



[2025] JMSC Civ 82

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**IN CIVIL DIVISION**

**CLAIM NO. SU 2024 CV 04793**

<b>BETWEEN</b>	<b>MATTHEW DONALDSON</b>	<b>CLAIMANT/APPLICANT</b>
<b>AND</b>	<b>CHESCOT BROWNIE</b>	<b>1<sup>ST</sup> DEFENDANT/RESPONDENT</b>
<b>AND</b>	<b>HENRY McCURDY</b>	<b>2<sup>ND</sup> DEFENDANT</b>
<b>AND</b>	<b>GARTH WILKINSON</b>	<b>INTERESTED PARTY</b>
<b>AND</b>	<b>REGISTRAR OF TITLES</b>	<b>INTERESTED PARTY</b>

**IN CHAMBERS**

**Mr John Graham KC and Ms Peta-Gaye Manderson instructed by Messrs. John G. Graham & Company for the Claimant/Applicant**

**Mrs Caroline Hay KC and Mr Zurie Johnson instructed by Hay McDowell for the 1<sup>st</sup> Defendant/Respondent and the Interested Party, Mr Garth Wilkinson**

**Heard: 3 April, 6 June and 20 June 2025**

**Injunction – Application for interim injunction – Whether the threshold test for the grant of an injunction has been met – Whether the applicant has demonstrated on a preponderance of the evidence that there is a serious issue to be tried – Fraud – Whether there is sufficient cogent evidence before the court to establish fraud – Presumption of advancement – Whether the presumption of advancement has been rebutted on the evidence – Balance of convenience – Whether the balance of convenience lies in favour of granting the injunctive relief sought – Damages –**

**Whether damages are an adequate remedy – Section 49(h) of the Judicature (Supreme Court) Act, Section 11 of the Justices of the Peace Act, 2018, Civil Procedure Rules, 2002, as amended, rule 17**

**A. NEMBHARD J**

**INTRODUCTION**

- [1] This matter concerns an application for interlocutory injunctive relief which is made by the Claimant/Applicant, Mr Matthew Donaldson. The application is concerned with property, which is located at Lot 2 Pimento Way, Montego Freeport, in the parish of St. James, being the land comprised in Certificate of Title registered at Volume 1269 Folio 343 of the Register Book of Titles (“the subject property”). The subject property was jointly purchased by the 1<sup>st</sup> Defendant/Respondent, Mr Chescot Brownie and Mr Garth Wilkinson, an Interested Party. In or around May 2002, the subject property was transferred into the joint names of Messrs. Wilkinson and Donaldson. At that time, Mr Donaldson was a minor.<sup>1</sup> <sup>2</sup> The 1<sup>st</sup> Defendant/Respondent, Mr Chescot Brownie, is the father of the Claimant/Applicant, Mr Matthew Donaldson.
- [2] This changed on or about 25 September 2024, when Mr Brownie was named as the sole registered proprietor of the subject property.<sup>3</sup> Mr Donaldson contends that that transfer was fraudulently done because the signature which appears on the Instrument Transfer, which is purported to be his, was forged. It is Mr Donaldson’s contention that he has a beneficial interest in the subject property. Mr Donaldson maintains that the Court ought to restrain Mr Brownie from dealing with subject property until the determination of the substantive Claim.
- [3] For his part, Mr Brownie maintains that Mr Donaldson voluntarily signed the Instrument of Transfer and that that document is authentic. Mr Brownie opposes

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<sup>1</sup> See – Exhibit “MD3”, which contains a copy of the Duplicate Certificate of Title registered at Volume 1269 Folio 343 of the Register Book of Titles, attached to the Affidavit of Matthew Donaldson, which was filed on 13 December 2024.

<sup>2</sup> See – Transfer No. 1181158 as noted on the Duplicate Certificate of Title for the subject property.

<sup>3</sup> See – Transfer No. 2584433, as noted on the Duplicate Certificate of Title for the subject property.

the application for injunctive relief and asserts that the Court ought properly to refuse same.

### **THE SUBSTANTIVE CLAIM**

**[4]** By way of his Further Amended Claim Form, which was filed on 28 March 2025, Mr Donaldson seeks the following orders against the 1<sup>st</sup> Defendant: -

- I. A Declaration that the transfer of the property known as Lot 2 Pimento Way, Montego Freeport, St. James, registered at Volume 1269 Folio 343 of the Register Book of Titles, into the name of the 1<sup>st</sup> Defendant, Chescot Brownie, is fraudulent, null and void and of no effect and is ineffective to transfer the property to the 1<sup>st</sup> Defendant.
- II. An Order directing the Registrar of Titles to reinstate the name of the Claimant as the registered proprietor of the property known as Lot 2 Pimento Way, Montego Freeport, St James, registered at Volume 1269 Folio 343.
- III. An Injunction restraining the 1<sup>st</sup> Defendant, his servants and/or agents from selling, transferring, charging, encumbering, mortgaging, disposing of or otherwise dealing with property located at Lot 2 Pimento Way, Montego Freeport, St. James, registered at Volume 1269 Folio 343 of the Register Book of Titles until the determination of this matter.
- IV. An Injunction restraining the 1<sup>st</sup> Defendant, whether by himself, his servants, agents, or otherwise, from entering into any agreement with any person or entity, or collecting rent from, the Jamaica Biscuit Company Limited or any other person/entity in respect of the property located at Lot 2 Pimento Way, Montego Freeport, St. James, registered at Volume 1269 Folio 343 of the Register Book [sic] until the determination of this matter.

- V. An Order that the 1<sup>st</sup> Defendant render an account for and pay over to the Claimant all rent collected from the Jamaica Biscuit Company Limited since the purported transfer of the property.
- VI. Damages.
- VII. Costs.

## **BACKGROUND**

### **The factual substratum**

- [5] Mr Brownie is a businessman. He has nine (9) children, including Mr Donaldson.<sup>4</sup>
- [6] Mr Brownie enjoys a friendship and a business relationship with Mr Wilkinson, which span several decades. Mr Brownie asserts that, in or around 1999, he and Mr Wilkinson decided to acquire the subject property by purchasing same. The monetary payments toward the purchase price of the subject property were completed between 2001 and 2002.<sup>5</sup> The transfer of the ownership of the subject property is noted as Transfer No. 1181158 on the Duplicate Certificate of Title in respect of the subject property, with Messrs. Wilkinson and Donaldson holding as joint tenants. Born in 1986, at the time of this transaction, Mr Donaldson was a minor.
- [7] The subject property is a commercial one and, at different periods from 2002 to present, has been let to different commercial tenants. The most recent commercial tenant is the Jamaica Biscuit Company Limited (“the JBCL”).<sup>6</sup> Mr Donaldson asserts that he and his wife operate a business at the rear of the

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<sup>4</sup> See – Paragraphs 1 and 7 of the Affidavit of Chescot Brownie, which was filed on 10 January 2025.

<sup>5</sup> See – Paragraphs 6 and 12(i) of the Affidavit of Chescot Brownie, which was filed on 10 January 2025.

<sup>6</sup> See – Exhibits “**MD1**” and “**MD2**”, which contain copies of Lease Agreements between The Jamaica Biscuit Company Limited and both Mr Garth Wilkinson and Mr Matthew Donaldson, dated 25 February 2019 and 25 February 2022, respectively, attached to the Affidavit of Matthew Donaldson, which was filed on 13 December 2024. See also, paragraph 7 of the Affidavit of Matthew Donaldson, which was filed on 13 December 2024.

subject property, and that this business is the sole source of income for he and his family.<sup>7</sup>

- [8] In or around September 2024, Mr Brownie became the sole registered proprietor of the subject property, a transfer conveyed by way of gift.<sup>8</sup> Mr Donaldson questions the authenticity of the signature which is purported to be his and which appears on the impugned Instrument of Transfer.<sup>9</sup> Subsequently, Mr Donaldson registered a caveat on the title for the subject property.<sup>10</sup> In or around October 2024, Mr Brownie's former legal representative wrote to the JBCL and indicated that Mr Brownie is now the registered proprietor of the subject property.<sup>11</sup> In or around November 2024, Mr Brownie issued Mr Donaldson with a Notice to Quit and demanded that Mr Donaldson vacates the subject property by 1 January 2025.<sup>12</sup>

### **THE CLAIMANT/APPLICANT'S CASE**

- [9] The major thrust of Mr Donaldson's case is that the 2002 transfer of the subject property into his name was a gift from his father. Mr Donaldson asserts that since the time of that transfer, he has been the beneficial owner of the subject property and has exercised ownership rights over same. He has operated a business at the rear of the subject property for many years.<sup>13</sup> Since 2002, Mr Donaldson

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<sup>7</sup> See – Paragraphs 9 and 19 of the Affidavit of Matthew Donaldson, which was filed on 13 December 2024.

<sup>8</sup> See – Paragraphs 10 – 13 of the Affidavit of Matthew Donaldson, which was filed on 13 December 2024.

<sup>9</sup> See – Exhibit “**MD4**”, which contains a copy of the Instrument of Transfer, which transferred the subject property in the sole name of Mr Chescot Brownie, attached to the Affidavit of Matthew Donaldson, which was filed on 13 December 2024.

<sup>10</sup> See – Paragraphs 14 and 15 of the Affidavit of Matthew Donaldson, which was filed on 13 December 2024.

<sup>11</sup> See – Exhibit “**MD5**”, which contains a copy of letter dated 5 October 2024 addressed to the Jamaica Biscuit Company Limited, bearing the signature of Ms Nicole Allen, Attorney-at-Law of the firm, Allen Robb-Cato, attached to the Affidavit of Matthew Donaldson, which was filed on 13 December 2024.

<sup>12</sup> See – Paragraph 16 of the Affidavit of Matthew Donaldson, which was filed on 13 December 2024.

<sup>13</sup> See – Paragraph 9 of the Affidavit of Matthew Donaldson, which was filed on 13 December 2024.

asserts, his father has not been involved in the preservation, conservation or management of the subject property.<sup>14</sup>

[10] Mr Donaldson alleges that, although the Lease Agreements in respect of the subject property were entered into by himself and Mr Wilkinson, the latter never exercised any ownership rights over the subject property.<sup>15</sup>

[11] Mr Donaldson denies affixing his signature to any document to transfer his interest in the subject property to Mr Brownie. He maintains that he did not sign the impugned Instrument of Transfer in the presence of Mr Henry McCurdy, Justice of the Peace.<sup>16</sup>

### **THE 1<sup>ST</sup> DEFENDANT/RESPONDENT'S CASE**

[12] For his part, Mr Brownie avers that he acquired several properties over many years. The subject property was purchased by himself and Mr Wilkinson, who contributed One Hundred Thousand United States Dollars (USD\$100,000.00), towards the acquisition of the subject property.<sup>17 18</sup>

[13] Mr Brownie further avers that he elected to arrange his personal affairs by placing most of his assets in the names of his children and that of their mothers. This he did in the event of his demise or incapacity.<sup>19</sup> In relation to the subject property, Mr Brownie asserts that he wanted Mr Donaldson to have an interest in property.<sup>20</sup>

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<sup>14</sup> See – Paragraph 4 of the 2<sup>nd</sup> Affidavit of Matthew Donaldson, which was filed on 16 January 2025.

<sup>15</sup> See – Paragraph 8 of the Affidavit of Matthew Donaldson, which was filed on 13 December 2024.

<sup>16</sup> See – Paragraph 12 and 13 of the Affidavit of Matthew Donaldson, which was filed on 13 December 2024. See also, paragraphs 5, 6, 14 and 15 of the 2<sup>nd</sup> Affidavit of Matthew Donaldson, which was filed on 16 January 2025. See also, paragraphs 4 – 7 inclusive of the Affidavit of Matthew Donaldson in response to the 2<sup>nd</sup> Affidavit of Chescot Brownie, filed January 21, 2025, which was filed on 14 February 2025.

<sup>17</sup> See – Paragraphs 6, 8 and 12(i) of the Affidavit of Chescot Brownie, which was filed on 10 January 2025.

<sup>18</sup> See – Paragraph 4 and 5 of the Affidavit of Garth Wilkinson in response to Affidavit of Matthew Donaldson, which was filed on 10 January 2025.

<sup>19</sup> See – Paragraph 7 of the Affidavit of Chescot Brownie, which was filed on 10 January 2025.

<sup>20</sup> See – Paragraph 9 of the Affidavit of Chescot Brownie, which was filed on 10 January 2025.

- [14] Mr Brownie maintains that the subject property was let to several commercial tenants from 2002 to present. Prior to 2012, Mr Wilkinson collected the rent from those tenants. In October 2013, the subject property was let to the JBCL and Mr Donaldson collected the rent from that entity.<sup>21 22</sup>
- [15] In or around 2017, Mr Donaldson got married.<sup>23</sup> In or around 2018, Mr Brownie asserts that he became concerned that many of his properties could become embroiled in matrimonial property disputes, a concern which he shared with Mr Donaldson. Mr Brownie maintains that at first, Mr Donaldson denied being married but subsequently admitted that he was. It is in those circumstances, Mr Brownie contends, that Mr Donaldson agreed to sign all the requisite documents to effect a transfer of the ownership of the subject property from himself [Mr Donaldson] to him [Mr Brownie]. It is Mr Brownie's evidence that during the period 2019 to 2022, he instructed his then Attorney-at-Law to prepare the requisite documents to effect the said transfer.<sup>24 25</sup>

### **THE APPLICATION FOR INJUNCTIVE RELIEF**

- [16] It is against this background that the application for injunctive relief is made. The application is contained in a 2<sup>nd</sup> Further Amended Notice of Application for Injunction, which was filed on 19 March 2025, Mr Donaldson seeks the following Orders: -

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<sup>21</sup> See – Paragraphs 12(ii) – 14 of the Affidavit of Chescot Brownie, which was filed on 10 January 2025. See also, Exhibits “CB4”, “CB5” and “CB6” which contain copies of the JBCL's copies of the Lease Agreement dated 1 October 2013, Addendum to Lease Agreement dated 18 July 2028 and Lease Agreement dated 25 February 2022, attached to the Affidavit of Chescot Brownie, which was filed on 10 January 2025.

<sup>22</sup> See Paragraphs 7 – 10 of the Affidavit of Garth Wilkinson in response to Affidavit of Matthew Donaldson, which was filed on 10 January 2025.

<sup>23</sup> See – Paragraph 4(i) of the Affidavit of Chescot Brownie in response to the 4<sup>th</sup> and 5<sup>th</sup> Affidavits of Matthew Donaldson, which was filed on 28 February 2025.

<sup>24</sup> See – Paragraphs 15 – 26 of the Affidavit of Chescot Brownie, which was filed on 10 January 2025.

<sup>25</sup> See – Paragraphs 11 – 14 of the Affidavit of Garth Wilkinson in Response to Affidavit of Matthew Donaldson, which was filed on 10 January 2025.

- i. An injunction restraining the Defendant, his servants and/or agents from selling, transferring, charging, encumbering, mortgaging, disposing of or otherwise dealing with property located at Lot 2 Pimento Way, Montego Freeport, St. James, registered at Volume 1269 Folio 343 of the Register Book of Titles until the determination of this matter.
- ii. An injunction restraining the Defendant, whether by himself, his servants, agents, or otherwise, from interfering with the Claimant's possession and use of the back portion of the property until the determination of this matter.
- iii. An injunction restraining the Defendant, whether by himself, his servants, agents, or otherwise, from entering into any agreement with any person or entity, or collecting rent from, the Jamaica Biscuit Company Limited or any other person/entity in respect of the property located at Lot 2 Pimento Way, Montego Freeport, St. James, registered at Volume 1269 Folio 343 of the Register Book [sic] until the determination of this matter.
- iv. That the Claimant gives an undertaking as to damages.
- v. Costs be costs in the claim.
- vi. Such further or other orders as this Honourable Court deems fit.

**[17]** The application for injunctive relief is made on the bases that: -

- i. Pursuant to section 49(h) of the Judicature (Supreme Court) Act and rule 17.1(1)(a) of the Civil Procedure Rules, 2002, the Court has jurisdiction to grant the Orders which are sought.
- ii. The Claimant is the beneficial owner of the property known as Lot 2 Pimento Way, Montego Freeport, St. James, registered at Volume 1269 Folio 343 of the Register Book of Titles.
- iii. The Defendant caused the property to be transferred into his name by way of gift without the Claimant's consent or knowledge.
- iv. The Claimant has not signed the Transfer document, and the signature purporting to be his is a forgery.



- v. The Defendant issued a Notice to Quit, demanding that the Claimant vacate the property by January 1, 2025.
- vi. The Defendant has sought to interfere with the Claimant's possession and use of the property by collecting rent from the Jamaica Biscuit Company Limited.
- vii. The Claimant and his family rely on the business operated on the back portion of the property as their sole source of income.
- viii. If the injunction is not granted, the Claimant will suffer irreparable harm as the Defendant is attempting to deprive him of his lawful ownership and possession of the property.
- ix. In the circumstances, it would be just and equitable and in keeping with the overriding objective, for the Court to grant the Orders sought herein.

## **THE ISSUES**

**[18]** The application for interlocutory injunctive relief raises the following issues for the determination of the Court: -

- i. Whether there is a serious issue to be tried.
- ii. Whether the balance of convenience lies in favour of the grant of the injunctive relief.
- iii. Whether the Claimant/Applicant would suffer irreparable harm should the application for injunctive relief be refused.
- iv. Whether the 1<sup>st</sup> Defendant/Respondent would suffer irreparable harm should the application for injunctive relief be allowed.
- v. Whether Damages are an adequate remedy.
- vi. Whether the Court ought to grant the injunctive relief sought in circumstances where the Claimant/Applicant has not demonstrated an ability to support his undertaking as to Damages.

## THE LAW

### The court's power to grant an interim injunction

- [19] Section 49(h) of the Judicature (Supreme Court) Act governs the granting of an injunction. The section reads as follows: -

*“49(h) A mandamus or an injunction may be granted or a receiver appointed, by an interlocutory order of the Court, in all cases in which it appears to the Court to be just or convenient that such order should be made; and any such order may be made either unconditionally or upon such terms and conditions as the Court thinks just, and if an injunction is asked for either before or at or after the hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass, such injunction may be granted if the Court thinks fit, whether the person against whom such injunction is sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title, and whether the estates claimed by both or by either of the parties are legal or equitable.”*

- [20] Rules 17.1(1)(a) and 17.4 of the Civil Procedure Rules, 2002, as amended (“the CPR”), also empower the court to grant interim injunctive relief. These rules, in so far as they are relevant, provide as follows: -

*“17.1*

*(1) The court may grant interim remedies including –*

*(a) an interim injunction;*

*(b) ...*

*17.4*

*(4) The court may grant an interim order for a period of not more than 28 days (Unless any of these Rules permit a longer period) –.”*

### The purpose of the grant of an interim injunction

- [21] The purpose of an interlocutory injunction is to preserve the status quo although it is, of course, impossible to stop the world, pending trial. The court may order a

defendant to do something or not to do something but such restrictions on the defendant's freedom will have consequences, for him as well as for others, which a court must take into consideration.

[22] The grant of such an injunction serves the additional purpose of improving the court's ability to do justice after a determination of the merits at trial. At the interlocutory stage, the court is required to assess whether granting or withholding an injunction is more likely to produce a just result. As the House of Lords pointed out in **American Cyanamid Co v Ethicon Ltd**,<sup>26</sup> that means that, if damages will be an adequate remedy for the claimant, then there are no grounds for interference with the defendant's freedom of action, by the grant of an injunction.

[23] Likewise, if there is a serious issue to be tried and the claimant could be prejudiced by the acts or omissions of the defendant pending trial and the cross-undertaking in damages would provide the defendant with an adequate remedy, if it turns out that his freedom of action should not have been restrained, then an injunction should ordinarily be granted.

### **The threshold test for the grant of an interim injunction**

[24] In **American Cyanamid Co v Ethicon Ltd**,<sup>27</sup> the court developed a set of guidelines to be followed in seeking to determine whether an applicant's case warrants the granting of an interlocutory injunction. The main guidelines are: -

- (i) Whether there is a serious question to be tried (whether the claim has a reasonable prospect of succeeding);
- (ii) What would be the balance of convenience of each party should the order be granted, in other words, where does that balance lie?
- (iii) Whether there are any special factors to be considered; and what Lord Diplock referred to as the governing principle;

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<sup>26</sup> [1975] AC 396

<sup>27</sup> *supra*

- (iv) Whether an award of damages would be an adequate remedy.

[25] The basis for these guidelines was explained by Lord Diplock as follows: -

*“...the governing principle is that the court should first consider whether, if the plaintiff were to succeed at trial in establishing his right to a permanent injunction, he would be adequately compensated by an award of damages for the loss he would have sustained as a result of the defendant’s continuing to do what was sought to be enjoined between the time of the application and the time of the trial. **If damages in the measure recoverable would be an adequate remedy** and the defendant would be in a financial position to pay them, **no interim injunction should normally be granted**, however strong the plaintiff’s case appeared to be at that stage.”*

**[Emphasis added]**

#### **Whether there is a serious issue to be tried**

[26] The law set out by Slade J in **Re Lord Cable (deceased) Garratt and others v Walters and others**,<sup>28</sup> is, respectfully, accepted as being correct. At page 431, Slade J is quoted as follows: -

*“...Nevertheless, in my judgment it is still necessary for any plaintiff who is seeking interlocutory relief to adduce sufficiently precise factual evidence to satisfy the court that he has a real prospect of succeeding in his claim for a permanent injunction at trial. If the facts adduced by him in support of his motion do not by themselves suffice to satisfy the court as to this, he cannot in my judgment expect it to assist him by inventing hypotheses of fact on which he might have a real prospect of success...”*

[27] This reasoning was accepted by the Jamaican Court of Appeal in **Reliance Group of Companies Limited v Ken’s Sales and Marketing and another; Christopher Graham v Ken’s Sales and Marketing and another**,<sup>29</sup> which is

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<sup>28</sup> [1976] 3 All ER 417

<sup>29</sup> [2011] JMCA Civ 12

consistent with that of Lord Diplock in **American Cyanamid Co v Ethicon Ltd.**<sup>30</sup>  
At page 408, Lord Diplock stated: -

*“...So, unless the material available to the court at the hearing of the application for an interlocutory injunction fails to disclose that the plaintiff has any real prospect of succeeding in his claim for a permanent injunction at the trial, the court should go on to consider whether the balance of convenience lies in favour of granting or refusing the interlocutory relief sought...”*

- [28] The failure to establish that there is a real question to be tried means that the application for the grant of injunctive relief ought properly to be denied. Such a failure also obviates the need to consider the issue of whether damages would be an adequate remedy and the balance of convenience.<sup>31</sup>
- [29] Once the court determines that there is a serious question to be tried on the merits of the substantive claim, the court should then consider whether the applicant will be adequately compensated by an award of damages at trial. At paragraph 408 of the authority of **American Cyanamid Co. v Ethicon**, Lord Diplock stated the following: -

*“If damages in the measure recoverable at common law would be an adequate remedy and the defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted, however strong the plaintiff’s claim appeared to be at that stage. If, on the other hand, damages would not provide an adequate remedy for the plaintiff in the event of his succeeding at the trial, the court should then consider whether, on the contrary hypothesis that the defendant were to succeed at the trial in establishing his right to do that which was sought to be enjoined, he would be adequately compensated under the plaintiff’s undertaking as to damages for the loss he would have sustained by being prevented from doing so between the time of the application and the time of the trial. If damages in the measure recoverable under such an undertaking would be an adequate remedy and the plaintiff would be in a financial position to*

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<sup>30</sup> [1975] AC 396

<sup>31</sup> See – **Brian Morgan (Executor of the Estate of Rose I Barrett) v Kirk Holgate** [2022] JMCA Civ 5

*pay them, there would be no reason upon this ground to refuse an interlocutory injunction.*

*It is where there is doubt as to the adequacy of the respective remedies in damages available to either party or to both, that the question of balance of convenience arises. It would be unwise to attempt even to list all the various matters which may need to be taken into consideration in deciding where the balance lies, let alone to suggest the relative weight to be attached to them. These will vary from case to case."*

- [30] The claimant is required to compensate the defendant or any other person served with the order for any loss caused by the injunction if it later appears that the injunction was wrongly granted. Normally, only the defendant is afforded protection, however, there is an extended undertaking which is to protect third parties. The purpose of this is to provide a safeguard for the defendant or any other person who may be unjustifiably prevented from doing something it was entitled to do.

### **The doctrines of resulting trust and the presumption of advancement**

- [31] The Halsbury's Laws of England<sup>32</sup> outlines the concept of the presumption of advancement. It is stated: -

*"Where the person in whose name a purchase or transfer is taken is the spouse or civil partner, child or adopted child of the person paying the purchase money or making the transfer, there is a presumption that a gift was intended. The rule has been extended to the case of an illegitimate child and to that of a grandchild whose father is dead when the father and grandfather, respectively, have placed themselves in loco parentis, but has been held not to have applied in the case of a woman with whom the alleged donor had gone through a form of marriage, but whom he could not legally marry, or with whom he merely cohabited. The presumption that a gift is intended may exist notwithstanding that the spouse or civil partner or parent has actually received the income during his life and made leases of the property.*

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<sup>32</sup> Gifts (Volume 52 (2020) paragraph 244

*The presumption of advancement may be rebutted by showing that there was no present intention to benefit or by a contemporaneous act or declaration by the alleged donor, but acts or declarations by him subsequent to the purchase or transfer, if they are not so connected with it as to be reasonably regarded as contemporaneous, are not admissible in favour of the donor to rebut the presumption, subsequent acts and events being only admissible as evidence against the party who does or makes them and not in his favour.*

*The business relationship of the parties may act as a rebuttal of the presumption of a gift, as, for instance, the fact that a son was solicitor to his parent. A formal and unmistakable act of taking possession by the alleged donor at the time of the purchase would show his ownership and the trusteeship of the person in whose name the property has been purchased. Subsequent declarations of the alleged done might rebut the gift, as it is against his interest to make them."*

[32] In the 2<sup>nd</sup> edition of the text, the Law of Trusts, authored by Phillip H. Petit, it is stated: -

*"Whenever a man buys either real or personal property and has it conveyed or registered or otherwise put in the name of another, or of himself and another jointly, it is presumed that the other holds the property on trust for the person who has paid the purchase money. The classic statement of the law is to be found in the Judgement of Eyre C.B. in Dyer v Dyer (1788) 2 Cox Eq. Cas 92;*

*"The clear result of all the cases, without a single exception, is that the trust of a legal estate, whether freehold, copyhold, or leasehold; whether taken in one name or several; whether jointly or successive results to the man who advances the purchase money."*

## **ANALYSIS AND FINDINGS**

### **Submissions advanced on behalf of the Claimant/Applicant**

#### **Whether there is a serious issue to be tried**

[33] Learned King's Counsel Mr John Graham commenced his comprehensive written and oral submissions with the assertion that the threshold for establishing that

there is a serious issue to be tried is a low one. The applicant, on an application for an interlocutory injunction, must demonstrate that the claim is neither frivolous nor vexatious and that there is a real prospect of success at trial.

**[34]** Mr Graham KC submitted further that there is no dispute between the parties that: -

- a. The Applicant did not contribute financially to the acquisition of the property; and
- b. Prior to September 2024, the Applicant's name appeared on the Certificate of Title as a joint owner of the property with Garth Wilkinson.

**[35]** Mr Graham KC submitted that the Applicant categorically denies that he signed the Transfer document which purportedly transferred his interest in the subject property to the Respondent. Nor did he appear before the Justice of the Peace, Mr Henry McCurdy, to execute the same. The Applicant averred that there were two (2) occasions on which the Respondent visited him [the Applicant] in Florida, in the United States of America. These two (2) occasions occurred in 2023. On each of those occasions the Respondent asked the Applicant to sign the Instrument of Transfer, which the latter refused to do. In the circumstances, Mr Graham KC submitted, there is a serious issue to be tried.

**[36]** It was further submitted that the purported transfer of the ownership of the subject property is invalid as it was not executed in compliance with the requirements of section 11 of the Justices of the Peace Act, 2018. The Respondent in his Affidavit averred that the Instrument of Transfer was already signed by the Applicant in July 2023. This in circumstances where the Instrument of Transfer is dated 19 December 2023. This discrepancy, Mr Graham KC maintained, raises serious questions in relation to the validity of the Instrument of Transfer.

**[37]** Mr Graham KC submitted that although he has not been able to identify any judicial authorities which speak directly to the proper interpretation to be applied to section 11 of the Justices of the Peace Act, 2018, the governing principles of



section 6 of the Wills Act provide analogous guidance. This, Mr Graham KC maintained, is because courts have consistently held that wills not executed in conformity with statutory requirements are invalid. Consequently, Mr Graham KC submitted, the purported transfer of the subject property, if not witnessed in accordance with section 11 of the Justices of the Peace Act, is invalid and of no effect.

### **Submissions advanced on behalf of the 1<sup>st</sup> Defendant/Respondent**

- [38]** For her part, Learned King's Counsel Mrs Caroline Hay commenced her fulsome and equally comprehensive submissions by directing the Court's attention to section 49(h) of the Judicature (Supreme Court) Act and the Civil Procedure Rules, 2002, as amended.
  
- [39]** Mrs Hay KC asserted that the Court must be wary of any party's attempt to stifle the property rights of another party pending the determination of a trial. It was submitted that such an application must be carefully and closely scrutinized and must contain more than bare assertions. It was further submitted that the applicant must demonstrate a good arguable case (serious issue to be tried) that he was the beneficial owner of the subject property and that the Respondent forged his signature (as the Applicant has pleaded). Mrs Hay KC maintained that the Applicant must also demonstrate a real risk of dissipation. If the applicant can demonstrate these things, Mrs Hay KC submitted, then he must also establish that Damages are not an adequate remedy and that he has the capacity to give the required undertaking as to damages. It was submitted that the Applicant in these circumstances has not met any of these threshold requirements and has not established a basis on which this Court should make any order impairing the Respondent's rights to deal with his property in any way he chooses, as any registered proprietor can.
  
- [40]** Mrs Hay KC asserted that the Applicant's case is that he is the beneficial owner of the subject property by way of gift (implied trust) based on the presumption of advancement. It was submitted that the presumption of advancement is rebuttable. Mrs Hay KC referred the Court to various paragraphs of the Affidavit

of Chescot Brownie, which was filed on 10 January 2025 and the Affidavit of Garth Wilkinson, which was filed on 10 January 2025, respectively, as evidence of rebuttal. To buttress these submissions, Mrs Hay KC relied on the authorities of **Granville Scott v Yvonne Scott Robinson**<sup>33</sup> and **Catherine Victoria Simmons v Madge Olivene Wright**<sup>34</sup> and an extract from the Encyclopaedia of Forms and Precedents.

- [41] Mrs Hay KC submitted that the Applicant in his second Affidavit, which was filed on 16 January 2025, admits that he has no knowledge of some of these matters as the property was acquired during his minority. Mrs Hay KC maintained that there is no evidence presented by the Applicant to establish the presumption of advancement and further that the Applicant has very little likelihood of establishing that the subject property was a gift to him at all. It was submitted that the evidence demonstrates that at all material times, the leases contain the joint names of Garth Wilkinson and Matthew Donaldson and all dealings which predate the transfer endorsement are in both names. Mrs Hay KC contends that the Court has no evidence capable of proving that the Respondent forged anything much less the Applicant's signature. Mrs Hay KC asserted further that, on the state of the evidence, the question must be asked whether the Applicant's claim rises to the required standard necessary for a good arguable case for the award of an injunction. It was submitted that the Applicant does not have the evidence to substantiate the assertions which are made in this regard.

## **Discussion and findings**

### **Whether there is a serious issue to be tried**

- [42] It is clear from a reading of the authorities to which this Judgment refers that it is necessary for any applicant who seeks interlocutory relief to adduce sufficiently precise factual evidence to satisfy the court that he has a real prospect of succeeding in his claim for a permanent injunction at trial. If the facts adduced by him in support of his application do not by themselves suffice to satisfy the court

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<sup>33</sup> Claim No. 2009 HCV 01885

<sup>34</sup> [2002] 5 JJC 2702

as to this, he cannot expect the court to assist him by inventing hypotheses of fact on which he might have a real prospect of success.

- [43] It is equally clear that fraud, as a cause of action, must be precisely alleged and strictly proved. The court cannot deduce fraud based on general or unsubstantiated assertions. The question of the presence (or absence) of fraud is one of fact to be determined by the court, having regard to all the circumstances.
- [44] In the present instance, the Applicant, Mr Donaldson, alleges that his signature was forged on the Instrument of Transfer which was purportedly used to transfer the ownership of the subject property to the Respondent. The core of his Claim is that the transfer was fraudulently done because he did not affix his signature to the impugned transfer document and that at no time did he attend upon Mr Henry McCurdy, Justice of the Peace or any other person and execute the Transfer.<sup>35</sup>
- [45] In this regard, the Court is met with the bald assertions of the Applicant, Mr Donaldson. There is no evidence before the Court, which is capable of establishing, on a balance of probabilities, that the signature of the Applicant which appears on the transfer document is forged. Nor is there any evidence before the Court to suggest that the 1<sup>st</sup> Defendant, Mr Chescot Brownie, forged the signature of the Applicant.
- [46] The Applicant further maintains that he did not sign the transfer document, either on his own or in the presence of the Justice of the Peace, Mr Henry McCurdy. Mr Donaldson asserts that Mr McCurdy acted in breach of the statutory provisions which are contained in section 11 of the Justices of the Peace Act, 2018.
- [47] Section 11 of the Justices of the Peace Act, 2018 (“the Act”), provides as follows:

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*“11.- (1) Every document which is attested to or authenticated by a Justice in the execution of the functions of the Office shall bear the official seal, the date of execution thereof and the signature of that Justice.*

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<sup>35</sup> See – The Affidavit of Matthew Donaldson, which was filed on 13 December 2024, paragraphs 12 and 13.

*(2) Any purported attestation or authentication of a document by a Justice in the execution of his functions of the Office shall not be valid unless the requirements of subsection (1) have been complied with.*

*(3) Any documenting purporting to bear the official seal, the date of execution thereof and the signature of any Justice authorized by any enactment to administer any oath, affidavit, declaration or other affirmation, shall be admitted in evidence without proof that the seal or signature is the seal or signature of that Justice.”*

**[48]** The question therefore becomes what is the proper interpretation to be applied to the section. Section 11(1) and (2) of the Act are instructive for present purposes. Section 11(1) of the Act makes it clear that every document which is attested to or authenticated by a Justice in the execution of the functions of the Office shall bear the official seal, the date of execution thereof and the signature of that Justice.

**[49]** Section 11(2) of the Act provides that any purported attestation or authentication of a document by a Justice in the execution of his functions of the Office shall not be valid unless the requirements of subsection (1) have been complied with.

**[50]** The complaint which is made in respect of the transfer document is that Mr Chescot Brownie avers that same was signed by Mr Matthew Donaldson in July 2023. This, in circumstances where the said transfer document is dated 19 December 2023.

**[51]** This Court is of the view that this discrepancy by itself is not proof of fraud nor is it proof that the signature on the transfer document which purports to be that of Mr Donaldson is forged or is fraudulent. This Court is of the view that this discrepancy by itself does not satisfy the legal requirement that Mr Donaldson must adduce sufficiently precise factual evidence to satisfy the court that he has a real prospect of succeeding in his claim for a permanent injunction at trial. Nor does it render the impugned transfer document invalid by virtue of the operation of section 11 of the Justices of the Peace Act.

- [52] An examination of the transfer document reveals that the same is attested to or authenticated by Justice of the Peace, Mr Henry McCurdy. The transfer document bears the stamp of the Justice of the Peace, the name and signature of the Justice of the Peace as well as the parish for which he is commissioned as Justice of the Peace. The transfer document is dated 19 December 2023.
- [53] In the result, the Court finds that Mr Donaldson has failed to establish that there is a serious issue to be tried.

### **The presumption of advancement**

- [54] It is common ground between the parties that the subject property was acquired by Messrs. Wilkinson and Brownie before Mr Donaldson attained the age of majority. Nor is there any dispute between the parties that Mr Donaldson did not contribute to or otherwise play an active part in the acquisition of the subject property. For his part, Mr Donaldson maintains that the 2002 transfer of the subject property to himself was a gift.
- [55] The Law in this regard is clear. Brooks J (as he then was) in the authority of **Granville Scott v Yvonne Adocia Scott**-Robinson, examined the following two concepts: -

#### *“Presumed Resulting Trusts*

*The concept of a presumed resulting trust is concisely stated by Eyre, C.B. in Dyer v Dyer [1775-1802] All ER Rep. 205 at page 206 I:*

*“The clear result of all these cases, without a single exception, is that the trust of a legal estate, whether freehold, copyhold, or leasehold, whether taken in the names of the purchasers and others jointly, or in the name of others without that of the purchaser, whether in one name or several, and whether jointly or successively, results to the man who advances the purchase-money...it goes on a strict analogy to the rule of common law, that where a feoffment is made without consideration, the use results to the feoffer.”*

*It is also well established that the presumption of a resulting trust may be rebutted by evidence which indicates that the person providing the purchase money did not intend to keep the beneficial interest in the property purchased.*

*In addition to allowing for contrary evidence, the law also allows for contrary presumptions to apply. Where the purchaser is the father or, (less so in recent times) the husband, of the holder of the paper title, the presumption of advancement displaces the presumption of a resulting trust.*

*The presumption of advancement*

*The presumption of advancement may be simply summarized as the courts deeming the purchase of property, by a father or husband in the name of his offspring or wife respectively, as a gift of the beneficial interest to the latter. Eyre, C.B. explained in *Dyer v Dyer*, the origin of the difference in approach in such relationships, as opposed to the application to strangers.*

...

*As with the resulting trust, the presumption of advancement may be rebutted by evidence that a contrary effect was intended. It was made clear in *Dyer v Dyer* that the onus of proof to displace the presumption of advancement lies on the party asserting that no gift was intended.*

...

*In *Shephard v Cartwright* [1955] A.C. 431 at p 445 Viscount Simonds approved the following passage from *Snell's Equity* 24<sup>th</sup> Edition, page 153:*

*"The acts and declarations of the parties before or at the time of the purchase, or so immediately after it as to constitute a part of the transaction, are admissible in evidence either for or against the party who did the act or made the declaration... But subsequent declarations are admissible as evidence only against the party who made them, and not in his favour.*

...

*Evidence rebutting the presumption of advancement*

*The traditional view is that clear evidence is required to displace the presumption of advancement; rebuttal cannot be inferred from slight circumstances. Lord Denning, in Chettiar v Chettiar [1962] 2 W.L.R. 548, said at page 549:*

*“...whenever a father transfers property to his son, there is a presumption that he intended it as a gift to his son; and if he wishes to rebut that presumption and to say that his son took as trustee for him, he must prove the trust clearly and distinctly, by evidence properly admissible for the purpose, and not leave it to be inferred from slight circumstances: see Shephard v Cartwright.” (Emphasis supplied).*

- [56] As with the resulting trust, the presumption of advancement may be rebutted by evidence that a contrary effect was intended. It was made clear in the authority of **Dyer v Dyer** that the onus of proof to displace the presumption of advancement lies on the party who asserts that no gift was intended. Clear evidence is required to displace the presumption of advancement.
- [57] The Court finds that Mr Chescot Brownie has adduced sufficiently cogent evidence in relation to his purpose for having the subject property registered in the name of the Applicant, Mr Matthew Donaldson. The averments made by Mr Chescot Brownie, in the Affidavit of Chescot Brownie, which was filed on 10 January 2025, reveals the intent and purpose of Mr Brownie, that of managing his personal affairs and making provision for his children and their respective mothers, in the event of his demise. This, the Court finds is strengthened by the evidence of Mr Garth Wilkinson, which is contained in the Affidavit of Garth Wilkinson, which was also filed on 10 January 2025.
- [58] On the basis of that evidence, the Court finds that the presumption of advancement has been rebutted.

**Whether the balance of convenience lies in favour of the grant of the injunctive relief sought**

**Submissions advanced on behalf of the Applicant**

- [59] In this regard, Mr Graham KC asserted that if the Court accepts that there is a serious issue to be tried, then the balance of convenience lies in favour of granting the injunction. Should the injunction be refused, the Applicant will lose rental income, possession and control of a portion of the subject property, suffer financial loss and face significant disruption to his business and family life. It was submitted that the harm to the Applicant would be immediate and substantial. Conversely, if the injunction were to be granted, the Respondent would be prevented from dealing with the subject property until the final determination of the matter. It was submitted that the Respondent has not demonstrated any pressing need to deal with the subject property and further that, any financial loss which he may suffer can be compensated for by Damages, should he succeed at trial.
- [60] Mr Graham KC submitted that the purpose of an interlocutory injunction is to preserve the status quo among the parties until the rights of the parties can be determined at trial. Mr Graham KC contended that the status quo in the instant case is that the Applicant has been in possession and control of the subject property since 2013. It was submitted that granting the injunction would maintain this status quo and would prevent further interference by the Respondent. Mr Graham KC asserted that although the Respondent has stated that the injunction would cause undue hardship by preventing him from collecting rental income, this hardship is outweighed by the potential prejudice to the Applicant if the injunction is not granted. It was submitted that the Claimant would suffer irreparable harm if the subject property were dealt with in a manner that undermines his claim. To buttress this submission, Mr Graham KC relied on the



dicta of Lord Hoffman in the authority of **National Commercial Bank Jamaica Limited v Olint Corp Ltd (Jamaica)**.<sup>36</sup>

- [61] Mr Graham KC asserted that the overriding objective of the Civil Procedure Rules, 2002, as amended, is to deal with cases justly. In this case, Mr Graham KC maintained, the granting of the injunction would ensure that the Applicant is not deprived of his lawful ownership and possession of the subject property before the matter is fully adjudicated. It was submitted that it would also prevent the 1<sup>st</sup> Defendant from benefiting from the alleged fraudulent transfer.
- [62] It was submitted that Damages would not be an adequate remedy if the injunction is refused and the Applicant ultimately succeeds at trial. Mr Graham KC submitted that as a direct result of the Respondent's actions, the Claimant is no longer receiving the monthly rental payments from the Jamaica Biscuit Company Limited, which he has been collecting and on which he has relied since 2013. This would constitute a significant and sudden loss of income. It was further submitted that the Applicant and his family also relied on the business which is operated at the rear portion of the subject property as a source of income. Mr Graham KC contended that if the Respondent is permitted to continue interfering with the Applicant's possession and use of the subject property, the Applicant will suffer irreparable harm that cannot be adequately remedied by an award of Damages.
- [63] Mr Graham KC submitted that it is well-established that Damages are not an adequate remedy in cases involving real property, as land is unique and cannot be replaced. In this regard, Learned King's Counsel relied on the authority of **Tewani Limited v Kes Development Co. Ltd and Another**.<sup>37</sup> It was submitted that the presumption that Damages are inadequate in cases involving real property is rebuttable. The Respondent has not provided any evidence to rebut this presumption. It was further submitted that the Applicant's occupation of the subject property and his reliance on its rental income further underscore the

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<sup>36</sup> [2009] UKPC 16 at paragraph 18

<sup>37</sup> (unreported), Supreme Court, Jamaica, Claim No. 2008 HCV 2729, judgment delivered on 9 July 2008

inadequacy of Damages as a remedy. Mr Graham KC maintained that the Applicant has demonstrated that the property is integral to his financial stability and that its loss would cause irremediable harm. Mr Graham KC asserted that the subject property was transferred to the Respondent by way of gift and the Respondent has failed to provide any evidence that an award of Damages would be an inadequate remedy in his case.

- [64] Mr Graham KC asserted that the Applicant has stated that he is a twenty-five percent (25%) shareholder in a company which owns a property located at 29 Gloucester Avenue, Montego Bay, in the parish of Saint James, being the land comprised in Certificate of Title registered at Volume 795 Folio 17 of the Register Book of Titles. The approximate market value of the property is said to be Two Million United States Dollars (USD\$2,000,000.00). This, Mr Graham KC submitted, is a demonstration that Applicant has or has access to financial resources to satisfy the undertaking as to Damages.

#### **Submissions advanced on behalf of the Respondent**

- [65] It was submitted that in determining where the balance of justice/convenience lies, the adequacy of Damages must be addressed in tandem. Mrs Hay KC maintained that the authorities indicate that the presumption that Damages are not an adequate remedy is a rebuttable one. Mrs Hay KC submitted that where an applicant fails to present anything before the Court to demonstrate the uniqueness of the land, then there is no reason that Damages should not be considered an adequate remedy. Consequently, Mrs Hay KC asserted that in the absence of this evidence, Damages would be an adequate remedy. This, for the reason that the property is commercial property with no pleaded or demonstrated value. In this regard, Mrs Hay KC relied on the authorities of **Rosh Development Ltd v Cayjam Development Ltd & Proline Development Corporation**,<sup>38</sup> **MB Development & Investments Limited v A & A Lime Hall Development Company Limited**,<sup>39</sup> **Lorenz Redlefsen v Silver Sands Estates Limited et al**<sup>40</sup>

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<sup>38</sup> [2017] JMCC Comm 4

<sup>39</sup> *supra*

and **Vinayaka Management Limited v Genesis Distribution Network Limited et al.**<sup>41</sup>

- [66] Mrs Hay KC maintained that not only has the Applicant failed to give an undertaking as to Damages, but he has also failed to demonstrate that he has the means to give such an undertaking. It was submitted that an indication that the Applicant has shares in a company ought to be disregarded as no information was provided to the Court about the viability of the company, nor is there any evidence to substantiate this allegation.
- [67] Finally, Mrs Hay KC submitted that there is no basis on which to say that Damages would not be an adequate remedy, nor has the Applicant given an undertaking as to Damages. It was further submitted that the Respondent is the sole registered proprietor of the subject property and that there is no dispute that he purchased it with together with Mr Garth Wilkinson. Mrs Hay KC maintained that the addition of the Applicant's name to the title for the subject property was in keeping with his business practices and was never intended to be an outright gift to the Applicant during his [the Respondent's] lifetime.
- [68] Cumulatively, Mrs Hay KC maintained, there is no apparent basis on which the Court should interfere with the Respondent's property rights by granting the injunctive relief which is sought.

### **Findings**

- [69] Mr Donaldson asserts that he stands to lose rental income, possession and control of a portion of the subject property and disruption to his business and family life if the interim injunctions are not granted. Conversely, Mr Brownie maintains that he [Mr Brownie] had always been entitled to a portion of the rental income first as beneficial owner, and now paper owner of the subject property. Mr Brownie's evidence in this regard is as follows: -

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<sup>40</sup> [2021] JMCC Comm 11 at paragraph 57

<sup>41</sup> [2024] JMCA Civ 11

*“18. The Defendant has sought to interfere with my possession and use of the Property by issuing the Notice to Quit and collecting rent from the Jamaica Biscuit Company Limited.*

*19. The business that my wife and I operate from the back of the Property is now the only source of income for me and my family.”<sup>42</sup>*

...

*“21. In response to paragraph 10, I state as follows:*

*a. ...*

...

*f. I have not paid Mr Brownie 30% of the profits from my business.*

*g. Since 2013, I have used income generated from the rental of a portion the property and/or my business to support myself, my family, my sister, and my grandmother.”<sup>43</sup>*

**[70]** The Court finds that Mr Donaldson has failed to put before it sufficient cogent evidence to establish that there is a real likelihood that he would suffer irreparable harm without an interim injunction being in place prior to the final determination of the substantive matter. The Court finds that Mr Donaldson’s evidence in this regard consists largely of general assertions.

**[71]** In all the circumstances, the Court finds that the balance of convenience (or alternately, the balance of inconvenience) lies in favour of refusing the injunction which would interfere with the proprietary rights of the registered owner of the subject property.

**[72]** Additionally, the Court finds that Mr Donaldson has not demonstrated on a preponderance of the evidence that Damages would be an inadequate remedy. The Court was not presented with any evidence of the uniqueness of the land which comprises the subject property to refute the presumption that Damages would be an adequate remedy.

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<sup>42</sup> See – Affidavit of Matthew Donaldson, which was filed on 13 December 2024

<sup>43</sup> See – 2<sup>nd</sup> Affidavit of Matthew Donaldson, which was filed on 16 January 2025

### **Other considerations**

- [73] The Court finds that Mr Donaldson has failed to demonstrate on a preponderance of the evidence that he is able to support his undertaking as to Damages. Mr Donaldson's evidence in this regard is that he is a twenty-five percent (25%) shareholder in a company which owns a property which is located at 29 Gloucester Avenue, Montego Bay, in the parish of Saint James. This said property is the land comprised in Certificate of Title registered at Volume 795 Folio 17 of the Register Book of Titles. The approximate market value of the property is said to be Two Million United States Dollars (USD\$2,000,000.00).
- [74] This Court is of the view that there is an important distinction which is to be made between a shareholder who holds shares in a company and the property (real or personal) which is owned by that company. This averment on the part of Mr Donaldson does not demonstrate, on a balance of probabilities, that he is able to support the undertaking as to Damages which he has given in the present instance.

### **DISPOSITION**

- [75] It is hereby ordered and declared as follows: -
1. The 2<sup>nd</sup> Further Amended Notice of Application for Injunction, which was filed on 19 March 2025, is refused.
  2. The Costs of the 2<sup>nd</sup> Further Amended Notice of Application for Injunction, which was filed on 19 March 2025, are awarded to the 1<sup>st</sup> Defendant/Respondent against the Claimant/Applicant and are to be taxed if not sooner agreed.
  3. That the Caveat numbered 2591571 which is registered against the Certificate of Title registered at Volume 1269 Folio 343 of the Register

Book of Titles is discharged and the Registrar of Titles is directed to remove the said Caveat from the said Certificate of Title.

4. There shall be no Order as to costs in relation to the discharge of the Caveat numbered 2591571.
5. The Costs of the 1<sup>st</sup> Defendant's Notice of Application for Court Orders to Discharge Caveat, which was filed on 14 January 2025, are awarded to the 1<sup>st</sup> Defendant against the Claimant and are to be taxed if not sooner agreed.
6. The 1<sup>st</sup> Defendant's Attorneys-at-law are to prepare, file and serve these Orders.