In The Supreme Court of Bermuda

CIVIL JURISDICTION

2026 No 128

BETWEEN: **(1) RUBY LIGHTBOURNE-LAMB**

(2) ANDREA JULIETTE LIGHTBOURNE WEBSTER

PLAINTIFFS

AND

(1) BRIGHTSIDE ENTERPRISES LIMITED
(2) MICHAEL WILLARD LIGHTBOURNE
(3) GWYNETH LIGHTBOURNE
(4) ORLANDO SMITH
(5) BARRINGTON SERVICES LIMITED

DEFENDANTS

Application for interim injunction restraining the defendants from holding the annual general meetings of the first defendant pending trial of the action

Date of hearing: 22 April 2026

Date of Reasons: 22 April 2026

Appearances

Victoria Greening of Resolution Chambers Limited for the applicants

Ex parte without notice

MARTIN J

IN CHAMBERS

Reasons for Order refusing *ex parte* injunction

Introduction

1. This is an urgent application for injunctive relief that has been made on an *ex parte* without notice basis. The injunction seeks an order to restrain the holding of three annual general meetings of shareholders ("AGMs") of Brightside Enterprises Limited (the first defendant or "the company") pending the determination of the plaintiffs' claim. The AGMs are scheduled for Friday 24 April 2026 at noon[1].

[1] The application is premised upon the mistaken assumption that there is one AGM for 2026, but in fact there are three AGMs scheduled for this time as a combined meeting for three annual periods of 2023, 2024 and 2025.

2. The underlying basis of the application is stated to be that the company was established as a family business by their late father and that the 1st and 2nd plaintiffs say they were entitled to participate in the business as directors of the company along with their late father, brother (the second defendant) and their mother (the third defendant). The plaintiffs say that they were wrongfully removed from their positions as directors of the company in 2014 or sometime shortly thereafter in 2015.

The plaintiffs' claims

3. The plaintiffs say they are entitled to be appointed as directors at the AGM and they wish to restrain the meeting until their claim to that entitlement has been determined by the court. The generally indorsed writ sets out the main elements of the claim to be that the plaintiffs were unlawfully removed as directors in 2013 but remain shareholders of the company. The writ asserts that at the time of the removal of the plaintiffs as directors the third defendant was acting under the undue influence of the second defendant in removing them. The writ also alleges that the fourth defendant is acting in a position of conflict of interest acting as secretary to the board on account of his representation of the second and third defendants in pending litigation.

4. The agenda of the AGM is recited, which includes the consideration of the waiver of audited financial statements, the determination of the maximum number of directors and the election of new directors and their remuneration, the confirmation of the acts of the directors, as well as certain specific items of transactional business.

5. The writ then seeks an interim injunction to restrain the holding of the upcoming AGM pending the determination of the plaintiffs' claims which include prayers for:

> A declaration that the directors have acted in breach of duty
>
> An order removing the second defendant as a director
>
> An order (sic) that there was undue influence by the second defendant on the third defendant in removing the plaintiffs as directors
>
> Reinstatement of the plaintiffs as directors (of the first defendant)
>
> Removal of the fourth defendant as company secretary of the first defendant due to conflict of interest
>
> An Order for a full accounting
>
> Damages
>
> *Ex parte* injunctive relief restraining the holding of the AGM on 24 April 2026
>
> Further or other relief

Affidavit in support

6. Ms Ruby Lightbourne-Lamb sets out in her affidavit in support of the application that she and her sister (the second plaintiff) have repeatedly challenged their wrongful removal in 2014 and have asked for financial information, which has not been forthcoming. Ms Lightbourne-Lamb says she is alarmed by the proposal to waive audited financial statements contained in the Notice of Meeting and complains that she has asked for minutes of previous meetings which have not been forthcoming. Ms Lightbourne-Lamb then sets outs that she has concerns that the fourth defendant cannot act free from conflict. She says the fourth defendant is the company secretary and the lawyer representing the second and third defendants in litigation against the plaintiffs.

7. Ms Lightbourne-Lamb then set out her "primary" concerns which included:

    a. the fact that (she says) the AGMs for 2023 2024 and 2025 were held but no minutes were produced.
    b. There is no mention of the minutes of a Special General Meeting of 26 June 2024 at which various business matters were discussed and decided.
    c. No AGM for 2025 has been held.
    d. The 2026 AGM was circulated by the assistant secretary with no explanation and the meeting is intended to be held electronically without the plaintiffs' knowledge or approval.
    e. No information has been circulated about the new accountant.
    f. The Notice refers to audited financial statements but no auditor has been appointed
    g. No names of specific directors are mentioned in the proposal to elect directors.

8. The affidavit concludes by stating that an urgent injunction is required to restrain the 'AGM' until her claim against the defendants is resolved.

Analysis of the evidence in support of the claim

9. It is apparent from this recitation of the content of the affidavit that the averments do not go into any factual detail about the reasons why the AGM cannot be allowed to proceed, save to say that the plaintiffs wish for their claims to entitlement to be appointed as directors be heard before any further corporate action is taken.

10. Importantly, there is no explanation for the reasons why the plaintiffs have taken no steps since they were removed to seek relief from the court. The evidence is inconsistent as to when this is alleged to have happened. The writ pleads 2013, the affidavit says 2014 and in submissions counsel said 2015. Taking it at its highest, the plaintiffs have not taken any steps for over ten years to address their complaint that they were wrongly removed from office as directors. The acknowledged facts confirm

that there have been AGMs between 2015 and 2022 at which the second and third defendants were appointed as directors, but the plaintiffs were not.

11. There is also exhibited to the affidavit in support open correspondence from the second plaintiff's then attorneys in 2015 which shows that the facts were well known to the plaintiffs and that the plaintiffs threatened to bring a claim under section 111 of the Companies Act 1981 to seek relief. On enquiry by the court as to why steps were not taken to pursue the claim until now, Ms Greening said that her clients were preoccupied with other litigation between the parties and it is only now that they have been able to focus attention on this matter.

12. There is no independent or other indirect evidence that supports the bald claim that the plaintiffs had an entitlement to permanent appointment as directors. There is no reference to a meeting at which this was discussed or agreed, by whom and when or on what terms, and there is no evidence given of any pattern or history of events which reflects this as having been the way the company was managed.

13. The Notice of Meeting is in fact for the holding of the 'sanctioned AGMs of the company for 2023, 2024 and 2025'. This strongly suggests that the Registrar of Companies has granted sanctions for these meetings to be held and these meetings have been convened to comply with the terms of the sanction. In turn this strongly suggests that the averment that there have been meetings held for these years is incorrect and if so, this would explain the absence of minutes for those meetings about which Ms Lightbourne-Lamb complains. It is also strong evidence that these AGMs must be held within a specified period to comply with the terms of the sanction granted by the Registrar of Companies. Unfortunately, no enquiries had been made by the plaintiffs or their counsel to verify the details or confirm what the correct position is: these are matters of public record and there is no reason why this information could not have been obtained.

14. In the course of her submissions, Ms Greening stated that her clients' case is that the second defendant unduly influenced the third defendant to vote to remove the plaintiffs and to amend the bye laws. However, nowhere is this set out in the affidavit, and none of the material facts which must accompany such a serious allegation are included in either the writ or the affidavit.

15. In the course of her submissions Ms Greening submitted on instructions (after enquiry by the court) that in fact the majority of the shares are held by the third defendant (75%) and the rest by the plaintiffs and the second defendant (although no explanation of the details of each of the minority holdings was offered).

16. It emerged therefore that in fact the plaintiffs could not outvote the third defendant at an AGM as to her choice of directors. It was then said that the gravamen of the

complaint is that it is alleged that the third defendant (who is very elderly) is alleged to be under the undue influence of her son (the second defendant) and the plaintiffs fear that she will do what he tells her, and therefore the plaintiffs are powerless to oppose their brother in a vote at a shareholder meeting. Again, none of this is pleaded and none of this is set out in an affidavit which explains the history or verifies any of the facts upon which these claims are based or could be proved.

Analysis of Ms Lightbourne-Lamb's primary concerns

17. Ms Lightbourne-Lamb expresses concerns that there are no minutes for the 2023,2024 and 2025 AGMs: this is likely because those meetings have not yet been held.

18. Ms Lightbourne-Lamb complains that the minutes of the SGM are not referred to in the AGM. This is not unusual. The minutes of the prior AGM are approved at the next AGM, and it is not necessary for the minutes of an SGM to be approved at the next AGM. The 2026 AGM must be held before 31 March 2027 and (from the documents disclosed) it is yet to be convened.

19. The Notice of Meeting in fact refers to consideration of a motion to waive the presentation of audited financial statements: it does not refer to audited statements which have been prepared or presented.

20. The names of directors who are to be elected do not have to be set out in the Notice of Meeting. It is conventional to seek nominations from the meeting in small closely held companies, so there is nothing inherently wrong or sinister in the failure to name proposed candidates, who must usually be nominated by a shareholder, often from the floor of the meeting as it is in progress.

21. It appears that the 'primary concerns' spring from an unclear understanding of what the business of the meeting at the AGMs amount to, rather than concerns that (properly understood in their context) support an allegation that there is a pattern of misgovernance of the company by the second and third defendants.

Alleged conflict of interest on the part of the fourth defendant

22. Ms Lightbourne-Lamb asserts that the fourth defendant has or may have a conflict of interest in serving as secretary to the company while at the same time acting as the lawyer for the second and third defendants in the unfinished litigation between them and the plaintiffs. It is difficult to relate this allegation to the need for an injunction to restrain the holding of the AGMs.

23. Nonetheless, there is no allegation of fact that gives rise to a claim of a breach of duty on the part of the fourth defendant. In his capacity as secretary, the fourth defendant owes his duty to the company, not to the shareholders directly. It is also not explained how the representation of the second and third defendants in other litigation gives rise

to a breach of duty on his part or what the alleged conflict of interest is, but it is axiomatic that any claim of a breach of duty or a conflict of interest must be raised by the company acting by its board, not by an individual shareholder.

No serious issue to be tried

24. In analysing the pleadings and the affidavit, it is readily apparent that the essential ingredients to support a claim for unfairly prejudicial conduct of the affairs of the company by the wrongful exclusion of the plaintiffs from the board are not present in the affidavit in support of the application and do not feature in the 'generally indorsed writ'. Likewise, the facts pleaded in the writ and set out in the affidavit do not support a claim of breach of duty on the part of the directors. Nor does the writ or the affidavit set out a basis on which to set aside the resolution to remove the plaintiffs as directors on the grounds of undue influence over the third defendant by the second defendant. The relevant averments of fact to support these claims are completely absent from the pleading and the affidavit in support. The court can only act on evidence when asked to exercise its discretionary powers to grant injunctive relief. It is not permissible for counsel to think up arguments on the spot and urge the court to accept those arguments to supplement the deficiencies in the evidence.

25. It is important to explain that these are claims that could have been advanced if adequate facts had been pleaded with all the necessary particulars required by the rules of court. The court expresses no view on the potential merits of these claims if they are capable of being articulated in a manner which gives rise to a triable issue. However, until those requirements have been satisfied, these arguments are not open to the plaintiffs. Even on a generous reading of the pleadings, in my judgment, the generally indorsed writ and the affidavit in support of the application disclose no serious issue to be tried. Therefore, the first and essential requirement for the court to consider granting interim injunctive relief is absent, and the court cannot properly exercise its powers to grant temporary relief pending trial without it.

Balance of justice

26. If the court were to be wrong on that conclusion, the court has also considered where the balance of justice falls in granting temporary relief. It was submitted that damages would not be an adequate remedy for the wrongful removal of the plaintiffs as directors, and the court would be prepared to accept that as a general proposition.

27. However, that is not the end of the enquiry. The plaintiffs cannot point to (and did not attempt to do so in evidence or in submission) to any specific irremediable harm that affected the plaintiffs in their character as shareholders or as would-be directors. The submission was that the plaintiffs do not want any decisions to be taken until their claim to be appointed directors has been determined. This is an entirely unrealistic submission to make. The company is in breach of its obligations to hold its AGMs and has obtained the sanction of the Registrar to convene those meetings in order to

comply with the mandatory requirements of the Companies Act 1981 and the regulatory and compliance regime. These AGMs are well overdue and must be held, and they cannot be postponed indefinitely.

28. There is no specific decision that the plaintiffs say needs to be restrained because it will adversely affect the rights of shareholders or the company or its creditors. While it may be arguable that the absence of the plaintiffs' participation in board decisions may be a denial of their entitlements, the plaintiffs have also accepted they are minority shareholders and that the third defendant (as the 75% majority shareholder) is entitled to appoint the directors she prefers. Moreover, there is no restraint upon the plaintiffs from exercising their rights as shareholders to attend the AGMs and speak to the motions and seek to persuade the meeting(s) to their point of view.

29. Their complaint is really that they fear the second defendant will exercise undue influence over the third defendant's decision to appoint the directors. If the plaintiffs wish to challenge that decision on the ground of undue influence, that course is open to them, but they cannot in my view seek injunctive relief on a *quia timet* basis without setting out a plausible factual basis for establishing that claim. There is no attempt to do that in the evidence.

30. The plaintiffs have also waited for over ten years to bring this claim. This is not a claim for relief under section 111 of the Companies Act 1981 (which is not mentioned in the writ, allowing for the possibility that the wrong form of process has been adopted). While limitation periods may not be applicable to petitions under section 111, the court would need very compelling reasons to grant relief to plaintiffs who have delayed for over ten years in asserting their claims of oppression or unfair prejudice. There is no justification to be found in the submission that the plaintiffs were busy with other matters in the meantime.

31. On the pleaded case, however, the only prayers for relief are for declaratory relief as to breach of duty, and to declare that actions were procured by undue influence, or for an account, which claims are all subject to the ordinary time limit of 6 years under the Limitation Act 1984. The court does not have a general jurisdiction to remove or reinstate directors or officers (except perhaps in a petition under section 111 of the Companies Act 1981).

32. Ms Greening made the unqualified submission that section 33 of the Limitation Act 1984 gives the court a wide discretion to extend the limitation period. This is not a submission the court can accept[2]. Apart from the section not being pleaded or any application being made to extend time, the section only allows the court to extend time for the commencement of actions outside the limitation period when fraud,

[2] It may be that Ms Greening had in mind the provisions of section 34 of the Limitation Act 1984 which apply only in death and personal injury claims.

concealment or mistake is alleged, and only until 6 years after the plaintiff could have discovered the fraud concealment or mistake by reasonable diligence. In this case a letter before action was written by the second plaintiff's attorneys in 2015 which complained about the very matters being raised in these proceedings. It is also pertinent to mention that no allegation of fraud, concealment or mistake has been made. Thus, the ordinary time limit for these claims expired sometime in 2021, about 5 years ago.

33. Therefore, the scale of the balance of justice does not in my judgment move in favour of granting relief even on a temporary basis. On the other hand, the fact that the company has a limited time (albeit unknown to the plaintiffs) within which to convene the sanctioned AGMs in order to remain in compliance with the Companies Acts and remain in good standing is a clear prejudice to the company, contrary to the submission made by Ms Greening. The balance of justice obviously favours allowing the company to conduct the AGMs in the ordinary way.

34. Therefore, the court has concluded that no relief should be granted on the plaintiffs' application in this case. It is hereby dismissed.

***Ex parte* applications**

35. Practice Direction no 6 of 2011 makes it clear that applications for interim injunctions should be made *inter partes*. The rules of court require two days' clear notice to be given for an *inter partes* summons, which is a modest requirement[3]. The recipient of an *inter partes* summons will normally ask for time to respond, but the court can proceed in genuine cases of urgency to hear the application on the first return date, taking into account the respondent's lack of time to respond; at least the matter can be presented with all parties present and the court can make appropriate adjustments to suit the needs of justice in any particular case.

36. Where time is genuinely an issue, the Practice Direction still requires notice of the application to be given to the respondent, and the respondent can either not attend, or can attend and observe if proper instructions to oppose the application cannot be obtained. It is only when the purpose of the application would *likely* be defeated that the court will entertain an *ex parte* application without notice. In order for this to be appropriate, evidence explaining the reasons why the giving of notice will likely defeat the purpose of the application should be given.

37. Although the Practice Direction says an explanation on affidavit '*should normally be given*', this does not imply optionality or mere rough guidance. Evidence must be given explaining why it is necessary to proceed without giving notice, unless there are very compelling reasons why this cannot be done. That was not done in the present case. For future guidance, or as a reminder, the court makes it clear that it is not an

[3] RSC Order 32 rule 3.

appropriate or an acceptable substitute for counsel to think of reasons on their feet or to suggest potentially plausible explanations why it was not feasible to give notice after the fact. The pressure of time will rarely if ever be a sufficient justification. The fact that one side just does not trust the other side is not (standing by itself) enough.

38. In this case, there was no way for the company or the defendants to proceed with the AGMs any earlier than the date for which they had already been formally convened. There was no good reason why notice of the application was not given to the other parties. No attempt was made to agree a postponement of the AGMs in order to accommodate the application, and no effort was made to check with the Registrar of Companies as to the last date on which the AGMs could be held.

39. There is also an onerous duty of candour on the part of applicants and their counsel when making an *ex parte* application. This includes disclosing all relevant information to the court in a full frank and open manner, pointing out any factual matters where there are gaps in information, or where any facts militate against the grant of relief, and full reference to any cases or principles which may apply in support of *or against* the grant of relief. The applicant is under a duty to make all due enquiries as to relevant facts if they are not known and/or to explain why such facts were not available to the applicant.

40. The court should not be placed in the position of playing goalkeeper. In order for the court to be able to perform its functions properly and efficiently it must be able to rely on the performance of these duties by counsel to a high standard and on a consistent basis.

Dated this 22 day of April 2026

THE HON. MR. JUSTICE ANDREW MARTIN

PUISNE JUDGE OF THE SUPREME COURT