



[2025] JMCC Comm 11

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE COMMERCIAL DIVISION

CLAIM NO. SU2024CD00458

BETWEEN	ADAM STEWART	CLAIMANT
AND	ROBERT STEWART	1 <sup>ST</sup> DEFENDANT
	DMITRI SINGH	2 <sup>ND</sup> DEFENDANT
	ELIZABETH DESNOES	3 <sup>RD</sup> DEFENDANT
	LAURENCE McDONALD	4 <sup>TH</sup> DEFENDANT
	GORSTEW LIMITED	5 <sup>TH</sup> DEFENDANT

*Interlocutory Injunction – Estate Gordon “Butch” Stewart – Testator devised company shares and assets giving detailed instructions to Executors – Directors meeting called – Whether a director and beneficiary has locus standi to prevent the directors meeting – Section 213A Companies Act – Whether anticipated oppressive act can be restrained.*

W. Scott KC, I. Wilkinson KC, C. George, L. Stewart and G. Chin instructed by Hart Muirhead Fatta for the Claimant

S. Mayhew KC and A. Myrie instructed by Mayhew Law for the 1<sup>st</sup> Defendant

M. Hylton KC, K. Powell and T. Mason instructed by Hylton Powell for the 2<sup>nd</sup> Defendant

D. Gentles KC, K. Williams and S. Nelson instructed by Livingston Alexander & Levy for the 3<sup>rd</sup> Defendant

D. Kitson KC and D. Streete instructed by Grant Stewart Phillips for the 4<sup>th</sup> Defendant

**J. Vassell KC, J. Mais-Cox and A. Mitchell instructed by DunnCox for the 5<sup>th</sup> Defendant**

**Heard: 14<sup>th</sup> February and 3<sup>rd</sup> March 2025**

**In Chambers (by Zoom).**

**Cor: Batts J.**

[1] This is an application by the Claimant, filed on the 16<sup>th</sup> December 2024, for interim relief. The Claimant, among other things, seeks to restrain the 1<sup>st</sup> to 4<sup>th</sup> Defendants from proceeding with a meeting of the board of directors of the 5<sup>th</sup> Defendant. He does not wish the meeting to take place unless three independent directors are appointed and/or until the trial of the Fixed Date Claim. It is alleged that the conduct of the 1<sup>st</sup> to 4<sup>th</sup> Defendants has been oppressive, unfairly prejudicial and/or amounts to an unfair disregard for the interest of the shareholder/beneficiaries of the 5<sup>th</sup> Defendant. The Claimant, in the Fixed Date Claim, seeks a declaration that any attempt to remove him as executive chairman is oppressive, unfairly prejudicial and/or is an unfair disregard for his rights as a director, officer and majority beneficial shareholder within the meaning of Section 213A of the Companies Act.

[2] The application was opposed and several affidavits, containing assertions and counter assertions, were filed. Counsel filed detailed written submissions supported by many authorities. At the hearing oral submissions were permitted. I reserved my decision and, on the 3<sup>rd</sup> March 2025, refused the application. I promised to give my reasons shortly thereafter. This promise I now fulfill. Although grateful to all for their input I do not find it necessary to repeat the submissions or to rehash all the factual allegations. This is not a trial, and I am to make no findings of fact. There will be other more appropriate occasions for the issues to be judicially pronounced upon.

[3] The testator, Mr. Gordon “Butch” Stewart OJ was a very wealthy businessman who had several companies in differing fields of endeavor. He also had several children in the course of different relationships. The Claimant is a son by the testator’s second wife Penelope Jane “P.J.” Stewart. During the testator’s lifetime he was integrally involved in the running of his father’s businesses and continues so to be. Given the large number of assets, it is not surprising that the testator took great care, when making his will, to detail the arrangement of his estate. His will dated 15<sup>th</sup> May 2020 directed the Executor/Trustees exactly how he wished the companies to be organized after his passing. In this regard clauses 12-14 provided, see exhibit AS1 to the affidavit of Adam Stewart filed on the 16<sup>th</sup> December 2024:

**“The ATL Group**

*12. In this my Will “**ATL Group**” shall mean the company, Gorstew Limited (“Gorstew”) and its subsidiaries and other companies which own the following businesses, namely:*

- (a) Appliance Traders Limited and its businesses (otherwise called ATL) including the business operated from 35 Half Way Tree Road, in Saint Andrew and Bogue in Saint James;*
- (b) the Jamaica Observer newspaper;*
- (c) one or more radio station(s) and any other media business including the business known as Buzz;*
- (d) ATL Motors Limited/ATL Automotive Holdings Limited/ATL Autobahn Limited and all companies and entities involved in the motor vehicle dealership business or having an interest in the motor vehicle business anywhere in the world (the ATL Motors Sub-group”);*
- (e) the AC Marriott hotel in Kingston, Jamaica;*
- (f) the warehouse commonly called Alcrataz owned by Gorstew or by a company or companies owned by Gorstew but which was built and expanded by one or more companies within the Sandals & Beaches Group and which*

*is currently occupied by the Sandals & Beaches Group at a nominal rent, but only if it has not been sold as part of any deal relating to the Sandal & Beaches Group;*

*(g) any other hotel wherever located which is not operated under the Sandals or Beaches brand, or if the Sandals & Beaches Group is sold, is excluded from such sale;*

*(h) the property known as 5 Kent Avenue, Montego Bay, in the Parish of Saint James; and*

*(i) any other business falling outside the Sandals & Beaches Group, the Unique and the HPI Group (not specifically dealt with herein).*

*For this purpose, the ATL Group shall be deemed **not to include:***

- (i) the hotel known as Sandals Negril even though Gorstew may be the registered proprietor thereof at the time of my death;*
- (ii) any other asset used as part of the Sandals & Beaches hotel business (excluding Alcrataz); and*
- (iii) any undeveloped land intended for use by, or expansion of, any Sandals or Beaches hotel.*

*13.1 I GIVE the ATL Group to my following three (3) sons in the following proportion, namely:*

- (a) Adam Stewart = 52%;*
- (b) Robert "Bobby" Stewart = 24%; and*
- (c) Gordon Jackson Stewart =24%*

*The allocation of interest in the ATL Group recognizes Adam's important role in expanding and developing the ATL Motor Subgroup.*

*13.2 Notwithstanding anything above if during my lifetime I shall give any of my three (3) sons any interest in any of the companies or assets comprised in the ATL Group then such inter vivos gift shall go in reduction of the percentage ownership in the ATL Group or relevant company, as the case may be but not so as to*

*diminish any inter vivos gift made by me. For instance, I have in mind to give my son, Adam a 40% interest in the ATL Motors Sub-group during my lifetime and if I should do so, Adam's bequest under sub-clause 13.1 in respect of the ATL Motors Sub-group would be a further 12% to arrive at 52%. But if I were to give Adam an inter vivos gift of say 60% interest in the ATL Motors Sub-group then under subclause 13.1 he would receive zero interest in the ATL Motors Subgroup under this my Will and the remaining 40% would be divided equally between my other two sons referred to in sub-clause 13.1, namely; Robert ""Bobby" Stewart (20%) and Gordon Jackson Stewart (20%).*

*14. With respect to the ATL Group, I wish the following to be done and I charge my Trustees with the duty of reorganizing the ATL Group to ensure that these objectives are met; namely:*

- (a) that the ATL Group be reorganized under a single parent company in which shares can be allocated to my three (3) sons as stated in paragraph 13 above;*
- (b) that the ATL Group be managed and operated along strict business lines with a strong professional board of directors to generate income for the named beneficiaries;*
- (c) that my thee (sic) (3) sons named above shall, if they so desire, have seats on the board of directors of the parent company and other principal companies within the ATL Group and, in the case of Gordon Jackson Stewart, who is an infant at the date of this Will, upon his reaching the age of majority in Jamaica.*
- (d) that Adam Stewart be the chairman of the ATL Group so long as he is willing and able to hold that office;*
- (e) that Adam may establish a management company or team to manage the businesses comprised in the ATL Group on terms that such company or team be paid management fees on strict arm's length basis as determined and approved by my Trustees during the initial*

*set-up period with the assistance of professional management consultants as determined by my Trustees;*

*(f) that Jamaica Observer, although a loss-making venture at the moment, not be sold or disposed of or be closed down so long as the beneficiaries can, within reason, sustain this company by providing financial assistance from other companies within the ATL Group.*

*Nothing in this clause 14 shall be construed to mean that the beneficiaries of the ATL Group may not wind-up, sell or dispose of any business or asset in the ATL Group subject to requisite board or other approval PROVIDED that any such sale or disposal shall be on an arm's length basis. This clause shall also apply to Jamaica Observer if my three sons referred to in clause 13 above shall unanimously agree that it should be closed, sold or otherwise disposed of because it is a financial burden on the ATL Group."*

- [4] In effect certain of his companies were to come under a new umbrella company, not yet in existence. The Claimant is to receive 52% of the shares in that new company. The 5<sup>th</sup> Defendant is one of those companies and was, at the date of the testator's death, wholly owned by the testator, see paragraph 10 of the affidavit of the 1<sup>st</sup> Defendant filed on 17<sup>th</sup> January 2025. The Executor/Trustees have a responsibility to implement the wishes of the testator. In that regard they must identify and call in the assets, ensure they are duly protected and undertake the process of distribution in accordance with the testator's instructions.
- [5] The Claimant is not yet the registered holder of 52% of the "ATL Group". Primarily because, as is apparent from the terms of the will, that entity does not yet exist. He is at this time beneficially entitled to that shareholding in a company yet to be formed. This state of affairs is my primary reason for finding that this application cannot succeed. I find that the Claimant has not demonstrated that there is a serious issue to be tried such as to support his request for injunctive relief.

[6] The claim is pursuant to section 213A of the Companies Act, popularly called the “oppression” remedy, which reads:

“213A –

(1) *A complainant may apply to the Court for an order under this section.*

(2) *If upon an application under subsection (1), the Court is satisfied that in respect of a company or of any of its affiliates—*

*(a) any act or omission of the company or any of its affiliates effects a result;*

*(b) the business or affairs of the company or any of its affiliates are or have been carried on or conducted in a manner;*

*(c) the powers of the directors of the company or any of its affiliates are or have been exercised in a manner, that is oppressive or unfairly prejudicial to, any shareholder or debenture holder, creditor, director or officer of the company, the Court may make an order to rectify the matters complained of.*

(3) *The Court may, in connection with an application under this section make any interim or final order it thinks fit, including an order—*

*(a) restraining the conduct complained of;*

*(b) appointing a receiver or receiver-manager;*

*(c) to regulate a company's affairs by amending its articles or by-laws, or creating or amending a unanimous shareholder agreement;*

*(d) directing an issue or exchange of shares or debentures;*

*(e) appointing directors in place of, or in addition to, all or any of the directors then in office;*

*(f) directing a company, subject to subsection (4), or any other person to purchase the shares or debentures of a holder thereof;*

- (g) *directing a company, subject to subsection (4), or any other person to pay to a shareholder or debenture holder any part of the moneys paid by him for his shares or debentures;*
  - (h) *varying or setting aside a transaction or contract to which a company is a party, and compensating the company or any other party to the transaction or contract;*
  - (i) *requiring a company, within the time specified by the Court, to produce to the Court or an interested person, financial statements or an accounting in such forms as the Court may determine;*
  - (j) *compensating an aggrieved person;*
  - (k) *directing rectification of the registers or other records of the company;*
  - (l) *liquidating and dissolving the company;*
  - (m) *directing an investigation to be made; or*
  - (n) *requiring the trial of any issue.*
- (4) *A company shall not make a payment to a shareholder under paragraph (f) or (g) of subsection (3) if there are reasonable grounds for believing that—*
- (a) the company is unable or would, after that payment, be unable to pay its liabilities as they become due; or*
  - (b) the realizable value of the company's assets would thereby be less than the aggregate of its liabilities.”*

[7] It is important to note that the section speaks to things actually done and does not speak to future conduct. There is no remedy where proposed conduct is “*likely to have an effect*”. Furthermore, the Claimant not being a shareholder in the 5<sup>th</sup> Defendant, cannot claim relief as a shareholder. Similarly, he cannot claim as a shareholder of a company not in existence but in respect of which he expects to receive a majority of shares. King’s Counsel for the Claimant urged that, as the 5<sup>th</sup> Defendant is the “*effective holding company for the ATL Group*”, his client is



beneficially entitled to a 52% interest. They rely on the authority of **Commissioner of Inland Revenue v Hawley [1928] 1 KB 578** to support a submission that from the date of death the Claimant should be treated as the owner of that 52% interest. However, in **Hawley's case** the company was always in existence. Furthermore, the case was not considering the oppression remedy or locus standi for that purpose but rather whether dividends should be treated as belonging to the beneficiary from the date of distribution for income tax purposes. In the matter before me, the statute is clear that it is the executor who represents a deceased shareholder, see section 23(1) (b) of the Companies Act. I hold that the Claimant has no locus standi to bring this claim as a shareholder.

- [8] The Claimant's locus standi, on the facts, can only relate to his position as a director of the 5<sup>th</sup> Defendant. It means that any alleged relief, to which he is entitled, must concern disadvantages in his capacity as a director, see paragraphs 5, 9 and 10 of my judgment in **Courtney Wilkinson et al v Gerald Charles Chambers et al [2021]JMCC Comm 41(unreported judgment dated 20<sup>th</sup>July 2021)**. Injury to the company is best dealt with by relief pursuant to section 212 and not 213A of the Companies Act. The evidence, at this interlocutory stage, has not demonstrated an injury to the Claimant in his capacity as a director. The complaint is that the Defendants intend to call a meeting of directors with an agenda that, if implemented, will injure the Claimant. The Claimant has placed before the court evidence of the Defendants' prior conduct, prior statements and, other litigation, which suggest that the purpose of the agenda is to injure him. Even accepting those assertions as valid there is no evidence that the Claimant will be impacted in his capacity as a director.

- [9] He has been invited to the meeting and was given notice of the agenda. The intended notice and agenda are as follows (see exhibit AS1 to the affidavit of Adam Stewart filed on the 17<sup>th</sup> December 2024 at pages 64-66):

***"GORSTEW LIMITED  
NOTICE OF BOARD OF DIRECTORS MEETING***

I, **ROBERT STEWART**, director of GORSTEW Limited, acting pursuant to Article 103 of the Company's Articles of Incorporation **DO HEREBY SUMMON** a meeting of the Board of Directors to be held on: -

DAY: Wednesday  
DATE: December 18, 2024  
TIME: 9:00 a.m. - Jamaica Time (US Central)  
VENUE: The Hibiscus Meeting Room  
Courtyard By Marriott  
7 Park Close, Kingston 5  
- As well as remotely by a Zoom meeting link

Robert Stewart -Director  
Dated the 12<sup>th</sup> day of December, 2024

#### **AGENDA**

1. Meeting Called to Order
2. Apologies for Absence
3. Notice of Meeting
4. **Matters to be discussed**
  - a. That Adam Stewart, having appropriated unto himself the title of "**Executive Chairman**", without being appointed by the Directors or other lawful means, be and is hereby directed to cease to describe himself as such and to cease to exercise or purport to exercise any executive functions in relation to the Company.
  - b. **To duly appoint a Chairman** of the board of the Company pursuant to Article 106 of the Article of Association of the Company.
  - c. **Appointment of Additional Director**  
That, Paul Soutter, a former Finance Director of the Company, be and is hereby appointed as an additional Director of the Company.
  - d. **Action with respect to Jamaican Observer Limited**  
That the Company, as' principal shareholder in Jamaican Observer Limited, be and is hereby authorized to take the requisite legal steps to reorganize the board of directors of that subsidiary to protect that subsidiary and prevent its newspaper from being used as an instrument to attack and besmirch the character of persons on behalf of Adam Stewart, Jaime Stewart and Brian Stewart.

e. **Appointment of Audit committee**

*That an Audit Committee consisting of at least two Directors of the Company, least one of which or, if more than two, the majority of which must be a director or directors which has/have not being (sic) involved in the day to day management of the Company over the last three (3) years and that the duties and functions of the Audit Committee be as set out in the **Appendix** attached hereto.*

f. **Management of the Company**

*That the management arrangements with respect to the Company be reviewed to determine whether it is compliant with Mr. Gordon Stewart's mandate as set out in his Will – in particular clause 14 (e) of the Will and if not to determine whether the Board should approve the arrangement and appeal to the Executors to accept and ratify the arrangement if it were not preapproved by the Executors as required or alternatively whether any other action should be taken in respect thereof."*

- [10] The complaint is that the Defendants plan to direct the Claimant to cease calling himself "*ExecutiveChairman*"; to thereafter appoint a chairman which, on the Claimant's evidence, will be someone other than himself; to appoint Paul Soutter as an additional director. This the Claimant asserts is someone who is aligned to the faction which is against him, see paragraphs 56 to 60 of the Claimant's affidavit filed on the 16<sup>th</sup> December 2024. The agenda also proposes to re-organise the Jamaica Observer Ltd to "*prevent its newspaper from being used as an instrument to attack and besmirch the character of persons on behalf of Adam Stewart, Jaime Stewart and Brian Stewart*". Finally, the agenda proposes that an Audit Committee be established with attendant duties as set out in a schedule. Save for the proposal to appoint an additional director, none of the other agenda items directly impact the Claimant in his capacity as a director of the 5<sup>th</sup> Defendant.
- [11] The appointment of an additional director may affect the Claimant as a director insofar as it can impact the balance of voting rights on the board. In this regard

there is no challenge to the power of the 5<sup>th</sup> Defendant's board to appoint an additional director. If the Claimant wants to prevent a change to the balance of power on the board, at this interlocutory stage, he must satisfy the prerequisites laid down in **American Cyanamid Co. v Ethicon [1975] AC 396** and **National Commercial Bank Jamaica Ltd. v Olint Corporation Ltd. [2009] 1 WLR 1405**. These are now well known and can be summarized thus: (a) That there is a serious issue to be tried meaning that the claim is not frivolous; (b) That if the injunction is refused but he succeeds at trial damages will not be an adequate remedy, (c ) that the Defendants are adequately protected by an undertaking as to damages in the event the injunction is granted but the Claimant is ultimately unsuccessful at trial and, (d) that, in the event the consideration of damages as an adequate remedy is indecisive, the balance of convenience or in other words the justice of the case favours the grant rather than the refusal of injunctive relief. The court when applying these principles should avoid a “boxticking” approach and should always bear in mind the overall justice of the case.

- [12] I have said that the Claimant is not affected in his capacity as a director by most of the agenda items. However, as far as the appointment of a new director is concerned, he may be affected given that the balance of voting power on the board may change. This is somewhat speculative unless there is evidence that this appointee will reflect positions hostile to the Claimant. I do not think the evidence at this stage demonstrates that. The main complaint seems to be:

*“59. ....I have personally observed that Mr. Soutter does not contribute substantively to Board meetings and his opinion is therefore unlikely to be motivated by considerations of adding value to the board of Gorstew.”* (see paragraph 59, affidavit of Claimant filed 16<sup>th</sup> December 2024)

Mr. Stewart asserts in his second affidavit filed on the 16<sup>th</sup> December 2024 that the proposal by the Defendants to appoint Mr. Soutter, “*in the context of overt hostilities*”, see paragraph 12 (h)(ii), renders the appointment unsuitable. It seems the court is being asked to speculate about positions this new director will adopt and to assume, based on the conduct of others, that he will not act in accordance

with his fiduciary and other duties as a director. This will not suffice, and I therefore refuse this application as no serious issue for trial has been demonstrated such as to support the grant of interlocutory injunctive relief..

[13] If I am wrong, on the question of whether there are serious issues to be tried, I go on to consider the matter of damages as an adequate remedy and whether the Defendants are adequately protected. In this regard the Claimant posits that an award of damages is not a remedy available under section 213A (3). I disagree because section 213A (3) (j) allows for “*compensation*” to an “*aggrieved person*”. It appears nevertheless that any loss will be difficult, if not impossible, to assess. The Claimant asserts that his position as chairman is integral to the continuation of certain contracts and business arrangements. He postulates that the company will suffer gravely if he is removed as chairman, see paragraphs 55 of the Claimant’s First Affidavit (filed 16<sup>th</sup> December 2024). The Defendants say that the contracts and arrangements to which the Claimant refers are with subsidiary companies and not with the 5<sup>th</sup> Defendant. Therefore, his removal as chairman of the 5<sup>th</sup> Defendant will not have that effect. I think, respectfully, this is an unrealistic approach. Given his present stature and the nature of corporate enterprise the Claimant’s removal as chairman of the 5<sup>th</sup> Defendant is very likely to resonate within and among the group. On the other hand, given the grave allegations made by the Defendants (or some of them) an injunctive order, if they are ultimately proven correct, could similarly have devastating and incalculable consequences, see for example paragraphs 16 to 20 of the affidavit of Robert Stewart filed 17<sup>th</sup> January 2025. It is clear to me that an award of damages may not be adequate to compensate either the Claimant or Defendants in the event either succeeds at trial.

[14] When the prospect of harm to both sides is such that there is an inability to adequately compensate the court has regard to the justice of the case, that is, to the balance of convenience. In this regard I bear in mind that the Claimant’s case is anticipatory. The directors have not yet met to consider the agenda items. The

Claimant is asking the court to restrain the calling of a meeting and the implementation of agenda items by a board charged with statutory and fiduciary responsibilities. There is no challenge to the power of the board of directors to implement those agenda items. The court must bear in mind that there is no evidence that the Claimant's expected 52% shareholding, in an entity to be created, is or can be endangered by any of the agenda items. Furthermore, among the Defendant directors are Executor/Trustees who have further statutory responsibilities. It seems to me that, in these circumstances, the justice of the case demands that the board of directors ought to be allowed to carry out the responsibilities entrusted to them by the testator and by law.

[15] Mrs. Kitson, King's Counsel representing the 4<sup>th</sup> Defendant, urged me to treat with the application as one in which my decision will, at this interlocutory stage, bring about an end to the litigation. This would mean that I should pay a greater focus on the evidence and determine which party is more likely to succeed at trial. She relied on **Miller v Cruickshank**[1986] 44WIR 319 and **Rodeo Holdings Limited v The Proprietors Strata Plan 88 et al (1988)25 JLR 513**. I declined to view the matter that way primarily because the questions, whether the Defendants have lawfully carried out their functions or breached any duties to the Claimant, remain to be decided whether or not this injunction is granted.

[16] The Fixed Date Claim filed on the 16<sup>th</sup> December 2024 seeks declarations and orders in addition to the order restraining implementation of the agenda items. If the injunction is refused, but after a trial the court is satisfied that the agenda items ought not to have been implemented, the court can grant a declaration and make such orders, including the appointment of new directors, as will put matters right. I recognize fully the inconvenience and loss such a course may entail. However, it does not mean that refusing interim relief brings the matter to an end. Similarly, if the injunction were granted but after trial the Claimant is unsuccessful, the Defendants will then be permitted to implement the agenda items. The delay may cost time and some loss but there will still be the prospect

of a remedy. Although potentially inadequate compensation, by enforcement of the undertaking as to damages, is also possible. This is not a case like **Cruickshank** where the young cricketer wanted to participate in an age group competition. If not allowed to participate then he would never again be able to play given his age and the fact that the competition was imminent. If allowed to play, but at trial the competition organisers succeeded, they could never again bar him. In other words, neither side could later enjoy an effective remedy. **Rodeo Holdings** concerned an application to appoint an administrator at an interlocutory stage and the court considered this the main relief in the claim and therefore declined to do so prior to the trial. In the case at bar the issues remain, and effective remedies are still possible, whatever the result at this interlocutory stage. I therefore did not think it necessary to determine which party was most likely to succeed at trial.

[17] However, given the view I have taken that the Claimant has failed to demonstrate a serious issue to be tried, the injunctive relief is refused. Furthermore, even if there are serious issues for trial, damages cannot adequately compensate either party. It is manifest that at this interlocutory stage, where no findings of fact can be made, the justice of the case dictates that the directors and/or Executor/Trustees should be permitted to call the meeting, consider the agenda items and, carry out their fiduciary and statutory responsibilities. Remedies are available if the Defendants fail to do so lawfully and thereby cause the Claimant, or the companies, loss.

[18] In the result and for the reasons stated the application for interim relief was refused. I stood the matter over, to the 14<sup>th</sup> March 2025, for submissions on costs to be made.

**David Batts**  
**Puisne Judge.**