evidence to indicate that all of the Respondents have represented themselves as either Board Members, Directors, and/or Members of the Association.
85. The third order sought is granted.
86. The fourth order sought is denied. At the hearing, the Applicant conceded that this order relating to the Association's Atlantic Bank account may not be necessary considering the Atlantic Bank's position that it will preserve the *status quo* unless the Court issues an order that would indicate otherwise. Should any doubt arise, the second order of this Judgment restraining the Respondents from presenting themselves as either Board Members, Directors, and/or Members of the Association should suffice to clarify the current status of the Association's Board of Directors.
87. Costs of the Application will be in the cause.

IT IS HEREBY ORDERED:

- (1) The First Respondent, until the trial of the Claim or further Order of the Court, whether by himself, his servants or agents or otherwise whosoever, is restrained from entering upon the property being the Office of the Corozal Sugar Cane Producers Association, Mile 84 Phillip Goldson Highway, Ranchito Village, Corozal District, Belize ("the Property"), from authorizing any person to enter upon the Property and from doing any alteration to the Property to gain access at any time on any date, from authorizing any person to occupy or in any other way trespass on the Property, from authorizing any person to interfere with the Applicant's interest in the Property or interfere with the Applicant's servants or agents, who enter the Property to carry on the usual business of the Applicant.
- (2) The Respondents, their servants or agents, until the trial of the Claim or further Order of the Court, are restrained from presenting themselves as Board Members and/or Directors and/or Members of the Association, from conducting or authorizing any person to conduct and transact business, whether oral or written, directly or indirectly, for and on behalf of the Association.
- (3) The Applicant shall file and serve a Claim Form on the Respondents within 14 days of this Judgment.

(4) Costs of this Application shall be costs in the cause.

Dated April 4, 2022.

Geneviève Chabot
Justice of the Supreme Court