



[2025] JMCC Comm 38

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA  
IN THE COMMERCIAL DIVISION  
CLAIM NO. SU2025CD00321**

**Re: North Coast Resorts Limited**

**ORAL REASONS FOR JUDGMENT**

**Ms Shawn Steadman instructed by INNLOW for the applicant Ms. Lolita Evans**

**Mr Abe Dabdoub instructed by Dabdoub and Dabdoub for Mr. Adrian Thompson**

**Mrs Rita Allen - Brown for Mr Errol Gallimore**

**Heard September 1, 4 and 5, 2025**

***Interim Injunction – Whether serious issue to be tried – Whether fixed date claim form discloses any cause of action – Whether to allow amended pleadings - CPR 20.2(1) - Sections 2, 6, 8, 12 and 13 of The Industrial and Provident Societies Act***

**IN CHAMBERS**

**CORAM: JARRETT, J**

**Introduction**

1. On December 2, 2014, Mr Errol Gallimore, the Registrar of the Department of Co-operatives and Friendly Societies (the Registrar), cancelled the registration of North Coast Resorts Limited (NCRL) from the Register of Industrial and Provident Societies ( the Register ) by issuing a notice under section 8(3) of the Industrial and Provident Societies Act (IPSA) for failure to comply with section 13 requiring the filing of annual returns and financial statements. The period of non-compliance being 2009 to 2013. Prior to the notice of cancellation, on June 17, 2014, the Registrar issued a notice of proposed cancellation, required by section 8(3).

2. The notice of cancellation was gazetted on December 25, 2014, as stipulated by section 8(3) of the IPSEA. Pursuant to his powers under section 8(6), the Registrar appointed Mr Adrian Thompson as receiver (the Receiver), for NCRL on May 13, 2025.<sup>1</sup>
3. On August 14, 2025, Lolita Evans (Ms Evans), a member of NCRL, filed a fixed date claim form seeking 9 remedies, 5 of which are injunctions against the Receiver, restraining him from performing duties as receiver. She also seeks an order that the Registrar restore NCRL to the Register, that the restoration be deemed to be effective as at December 2, 2014, and that the Registrar rescind the appointment of the Receiver. There is also an injunction being sought against the Registrar of Titles, restraining her from issuing any certificate of title, pursuant to the powers of the Receiver.
4. The relevant and substantive grounds which Ms Evans relies on in her fixed date claim form are grounds 6, 7 and 8. By ground 6, it is alleged that the IPSEA does not include a mechanism for the restoration of a society to the Register; by ground 7, it is said that the Supreme Court has an inherent jurisdiction to grant remedies where statute is silent, provided it is not inconsistent with legislation; and ground 8 alleges that NCRL has largely complied with its obligations under the IPSEA, continues to operate in the ordinary course of business and is the registered proprietor of property registered at volume 1221 folio 945 and volume 1128 and folio 161 of the Register Book of Titles
5. Before the court is Ms Evans's interlocutory notice of application, filed on August 14, 2025, seeking the 5 injunctions stated in the fixed date claim form against the Receiver, and the injunction against the Registrar of Titles. This application is opposed by both the Receiver and the Registrar. The substantive and relevant grounds relied on in the application are grounds 6, 7 and 8 which replicate grounds, 6, 7 and 8 of the fixed date claim form.

---

<sup>1</sup> See Affidavit of Errol Gallimore filed September 1, 2025

6. On September 4 and 5, 2025 respectively, I delivered oral reasons for my decisions in this matter and promised to put them in writing. This judgment is in fulfilment of that promise.

### **The evidence in support of the Application**

7. In her affidavits in support of the application, Ms. Evans, does not deny that the above-mentioned notices under the IPSEA were issued by the Registrar, nor does she deny that NCRL had failed to file annual returns for 2010 to 2013 as required by the IPSEA. It is not disputed that the decision of the Registrar to cancel the registration of NCRL was not appealed; that notice of intention to cancel was sent by the Registrar to the managing director of NCRL; that notice of cancellation was sent to NCRL, and that the cancellation was gazetted.
8. Ms Evans contends that the annual returns for 2009 were filed. She says she only became aware of the non-compliance in around 2022, but she places the responsibility to file the returns on NCRL's former auditors. She contends that since being made aware of the non-compliance, attempts have been made to file all the outstanding returns, and the only remaining returns to be filed are those for 2020 to 2022. She further alleges that all the members wish to have NCRL restored to the register.
9. Ms Evans also alleges that the intention of the NCRL is to sell its property and that an offer to purchase had been made, but no sale can take place because as a matter of law, NCRL does not exist due to the cancellation of its registration.

### **Analysis and discussion**

10. It is helpful to set out the relevant statutory scheme of the IPSEA.
11. Under section 2 of the IPSEA, the Registrar is the Registrar of Co-operative Society appointed under the Co-operative Society Act. Under the Co-operative Society Act, the Registrar is appointed by the Governor General.

- 12.** Section 6A establishes an Appeal Tribunal for purposes of hearing appeals under sections 6,8 and 51.
- 13.** Section 8 gives the Registrar the power to cancel and suspend the registration of an industrial and provident society (society). Section 8(1) provides that the Registrar has the discretion to cancel the registration of a society if certain statutorily described circumstances exist. One such circumstance outlined in sub section (l), is where a society fails within 6 months after notice is served upon it to render any returns required by the IPSA to be sent to the Registrar or to comply with any requisition made by the Registrar under the authority of the IPSA.
- 14.** Section 8(3) provides that not less than 2 months prior notice in writing specifying the ground of any proposed cancellation or suspension of registration shall be given by the Registrar before the registration of a society can be cancelled (except in circumstances where the society itself requests cancellation) or suspended. The section provides further that notice of every cancellation or suspension shall be published in the Gazette as soon as practicable after cancellation takes place.
- 15.** By virtue of section 8(4), a society may within 3 months of the date of publication in the Gazette, appeal from the cancellation or suspension of its registration to the Tribunal, established under section 6A, and if it thinks fit the Tribunal may order the restoration of the society. Subsection 5 provides that a society whose registry has been cancelled shall cease to enjoy the privileges of registration but without prejudice to any liability incurred prior to cancellation, which may be enforced against it.
- 16.** Section 8(6) provides that upon cancellation, unless ordered by the Tribunal to be restored, the Registrar shall , where the circumstances require, appoint a receiver who shall be entitled , among other things, to enter and take possession and assume control of the property of the society, realize those assets and after the payment of all its debts, distribute the surplus pro rata to its members.

17. Section 13(1) makes it mandatory for a society to send to the Registrar, once every year by March 31, annual returns of the receipts and expenditure, funds and effects of the society as audited, and section 56 makes it an offence to fail to send a return required by the Registrar.
18. It is common ground that the threshold test for the granting of an interim injunction is whether there is a serious issue to be tried. The serious issue posed by Ms Steadman, counsel for Ms Evans, is whether the court in its inherent jurisdiction can restore NCRL to the Register, in circumstances where its registration was cancelled for failing to file returns and financial statements in accordance with section 8(6) of the IPSA.
19. I agree with the submissions of Ms Steadman that one of the circumstances where the court exercises its inherent jurisdiction is where there are gaps in the relevant legislation, provided it is not inconsistent with legislation. This, as earlier observed, is one of the substantive grounds on which Ms Evans relies for relief in the claim and the interlocutory application. But I disagree with Ms Steadman that there is any gap in the IPSA, providing for the restoration of an IPS to the Register, where the Registrar cancels its registration. As argued by Mr Dabdoub for the Receiver and Mrs Rita Allen Brown for the Registrar, the IPSA makes very clear provision for restoration of an IPS to the register, once an IPS invokes the provisions of section 8(4) of the IPSA.
20. The authority of **Re Application for Legal Guardianship of MA [ 2016] JMSC Civ 34** relied on by Ms Steadman is distinguishable and not helpful. This was a case in which the applicant sought an order to be made her husband's guardian. The factual circumstances did not meet the requirements of the Mental Health Act, and it was recognised that there was a lacuna in the law. The facts, in summary are, that the applicant's husband, who was a medical doctor with a medical practice, fell into a comatose state, required constant care and attention and consequently, was unable to deal with his business affairs. It was not possible to determine his mental status, due to his condition, and so, there was no evidence that he was mentally incapacitated so as to invoke the provisions of the Mental Health Act. There is no provision in that

legislation, allowing the court to grant the order sought, without evidence of the mental incapacity of the patient. It was therefore in these circumstances that Straw J, as she then was, invoked the court's inherent jurisdiction and granted an order making the applicant, her husband's guardian.

**21.** In the case before me, Ms Evans contends in ground 6 in both her fixed date claim form and her interlocutory application, that the IPSA does not include a mechanism for the restoration of an IPS to the Register. This argument must fail. It is plain, from the statutory scheme of the IPSA outlined earlier, that section 6A of the IPSA establishes a Tribunal, to which an appeal from a decision of the Registrar to cancel the registration of an IPS from the Register, lies. The power to cancel the registration of an IPS is given to the Registrar under section 8, and section 6A expressly states that such a decision falls to be considered on appeal to the Tribunal. As is also evident from the scheme of the IPSA, under section 8(4), upon hearing an appeal, the Tribunal may restore an IPS to the Register. With these very clear and unequivocal statutory provisions, it cannot be seriously contended that the IPSA has no mechanism for the restoration of an IPS to the Register.

**22.** It is notable that section 6A was a 2010 amendment to the IPSA. It is presumed that the legislature at the time of this amendment, carefully reviewed the IPSA and considered it fit to make provision for the decisions of the Registrar under sections 6, 8 and 51, to be appealed to the Tribunal (there being no prior right of appeal); and that the Tribunal upon hearing an appeal, would have the power to restore an IPS to the Register, that had been removed by the Registrar. There are no lacunae in the IPSA, as amended in 2010, in relation to the restoration of an IPS to the Register. Parliament in its wisdom obviously determined that any such restoration must be by way of an appeal of the decision of the Registrar.

**23.** It seems to me, that by these proceedings, Ms Evans seeks to circumvent the legislative scheme of the IPSA, in circumstances where NCRL, did not abide by the IPSA's very clear legislative provisions.

- 24.** The Receiver did not appoint himself. The Registrar appointed the Receiver by virtue of his powers under section 8(6) of the IPSA. If NCRL was aggrieved by such a decision, the appropriate route was also an appeal to the Tribunal under section 6A. Any subsequent challenge to the decision of the Tribunal, would, it seems to me, be by way of judicial review, where the court's supervisory jurisdiction is invoked. This route was available to NCRL, but it chose not to pursue it. Instead, Ms Evans, seeks injunctive relief against the Receiver to prevent him from performing his duties.
- 25.** In light of the provisions of the IPSA, which I have taken the time to outline earlier in this judgment, the approach of an IPS cannot be to bring a private law action to thereby avoid the procedural provisions of the IPSA.
- 26.** In the 8<sup>th</sup> ground relied on by Ms Evans, she says NCRL has largely complied with the provisions of the IPSA, continues to operate and owns property. I hardly see how these grounds assist her. The provisions of the IPSA were not complied with by NCRL. This is not denied by her.
- 27.** It seems obvious to me, having regard to the above reasons, that grounds 6, 7 and 8, which are the only substantive and relevant grounds on which the claim and the application lie, raise no serious issue to be tried. The injunctive relief sought will therefore be refused. The threshold test having not been met, there is no need to proceed with the inquiry any further.
- 28.** I note, *en passant*, that the fixed date claim form discloses no cause of action against the Receiver. There is nothing pleaded which discloses any legal or equitable right which Ms Evans or NCRL has, which justifies an injunction against the Receiver or for that matter the Registrar, given the clear provisions of the IPSA.
- 29.** There is a second affidavit filed by the Registrar, which created heated argument among counsel, during the hearing of this matter. In this affidavit, filed on September 3, 2025, the Registrar says that the Receiver was appointed by order on August 28, 2025, and that this appointment supersedes the appointment order dated May 13, 2025, because the latter had an

administrative error, in that it referred to the appointment of a liquidator instead of receiver. Ms Steadman argued that this evidence has 'pulled the rug' from under Ms Evans' feet, since the matter has proceeded on the basis of the May 13, 2025, order, by which Mr Adrian Thompson was appointed a liquidator. She also demanded to see the order referred to by the Registrar in his second affidavit and said the matter could not proceed any further, until this issue has been resolved. I disagreed for the reasons below.

**30.** In neither the grounds relied on in her fixed date claim form, nor the grounds relied on in her interlocutory application, does Ms Evans make any allegation against the Receiver. In one of her affidavits in support of her application, she alleges that the Receiver's appointment is invalid because he is not licensed to act as liquidator under section 71 of the Insolvency Act, since he is not on the schedule of Licenced Trustees of the Office of the Supervisor of Insolvency. This, however, is not a ground stated in either her fixed date claim form or in her application. There is no ground in her application or her fixed date claim form which allege that Mr Adrian Thompson was appointed a liquidator and not a receiver. Her claim, at its core, seeks a restoration of NCRL to the Register of in circumstances where she alleges that the IPSA does not make provision for restoration.

**31.** I therefore cannot see how the second affidavit of the Registrar amounts to 'pulling the rug' from under Ms Evans' feet. During the hearing I rejected the argument advanced by Ms Steadman, that, included in the claim, is the question whether the Receiver's appointment is void because he was appointed a liquidator instead of a receiver. The fact that the Receiver was appointed effective August 28, 2025, does not change the fact that the registration of NCRL was cancelled on December 2, 2014, the requisite notices under the IPSA were issued by the Registrar, and there was no appeal under section 6A, of that decision.

**32.** Although not necessary for my decision in this matter, I will take the liberty to comment, *en passant*, and very briefly, on the allegation made by Ms Evans in her affidavit, that the Receiver was not appointed under section 71 of the

Insolvency Act (IA). Section 71(1) of the IA states that only a person licensed as a trustee under the Act, may be appointed as a receiver. However, “receiver” under section 2 of the IA is defined as: “a person who, pursuant to a security agreement or an order of a court made under any law that provides for or authorises the appointment of a receiver has been appointed to take or has taken possession or control of any asset of the insolvent person or bankrupt”. In my view this definition puts to rest any question whether a receiver appointed under section 8(6) of the IPSA is a receiver under the IA. The appointment under section 8(6) of the IPSA is made by the Registrar and not made by an order of the court or pursuant to a security agreement.

- 33.** On a proper construction of sections 2 and 71 of the IA, it seems plain, that a Receiver appointed under section 8(6) of the IPSA is not a receiver under the IA.

*The amended pleadings*

- 34.** Pursuant to CPR 20.2(1), on the morning of September 4, 2025, I disallowed amended pleadings filed by Ms Evans that very morning. CPR 20.2(1) provides that where a party has amended a statement of case where permission is not required, the court may disallow an amendment with or without an application.
- 35.** On September 1, 2025, when this matter first came before me during the court’s long vacation as an urgent application, Ms Steadman made her submissions on the interlocutory application. During those submissions, I asked counsel if she considered whether what is being sought in the fixed date claim form is purely injunctive relief. Put another way, was there a pleaded cause of action or claim for declaratory relief. Counsel indicated that she was not of the view that the claim was seeking purely injunctive relief. In response to my further question as to what is the serious issue to be tried, as observed earlier, Ms Steadman said that the serious question is, whether the court in its inherent jurisdiction can restore NCRL to the IPS Register, in circumstances where the its registry was cancelled for failing to file returns and financial statements in accordance with section 8(6) of the IPSA.

36. After Miss Steadman completed her submissions, counsel Mrs Rita Allen – Brown, began hers on behalf of the Registrar. She did not complete those submissions on September 1, 2025, and so the matter was adjourned to 11:00 am on September 4, 2025.
37. It was during the adjournment, that Ms Evans filed the amended fixed date claim form, minutes before the start of the hearing on September 4, 2025. The amended claim included a raft of new remedies, and made new allegations against the Registrar, including breaches of the Charter of Fundamental Rights and Freedoms. Although no case management conference had yet been held in this matter, and consequently CPR 20.1 would not apply, I consider that it was unfair, and unjust to allow Ms Evans to rely on the amended pleadings, given the stage of the proceedings at which the amendment was filed, without first having sought the court’s permission. Ms Steadman had completed her submissions in support of the application for injunctive relief in which, in reliance on the extant pleadings, she had articulated what she considered to be the serious issue to be tried. Counsel for the Registrar, had already started her submissions, in which she had begun to argue that there was no serious issue to be tried, and that the grounds relied on by Ms Evans in her fixed date claim form, were not supported by the legislative scheme of the IPISA.
38. Furthermore, both the Registrar and the Receiver had filed applications on September 1, 2025, and August 29, 2025, respectively, seeking, among other remedies, to strike out the claim, and I had indicated that those applications would be heard after Ms Evan’s application for injunctive relief. It was inappropriate, given all the circumstances of this case, for Ms Evans to have filed amended pleadings when she did, without first seeking the court’s permission to do so. What she sought to do, was tantamount to “pulling the rug” from under the feet of both the Registrar and the Receiver. (see for example the approach of the court in **Index Communications Network Ltd v Capital Solutions Ltd and Ors [2012]JMSC Civ 50**)

## **Order**

- a) The Notice of Application filed on August 14, 2025, is dismissed.
- b) Costs to Mr Adrian Thompson and to Mr Errol Gallimore to be agreed or taxed.
- c) Amended pleadings filed on September 4, 2025, are disallowed.
- d) Leave to appeal the decision disallowing the amended pleadings is refused.

**A Jarrett**

**Puisne Judge**