

IN THE HIGH COURT OF BELIZE A.D. 2026

CLAIM NO. CV227 of 2026

BETWEEN:

ANTHONY SANER

Claimant/Applicant

And

[1] WILLIE ROBERTO CAAL

First Defendant

[2] LUIS FERNANDO CASTILLO

Second Defendant

[3] REEF CONSERVATION INTERNATIONAL (REEFCI)

Third Defendant

Appearances:

Mr Andrew Marshalleck SC and Ms. Payal Ghanwani for the Claimant/Applicant

Ms. Pricilla Banner SC and Mr. Jorge Matus for the Defendants

2026: August 25th;

October 22nd.

DECISION

Civil practice and procedure – Quia timet injunction – Preservative and limited interim reliefs – Dispute over beneficial ownership of assets of the business and who should exercise corporate rights – Claimant alleges that he is purchaser having solely funded business – Resulting and constructive trust – Relevance, if any, of the NGO status of the third defendant and implications for claims of beneficial ownership – Allegations of hostile takeover by the defendants in removing the claimant as director – Attempts to displace the historical management and control of the business – Serious issue to be tried – Damages as appropriate relief – Balance of convenience – Risk of dissipation of assets – Whether evidence of intention to dissipate is speculative

- [1] **ALEXANDER, J.:** This matter involves an interim injunction sought over the operations of the third defendant, a tourism business (“REEFCI” or “the business”). Following an initial inter partes hearing, the applicant amended both its claim and the notice seeking injunctive relief. The amended injunctive application was filed on 8th August 2026 and e-served on the defendants on 11th August 2026 (“the amended application” or “the application”).
- [2] The court heard the amended application on 24th August 2026. This is my decision on the application.

The Claim and Amended Application

- [3] By the amended application, the applicant asks the court to grant him a limited and preservative injunction pending the determination of the substantive claim. Put differently, the applicant is asking the court to preserve the subject matter of the litigation until the nature and extent of the proprietary rights claimed could properly be determined.
- [4] The reliefs sought are broad-based. They include restraining the first and second defendants (together “the defendants”) or their agents from dealing with, encumbering or disposing of the assets of REEFCI or from interfering with its management or operations. The applicant also seeks to prevent the defendants from exercising voting rights, as members or directors of REEFCI, or from asserting any beneficial ownership in the business or rights inconsistent to his.
- [5] The substantive claim, in short, involves assertions of rights in REEFCI that are grounded in trust, specifically to its assets and voting rights. He says that the business and assets were funded solely by him, and for his benefit.
- [6] The applicant’s case is, therefore, that he is the sole financial investor in the business and the ultimate beneficial owner. He retains and exercises absolute control over REEFCI’s assets and was, at all material times, actively managing its

daily operations through the defendants. He maintained throughout that not only did he hold the sole decision-making authority over the business, including the responsibility for its financial management, operations and strategic direction, but all its assets were exclusively reposed in him.

[7] The defendants did not contribute any monies towards acquiring and/or operating the business. Apart from providing no consideration, they assumed no risk in the operations of the business. They were employees or functionaries of REEFCl whom the applicant had hired and was paying for their services. They were hired for administrative, operational and regulatory conveniences. Their hire derived from the fact that they were resident in Belize and better able to facilitate the day-to-day operations of the tour business. Their employment did not confer, nor was it ever intended to confer, any ownership or beneficial rights in the business or its assets.

[8] Further, the applicant in his capacity as chairman and director of the business appointed the first defendant as director, in 2016 by special resolution. Later, sometime in 2021, he appointed the second defendant as treasurer, also by special resolution. There was no formal appointment process conducted and neither defendant made any contribution nor obtained beneficial rights in the business. Their appointment gave them voting rights in the business. Sometime in 2025, the applicant purchased an island, Tom Owens Island, under Minister's Fiat Lease No. 76 of 2007, from which REEFCl is conducting its business. The purchase price was USD750,000.00 and REEFCl was the corporate vehicle used for the transaction. The defendants did not contribute financially to this purchase.

Dispute

[9] On 12th February 2026 the defendants convened a meeting of REEFCl. In that meeting, they passed a resolution to oust the applicant from the business. The defendants in doing so were exercising their membership rights independently of and contrary to the directions of the applicant. The applicant then terminated their services with REEFCl and asserted his beneficial ownership of the business and

assets. He alone had provided the full purchase price for its acquisition and that of Tom Owens Caye.

- [10] When the inter partes hearing was first hurriedly and urgently convened, the defendants raised certain arguments about the nature of the business, as a non-governmental organisation (“NGO”) and a non-profit organisation (“NPO”); the standing of the applicant; its management and control and the challenges posed to the court to grant relief, among other things. They also decried the fact that they were not given sufficient time to properly respond to the application. There was some confusion about REEFCl’s status as an NGO. Time was allowed for the parties to properly respond.

Evidence

- [11] In support of the amended application, the applicant relied on the first affidavit of Anthony Saner (the applicant) dated 19th May 2026; his second affidavit dated 22nd June 2026, and third affidavit dated 22nd July 2026. In support of their notice of opposition filed on 28th August 2026, the defendants relied on two affidavits of Willie Caal (first defendant) dated 8th June 2026 and 30th June 2026.

Law

- [12] Applications for injunctions are provided for under the Senior Courts Act¹ and the Senior Courts (Civil Procedure Rules) 2025 (“CPR”).

Issues

- [13] The issue, as the court sees it, is whether it is just and convenient to grant interim relief. A determination of this would involve consideration of the existence of a serious issue to be tried, adequacy of damages, as a remedy, and where would the balance of convenience lie should the decision go either way.

¹ Act No. 27 of 2022.

Discussion

[14] The leading case on the principles governing interim injunctions is **American Cyanamid v Ethicon**,² reaffirmed by the Privy Council in **National Commercial Bank Jamaica Ltd v Olint Corporation Ltd**. In Belize, the **American Cyanamid** principles are now embedded in our jurisprudence and are the guidance resorted to when injunctive reliefs are sought.

[15] In **Belize Telemedia Limited v Arnold et al**³ at paragraphs 20 to 23, the Court of Appeal, in expressly adopting the **American Cyanamid** principles stated:

“20. The principles and guidelines by which court determines in the usual claims whether a claim is one in which it is just and convenient to grant an interim injunction order remains that established in the *American Cyanamid Co v. Ethicon* [1975] A.C. 396. But the guidelines are not meant to be regarded as statutory. In practice they are applied with some degree of flexibility. **First and foremost, the court determines whether there is substance in the claim, that is, whether there is a serious question in the claim with prospects of success, to go to trial.**

21. Second in the guidelines is that the court will, after having ascertained that there is a serious question to go to trial, **consider whether the evidence discloses that in the event the claimant is successful, an award of damages, that is, a sum of money, will be adequate remedy for the wrong complained about and the defendant will be able to pay.** If an award of damages will be an adequate remedy and the defendant will be able to pay, then usually an interim injunction order will be refused, even if there is a good arguable case in the claim on the merit...

22. Third, if after applying the guideline as to whether award of damages will be adequate remedy court is still not sure whether it will be just and convenient to grant an interim injunction order, **court will apply the guideline of a balance of convenience. Court will weigh the various material factors in the case so as to decide whether the risk of injustice lies with granting or refusing to grant interim injunction order...**

23. Fourth in the guidelines, court will almost always insist on the applicant for an interim injunction order providing **an undertaking in damages, should it**

² [1975] 1 All E.R. page 504.

³ Claim No. 145 of 2011 by Acting Chief Justice Awich.

later be decided that the interim injunction order was wrongly granted, and the respondent suffered loss as a consequence...” [My emphasis]

- [16] The staged process allows for the balancing of urgency with procedural fairness. The underlying purpose of interim relief, therefore, is to improve the chances that the court’s ultimate judgment will be effective, and reflective of the lowest risk of injustice pending trial. (**Olint Corporation Ltd**)

Serious Issue to be Tried

- [17] The first question is whether there is a serious issue to be tried. The short answer is yes. Parties agree that grave issues arise, but for different reasons.
- [18] In **Belize Telemedia Limited v Arnold supra** at paragraph 24, what constitutes an arguable case was described thus:

“Regarding establishing an arguable case with prospects of success, **it is not necessary that this case be established to a standard of prima facie case.** The hearing of an application for an interim injunction order is not the stage at which to decide highly contentious facts raised in the affidavits, or to get bogged down with a difficult question of law. **Court is required to examine the merit of the claim and defence to a limited extent in order to decide whether the claim has substance and reality about it.**” [My emphasis]

- [19] The court is required to assess the claim to ensure that it is not vexatious or devoid of merit. In doing so, the court would not entwined itself in trying to figure out any difficult legal questions that arise on the facts and evidence before it.
- [20] Here, the ownership of REEFCI and its assets are in issue. The evidence of the applicant is that having invested substantial funds into REEFCI and Tom Owens Caye, all the assets such as vessels, equipment and other operational tools of the business, are held for his benefit. REEFCI holds its assets including those used to do business at Tom Owens Caye upon resulting and constructive trust for his benefit. Secondly, the applicant’s evidence is that the defendants hold their voting rights as members of REEFCI upon trust for him and subject to his control.

Basically, he claims a strong prima facie proprietary interest in the assets of REEFCl including Tom Owens Caye. Thirdly, the applicant says that there is a real risk of dissipation of the assets. Why? The defendants have already demonstrated an intention to exercise their membership rights independently of him including their unauthorised use of Tom Owens Caye. Unless restrained, the defendants will likely continue to do so in a manner inconsistent with the trust and the applicant's beneficial interest. This will affect the assets that form the subject matter of the claim.

[21] Counsel for the applicant, Mr. Marshalleck, asserts that the orders sought are simply to preserve the assets, tourism business and status quo pending determination at trial. This is not a case, as the defendants have sought to make it, about the NGO status of REEFCl. The case raises issues of the status of REEFCl, the statutory implications of this, if any, fiduciary duties, trust (resulting or constructive), beneficial interest and standing. There are weighty issues of law raised that call for mature consideration by the court upon the production of all evidence before it. Mr. Marshalleck acknowledged that while the applicant had initially denied then accepted that the current registered status of REEFCl is that of an NGO (i.e. despite its non-renewal), the present case is not about an NGO or NPO where the assets could be said to belong exclusively to REEFCl. Indeed, the designation of REEFCl as NGO does not impact the applicant's claim to the assets. He is making a claim in his personal right to assets that he purchased and which REEFCl holds on trust for him; his claim is not made on behalf of REEFCl.

[22] The claim raises issues of the defendants' membership interests, and their statuses as paid employees and non-contributors to the business. Mr. Marshalleck submits that membership is not transferable and the injunction is not about corporate governance. It is about ownership of assets. The evidence shows that when the applicant bought REEFCl, all assets (tangible and intangible) then owned by the seller Polly Alford were "purchased" by him, as seen in paragraph 3

of the Purchase Agreement dated 7th October 2015. It is accepted that there is a dispute about the applicant being the ultimate beneficial owner of REEFCl.

- [23] In issue also is the defendants' involvement in a separate entity known as FINS, which is a similar business as REEFCl, with alleged unauthorised intermingling of resources and risk to the goodwill. The applicant avers that the use of REEFCl's assets in FINS is to the detriment of the operational integrity and goodwill of REEFCl. The applicant summarises the risk involved neatly in his third affidavit at paragraph 26:

“... they acted without my authority, misrepresented their intentions to me and to members of staff, retained property belonging to me held by the Third Defendant, and participated in the operation of FINS using the Third Defendant's staff, vessels, facilities, programmes and goodwill for the benefit of a separate enterprise.”

- [24] In opposition, the defendants focused their arguments on quia timet injunction and the tests to be satisfied as well as the corporate status of the business. Counsel for the defendants, Ms. Banner, argues that to get a quia timet order, an applicant must show a strong probability of future wrong. There must be evidence of a high degree of certainty that unless restrained, the defendants will breach the applicant's rights. Suspicion and remote possibility would not do. Secondly, he must show that the feared damage is so serious as to be irreparable by monetary compensation. Counsel pointed to the evidence of the first defendant that the applicant unilaterally added himself as ultimate beneficial owner on REEFCl's record in the company's registry and to other financial irregularities in the use of the monies of the business. This included failures to account for funds received and clandestine listing and attempts at sale of business property.

- [25] Focusing on the nature of REEFCl as an NGO and NPO, Ms. Banner argues that all assets held in the name of REEFCl belong exclusively to REEFCl and cannot be the subject of any beneficial claim. Counsel highlights that the applicant, in his third affidavit at paragraph 10, admits that REEFCl is an NGO. Under the NGO

Act, REEFCl's assets, including all income generated from business activities, are for the use and benefit of REEFCl and not the applicant. The applicant simply cannot prove equitable ownership of assets in REEFCl and does not have a prima facie case.

[26] Counsel argues, further, that if REEFCl is indeed both NGO and NPO then by virtue of these statutory designs and the objects and purposes in its memorandum of association, REEFCl is a company limited by guarantee and not having a share capital. The assets of REEFCl and the ultimate beneficial ownership are for REEFCl alone and not for the applicant in his personal capacity. Moreover, the applicant is not the purchaser of the business, so cannot claim assets that he did not purchase. The defendants pointed to the applicant's affidavit evidence that the business was paid for by Debra Saner Trust, purportedly for his benefit.

[27] Ms. Banner questions the applicant's claims to exclusive rights in REEFCl's daily management and administration and that he alone has proprietary rights. Counsel submits that the defendants have lawfully exercised their powers to vote and pass resolutions. The evidence shows that the defendants were both members and directors of REEFCl and owed fiduciary obligations to REEFCl. They had the power to call meetings, vote and pass resolutions and acted within the confines of the articles of association of REEFCl to do exactly what they did. There is no evidence that they were mere nominees of the applicant.

[28] Regarding standing, Ms. Banner advances that the applicant has erroneously brought the application in his personal capacity. There is no evidence that he is authorised to act for REEFCl or even has standing to obtain injunctive orders. The defendants conceded only that the applicant is a member, but not a director of the business. The defendants stiffly resisted the entertainment of the instant application and calls for its dismissal in its entirety based on lack of standing.

[29] Finally, Ms. Banner submits that the only risk of dissipation of the assets is posed by the applicant. There is evidentiary basis demonstrating the applicant's attempts to dissipate assets by advertising to sell REEFCl and Tom Owens Caye.

[30] The court has examined the evidence and submissions. At this stage of the proceedings, the court does not have to satisfy itself that there is a *prima facie* case but, in a limited way, to examine the merits of the claim and defence: see **Arnold supra**. There are genuine ongoing controversies over ownership of assets, risk of dissipation, unilateral listing for sale of the business, use of assets by FINS, and continuing possession of assets by the first defendant. Other issues include whether the applicant has standing, whether REEFCl holds its assets on resulting or constructive trust for the applicant, and whether the defendants' voting rights are held on trust for the applicant. There is also the issue of the exercise of corporate control, which parties hold opposing positions on. To be precise and avoid any misunderstanding, this court does not reach any conclusive position on the evidence before it. It is observed only that the claims for declaratory and equitable reliefs in trust require full ventilation.

[31] In **Belize Telemedia Ltd. v Speednet Communications Ltd.**⁴ it was stated:

"The court no doubt must be satisfied that the claim is not frivolous or vexatious, in other words, that there is **a serious question to be tried**. It is no part of the court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend **nor to decide difficult questions of law which call for detailed argument and mature considerations**. These are matters to be dealt with at the trial. ..."
[My emphasis]

[32] These words aptly describe the case here. The court will not allow itself, at this interlocutory stage, to be bogged down by these weighty questions nor will it make the misstep of conducting a mini trial of the evidence. This is not the court's remit at this stage. I find that this is a case with "*substance and reality*" and merits, with serious issues requiring a trial.

⁴ BZ Civil Appeal No 27 of 2009.

Damages as a Sufficient Remedy

- [33] The applicant states at paragraph 105 of his second affidavit, “[D]amages would not be an adequate remedy. The Third Defendant’s operations are ongoing, its goodwill and operations are vulnerable to disruption, and Tom Owens Caye is unique property from which the operations are conducted.” This provides the short answer to the question of damages, through his lens. The defendants resist this position.
- [34] The next inquiry, therefore, is into the sufficiency of damages as a remedy. The court generally refrains from granting an injunction where an award of damages would suffice to compensate an applicant for any losses, he might suffer. To be observed here is that the injunction sought is limited and preservative.
- [35] Mr. Marshalleck argued for the applicant that damages would not adequately compensate the applicant, if interim relief is refused and he ultimately succeeds. The claim is proprietary and concerns beneficial ownership of specific assets including Tom Owens Caye, goodwill, bookings, customer relationships and operational continuity of an ongoing business. Counsel submits that the property is unique land, assets standing in the name of the third defendant, and interference with the management continuity and tourism business’ goodwill would not be adequately compensable in damages. Any transfer, charge or encumbrance of the disputed assets may introduce third-party interests and materially complicate or frustrate the court’s eventual relief.
- [36] Ms. Banner disagrees with these arguments and asserts that damages are an adequate remedy. Counsel pointed to the applicant’s evidence in his second affidavit, listing the financial transactions of the business including that: (i) REEFCl was purchased for USD\$300,000.00 (i.e. paragraphs 20-24); (ii) he had paid for a green energy solar project in the sum of USD\$43,000.00 (i.e. paragraph 35); (iv) the purchase of Ms. Rachel has a value; and (v) Tom Owens ‘was purchased

solely from accumulated revenues of the Third Defendant' (i.e. paragraph 42) and that a total of USD\$760,000.00 was transferred to the sellers for closing of Tom Owens property. Tom Owens and REEFCl were listed by the applicant for an asking price of USD\$2,000,000.00 having sales revenue of USD\$1,000,000.

[37] Relying on this evidence, Ms. Banner argued that there is no evidence of financial vulnerability or instability of the applicant. The operations continue notwithstanding the ongoing case, and the assets are all stable and protected and their location and ownership are all known. The suggestion by the applicant that there is a risk of interference or dissipation of property is unsupported. The evidence shows that it is the applicant alone who has taken steps to dispose of the property and assets of REEFCl inclusive of Tom Owens. Moreover, the applicant even gave an undertaking as to damages (i.e. paragraph 47 of the applicant's first affidavit.)

[38] I have considered the evidence and arguments of both parties. I note that the applicant specifically denied that Tom Owens was purchased "***solely*** from accumulated revenues of the Third Defendant.' This is a matter that involves disputed organisational control over a business and/or its assets. The evidence also shows that the first defendant continues to have in his personal possession/control assets of the business including tools, oxygen tank and regulator, lumber, 443 six-inch blocks and 130 four-inch blocks.

[39] The term "*adequacy of damages*" comes from Lord Diplock's explanation in **American Cyanamid** which recognised that the court's approach is not bound by inflexible rules. The Diplock formulation is simple, that is to say that the court before granting an injunction should first ask itself whether money would be enough to compensate the party who eventually wins the case. If money can fairly make up for any loss suffered, and the defendant can afford to pay it, then the court should **not** grant an injunction, even if the claimant's case seems very strong at that point.

- [40] There is evidence that certain losses may be quantifiable but others unquantifiable. This claim involves disputed organisational control over unique land (Tom Owens Caye) and other assets, customer relationships, the goodwill of the business. The court considers that bookings might also suffer prejudice, and that customer confidence and operational stability are in jeopardy.
- [41] Applying the principles outlined in **American Cyanamid**, I am not convinced that damages would be adequate if the injunction is refused.

Balance of Convenience and least risk of injustice

- [42] Regarding the balance of convenience, the question is whether granting the injunction would create the greater risk of injustice to any party. In determining this, the court must assess the practical consequences of a decision that goes either way.
- [43] **National Commercial Bank Jamaica Ltd v Olint Corporation Ltd**⁵ affirms that the court must adopt the course that carries the lower risk of injustice or results in the least irremediable prejudice. The basic principles are captured thus:
- “Among the matters which the court may take into account are the prejudice which the plaintiff may suffer if no injunction is granted or the defendant may suffer if it is; the likelihood of such prejudice actually occurring; the extent to which it may be compensated by an award of damages or enforcement of the cross-undertaking; the likelihood of either party being able to satisfy such an award; and the likelihood that the injunction will turn out to have been wrongly granted or withheld, that is to say, the court’s opinion of the relative strength of the parties’ case.”
- [44] Mr. Marshalleck argues that the balance of convenience lies in the applicant’s favour. The interlocutory order would not be disruptive but preservative. It would not transfer any REEFCL assets to the applicant, remove the defendants as members or directors, prevent REEFCL from continuing to operate or stand as any

⁵ [2009] UKPC 16.

determinative or final declaration of the applicant as beneficial owner. The evidence shows that replacement personnel are already performing the managerial and operational functions previously carried out by the defendants, and the tourism programmes are continuing. Further, counsel advanced that the applicant's attempt to sell does not alter the balance. No sale was completed or asset disposed of, and the order would preserve the property pending final determination of the matter. Counsel stated that an undertaking as to damages was already given and the applicant is prepared to give an undertaking not to dispose of the assets.

[45] In answer, Ms. Banner highlighted the Articles of Association that require REEFCl to have no less than two directors to continue to operate. Counsel then pointed to clause 4 of the Memorandum of Association that states that the income and property of REEFCl shall apply solely to promoting the objects of the business. However, the applicant is the sole person with rights to the bank account of REEFCl. Ms. Banner also submitted that the applicant has taken several unlawful unilateral steps to date including hiring persons to replace the defendants. In these circumstances, counsel was adamant that, *"[t]here is a real risk that funds held by the Claimant and Debra Saner in the US Accounts will be diverted by the Claimant in view of the Claimant's wrong belief as to his beneficial ownership of the assets of the Third Defendant."* The applicant is acting contrary to the law and constitution of REEFCl in exercising sole ultimate control over the business, changing its management structure, suggesting that the defendants are his nominees and even attempting to sell its assets. These submissions are well-taken.

[46] The court accepts that any evidence of likely dissipation of assets is limited to attempts by the applicant. However, there is evidence that the defendants have sought to independently continue the operation of the business to benefit FINS, specifically on Tom Owens Caye. The first defendant also remains in possession of certain assets needed for operating the business. These are all issues in dispute that could benefit from further investigations and disclosure.

[47] There is evidential basis for concluding that the conduct of all parties has contributed to the breakdown of trust and confidence between them. The balance of convenience, therefore, strongly favours preservation and the balance lies with the applicant.

Disposition

[48] In light of the discussion above and subject to the undertaking of the applicant not to dispose of the assets of the business prior to the determination of the matter, I will order that:

1. The injunction is granted.
2. The costs of this application shall be costs in the cause.

Martha Lynette Alexander
High Court Judge