COURT OF APPEAL
Public Building West,
King Street, Kingston
Telephone# (876) 633-7201
Email registry@courtofappeal.gov.jm
Website www.courtofappeal.gov.jm

NOTICE TO PARTIES OF THE COURT'S MEMORANDUM OF REASONS FOR DECISION

SUPREME COURT CIVIL APPEAL COA2025CV00082

APPLICATION NO COA2025APP00187

BETWEEN	**LOLITA EVANS**	**APPLICANT**
AND	**ADRIAN THOMPSON (RECEIVER OF NRC)**	**1ST RESPONDENT**
AND	**ERROL GALLIMORE (REGISTRAR OF THE INDUSTRIAL AND PROVIDENT SOCIETIES)**	**2ND RESPONDENT/ INTERVENOR**

TAKE NOTICE that this matter was heard by the Hon Miss Justice P Williams JA on 8 and 11 September 2026, with Douglas Leys KC and Ms Shawn Steadman instructed by INN LAW for the applicant, Abraham Dabdoub instructed by Dabdoub, Dabdoub & Co for the 1st respondent and Ms Katherine Francis and Stephen McCreath instructed by the Director of State Proceedings for the 2nd respondent/intervenor.

TAKE FURTHER NOTICE that the court's memorandum of reasons for decision, as delivered orally in chambers by Hon Miss Justice P Williams JA, is as follows:

[1] This is an application by Ms Lolita Evans ('the applicant') for an injunction pending an appeal from the order of Jarret J ('the learned judge') made on 5 September 2025. By that order, the learned judge refused injunctive relief sought by the applicant and

disallowed her amended pleadings filed on 4 September 2025. The learned judge's reasons for the orders made are contained in a written judgment with neutral citation [2025] JMCC Comm 38. The learned judge refused leave to appeal the order disallowing the amended pleadings. The applicant applied for and was granted leave to appeal by a panel of this court on 16 February 2026. This court also ordered that the applicant file an amended notice and grounds of appeal incorporating the appeal against the order disallowing the amendment into the appeal against the order refusing the injunction.

[2] It is considered appropriate to set out briefly what I consider to be the undisputed facts in this matter such that there can be a proper appreciation of the application being sought. The applicant is the founding member of North Coast Resorts Limited ('NCR'), which was registered as an Industrial Provident Society ('IPS') in 1988. NCR is the registered proprietor of property registered at Volume 1221 Folio 945 and Volume 1128 Folio 161 of the Register Book of Titles on which it operates the Doctor's Cave Beach Hotel in Montego Bay in the parish of Saint James ('the property'). Pursuant to the provisions of the Industrial and Provident Societies Act ('the Act'), notice was given of the intention of the Registrar to proceed on 13 August 2014 to cancel the registry of NCR unless cause be shown to the contrary in the meantime. This notice was dated 13 June 2014. The grounds for the proposed cancellation were that NCR had failed to file annual returns and financial statements for the period 2009 to 2013 in breach of sections 12 and 13 of the Act. Mr Errol Gallimore ('2nd respondent'), is the Registrar of the Department of Co-operative Societies and Friendly Societies ('the DCSFS') and Registrar for the Industrial and Provident Societies, and it was permissible for him to cancel the registry on this ground pursuant to section 8(1)(l) of the Act, which provides that he may do so if a society fails within six months after being served notice.

[3] Section 8(3) provides that not less than two months' prior notice in writing specifying the ground of any proposed cancellation shall be given by the Registrar to a society before the registry can be cancelled. The registry of NCR was subsequently

cancelled on 2 December 2014 and notice of the cancellation was published in the Jamaica Gazette dated 25 December 2014 (as required by section 8(3) of the Act).

[4] I note further relevant background information as contained in the affidavit of the 2nd respondent filed on 15 July 2026. In an email dated 12 June 2014, Ms Corrine Ford of Calvert Gordon Associates requested a letter of good standing on behalf of NCR and asked to be advised of the status of the company and if there were any outstanding matters. The 2nd respondent, in a letter dated 13 June 2014, advised her that the request could not be granted as it was the "Department's Policy to issue Letters of Good Standing to Societies that are in compliance with [the Act] under which they are registered by fulfilling the following criteria as required by the Act: - 1. Annual returns and financial statements for the years 2009 – 2013 are outstanding".

[5] On the same date, a letter was sent to Andre McGann, Managing Director of NCR, giving notice of the proposed cancellation of NCR. In a letter dated 11 August 2014, Horace Gyles of HBG Associates wrote to the Registrar advising that, as the auditors for NCR, they anticipated completing the audit for the years requested by 30 November 2014. As such, it was asked that the cancellation be stayed. In an email, dated 12 August 2014, Mr McGann wrote to DCSFS acknowledging receipt of the notice regarding the cancellation. He gave assurances of the intention to comply with the request and in turn requested that NCR not be cancelled. On 15 August, an email was sent to Mr McGann referencing a letter responding to Mr Gyles advising that the cancellation order was put on hold until 30 November 2014 pending the submission of all outstanding annual returns and financial statements. Mr McGann responded on said date, indicating that they were working on it. In an email dated 28 November 2014, Mr McGann advised the DCSFS of the efforts being made and the challenges in compiling the requested documents for submission within the allotted timeframe. In a letter, dated 2 December 2014, Mr McGann was advised that NCR was cancelled and a copy of the cancellation order for publication was attached. On 3 June 2015, Patterson Mair Hamilton, attorneys-at-law, wrote to the 2nd respondent, acknowledging an understanding that NCR had been struck off as of

December 2014. It was stated that the directors of NCR, their clients, were desirous of reinstating NCR so that it may conduct transactions pertaining to the property. Advice was requested as to what would be required in the circumstances to bring NCR back into good standing.

[6] The applicant, in an affidavit filed 17 September 2025, asserted that having been informed that NCR was cancelled as an IPS, she engaged the DCSFS and sought to comply with its obligations, including the filing of the outstanding returns. She further asserted that she was unaware of the relevant provisions under the Act for an appeal to a tribunal for the restoration of a society and believed that if NCR brought its filings up to date, it would be in proper standing with DCSFS, a view which she felt was reinforced by DCSFS accepting the returns and relevant fees up to 2025. Efforts by the applicant and other members of the NCR to sell the property led to discussions with the 2nd respondent as to how to regularise the NCR, as they were advised that no steps could be taken to transfer or otherwise deal with the property which was in the name of an entity which no longer existed in law. On 13 May 2025, she received an email from DCSFS advising that Mr Adrian Thompson ('the 1st respondent') had "been appointed liquidator to [wind] up the affairs" of NCR pursuant to section 8(6) of the Act. This was accompanied by a letter from the 2nd respondent, to which was attached a copy of the Appointment Order which had been sent to be published in the Jamaica Gazette. Section 8(6) provides that upon cancellation of the registry, the Registrar shall, where the circumstances require it, appoint a receiver who shall be entitled to enter into possession and assume control of the society and shall realise the assets and, after payment of outstanding debts, distribute the surplus, if any *pro rata* among the shareholders.

[7] On 5 August 2025, attorneys-at-law then representing NCR wrote to the 2nd respondent indicating that section 8(6) of the Act refers to the appointment of a receiver, not a liquidator, and any decision taken by the 1st respondent may be contrary to the provision of the Act. The 2nd respondent, thereafter, caused to be published in the Gazette of 2 September 2025 further notice that "the previous Appointment Order used the word

'Liquidator' instead of 'Receiver' consequent on an administrative error in the nomenclature. Consequently, this Appointment Order supersede[s] the Appointment Order dated 13th May 2025, pursuant to the powers vested in section 8(6) of [the Act]".

[8] On 14 August 2025, the applicant filed a fixed date claim with affidavit in support and a without notice application for an injunction. In her fixed date claim, the applicant sought the orders for the 2nd respondent to restore NCR to the register, that the restoration be deemed to have taken effect as of 2 December 2014 and that the 2nd respondent rescind the appointment of the 1st respondent as liquidator. She also sought injunctions to restrain the 1st respondent from carrying out certain acts in relation to NCR and the property.

[9] Two of the grounds on which the orders were being sought were, firstly, that the Act does not include a mechanism for restoration of an IPS to the register; and secondly, that the Supreme Court has inherent jurisdiction to grant remedies where the statute is silent, provided it is not inconsistent with the legislation. In the interlocutory notice of application filed on the same date, the applicant sought the interim injunctions in the same terms as contained in the fixed date claim, until the determination of the claim or further orders of the court.

[10] The learned judge commenced hearing the application on 1 September 2025, and the matter was adjourned to 4 September 2025. On that morning, the applicant filed an amended fixed date claim form. The learned judge in the written judgment described this amended claim as "including a raft of new remedies, and made new allegations against the [2nd respondent], including breaches of the Charter of Fundamental Rights and Freedoms".

[11] In relation to the application for interim injunction, the learned judge commenced her analysis and discussion by setting out the relevant statutory scheme of the Act. In addition to those mentioned above, she identified section 6A as relevant, which provides for the establishment of an Appeals Tribunal for the purposes of hearing appeals under

sections 6, 8, and 51. She also identified section 8(4) of the Act, which provides that a society within three months of the date of publication in the Gazette may appeal from the cancellation or suspension to the Tribunal, and the Tribunal may, if it thinks fit, order the restoration of the registry or confirm such cancellation.

[12] The learned judge noted that the serious issue posed by Ms Steadman, attorney-at-law appearing on behalf of the applicant, was "whether the court in its inherent jurisdiction could restore [NCR] to the Register, in circumstances where its registration was cancelled for failing to file the returns and financial statements in accordance with section 8(6) on [the Act]."

[13] The learned judge was satisfied that there were clear provisions in the legislation such that it could not seriously be contended that the Act has no mechanism for the restoration of an IPS to the register. She opined that by "these proceedings [the applicant] seeks to circumvent the legislative scheme of [the Act] in circumstances where [NCR] did not abide by [the Act's] very clear legislative provisions". Ultimately, the learned judge found that the substantive and relevant grounds on which the claim and the application were made raised no serious issue to be tried and the injunctive relief sought was refused. With the failure to meet the threshold test, the learned judge saw no need to proceed with the inquiry any further.

[14] In relation to the amended fixed date claim form, the learned judge, acknowledged that no case management conference had been held in the matter and consequently rule 20.1 of the Civil Procedure Rules would not apply. Nevertheless, she considered it unfair and unjust to permit the applicant to rely on the amended pleadings, given the stage of the proceedings at which the amendment was filed without seeking the court's permission.

[15] This application for an injunction pending appeal is brought pursuant to rule 2.10 (1)(c) of the Court of Appeal Rules ('CAR') which empowers a single judge to make orders

"for an injunction restraining any party from dealing, disposing or parting with the possession of the subject matter of an appeal pending the determination of the appeal".

[16] It is now well settled that in determining whether an injunction ought to be granted, the single judge must find that the applicant has a good arguable appeal. In determining whether there is a good arguable appeal, it must be borne in mind that this court will only disturb a decision made by a judge below if it is found that the judge exercised his discretion on an incorrect basis. Should it be determined that there is a good arguable appeal, the other relevant considerations are whether damages are an adequate remedy and whether the balance of convenience lies in the grant or refusal of the injunction (see **Rona Thompson v City of Kingston Sodality Co-Operative Credit Union Limited** [2015] JMCA App 12 and **Alliance Financial Services Limited v The Bank of Jamaica** [2022] JMCA App 2 and **American Cyanamid Co v Ethicon Ltd** [1975] AC 396). Thus, it is necessary in this case to determine whether the learned judge erred in her decision.

[17] I have read and carefully considered all the submissions along with the authorities referenced, by counsel and will not be rehearsing them but will refer to any which may have assisted in my ultimate resolution of this matter.

[18] In the amended notice and grounds of appeal filed on 2 March 2026 (pursuant to the order of this court dated 16 February 2026), there are 14 grounds on which the applicant will be seeking to establish errors on the part of the learned judge in both law and fact. The grounds are divided into four parts, namely errors relating to the refusal of the interlocutory injunction, errors relating to the cancellation of NCR and the appointment of the receiver, errors relating to the disallowance of the amended fixed date claim form and errors relating to costs.

[19] I find that the learned judge could not be faulted for concluding that, based on the provisions of the Act, the 2nd respondent would have properly acted entirely within his remit to cancel the registry of NCR and to thereafter appoint a receiver, not a

liquidator. The learned judge did not err in concluding that there was a mechanism for the restoration of NCR within the legislation and there could be no serious issue to be tried in that regard. However, significantly, any restoration pursuant to the Act could be effected by the Tribunal upon an appeal to it. To my mind, the applicant could not have utilised the mechanism as provided in the Act since NCR had in fact failed to file annual returns and financial statements and did not seek to say otherwise.

[20] It seems to me the issue being raised by the applicant was whether circumstances existed in which the court could order a restoral subsequent to a cancellation for such a breach. Thus, as stated in the grounds set out in both the original fixed date claim form and the notice of application for interim injunction, the question was whether, in the circumstances where NCR had largely complied with its obligations under the Act, continued to operate in the ordinary course of business, and continued to be the registered owner of the property, it would be just and reasonable for the court to make an order for the restoration of NCR to the registry. There is no apparent mechanism in the legislation to address restoration in such circumstances. To my mind, the learned judge failed to appreciate this as being the issue which the applicant was seeking to raise for consideration.

[21] Further, the applicant is seeking to challenge the cancellation on the basis that there had been failure on the part of the 2nd respondent to comply with the timelines set out in the legislation, thus raising the question of whether the cancellation was void and of no effect. This was not raised specifically as an issue before the learned judge. Given that she was being invited to consider whether the court, in exercise of its inherent jurisdiction, could order that NCR be restored to the register, it may well be a good arguable ground that the learned judge ought to have considered this issue, which, if resolved in favour of the applicant, could mean that the cancellation could not stand and the question would be whether the court could thereby order the restoration of NCR. On that basis, the court would have authority and jurisdiction to consider whether the decision to cancel the registry of NCR was void.

[22] I find that there is sufficient basis for finding that the learned judge erred in a significant way in the decision she handed down.

[23] There is merit in the submissions made on behalf of the applicant that damages would not be an adequate remedy. The general principle is that where the subject matter of a dispute is real estate, there is a rebuttable presumption that damages are not an adequate remedy because each parcel of land is said to have a peculiar and special value (see **Lookahead Investors Limited v Mid Island Feeds (2008) Limited and Others** [2012] JMCA App 11 and **Kevin Sudeall and Joyce Ramdeen-Sudeall v Garfield Sinclair and Lynsetta Sinclair** [2023] JMCA Civ 32). The undisputed evidence in this case is that this property is unique and of peculiar value.

[24] Further, it is accepted that if the 2nd respondent is permitted to carry on and sell the property, it may be sold at a forced sale with the appeal thereafter being rendered nugatory. As such, it seems to me the balance of convenience lies with the granting of an interim injunction pending the outcome of the appeal. I am satisfied that the granting of an interim injunction would be the course likely to cause the least irremediable prejudice to the respondents.

[25] Accordingly, the court makes the following orders:

1. Orders in terms of paras. 1, 2, 3, 4, 5 and 6 of the amended notice of application filed on 15 October 2025.

2. Costs of this application to be the costs in the appeal.

3. The applicant's attorneys-at-law to prepare, file, and serve the orders made herein.