



In The Supreme Court of Bermuda

COMPANIES (WINDING UP) JURISDICTION

2026 No 26

IN THE MATTER OF PATTY COURT LIMITED

9.30 am

20 February 2026

Comm Court 2

Martin J in chambers

Application for ex parte injunction to restrain advertisement of petition and other directions to stay or adjourn the petition hearing on the grounds of abuse of process

Vaughan Caines of Forensica Legal for the company

Ex tempore Ruling

This is an application for an urgent *ex parte* interim injunction to restrain the advertisement of a petition to wind up Patty Court Limited on the grounds that the petition debt is *bona fide* disputed on substantial grounds and the petition is therefore an abuse of the court's process.

The basis of the statutory demand that was served on Patty Court Limited was for accrued arrears of rent under a lease between the petitioner Washington Properties Limited (as landlord) and Patty Court Limited (as tenant) which had been found due and owing in an arbitration award by Mr Delroy Duncan KC sitting as arbitrator.

In those arbitration proceedings Patty Court Limited had asserted a counterclaim for over BD\$1 million which far exceeded the amount due as unpaid rent. That claim apparently related to water damage to Patty Court Limited's shop stock which was stored on the premises.

Patty Court Limited's counterclaim was dismissed by the arbitrator and an award was made in the landlord company's favour in the amount of BD\$64,513.50 in respect of unpaid rent for the period between 30 April 2019 and 21 May 2020. The award was dated 10 July 2025.

The award has not been paid. The landlord company issued a statutory demand in common form dated 26 September 2025 indicating that a winding up petition would be issued if the debt was not paid or

secured to the satisfaction of the landlord within 21 days. It was not paid or secured to the satisfaction of the landlord within that period.

The attorneys for Patty Court Limited indicated that they intended to appeal against the arbitral award on a point of law: three grounds were cited (i) whether the service charge contributions for insurance premiums create beneficial interests in insurance proceeds (ii) whether the unconscionability analysis is mandatory for exclusion clauses in dependency relationships (iii) whether exclusion clauses must be construed in the light of express contractual obligations to insure and maintain. It is inferred from this that the basis of the dismissal of the counterclaims by the arbitrator was based on an exclusion of liability clause contained in the lease.

On 18 November 2025 an Originating Summons was filed in the Supreme Court by Patty Court Limited's attorneys seeking leave to appeal, but Patty Court Limited's attorneys say that despite chasing the Registry staff, the Originating Summons was not (and has not yet been) issued. Patty Court Limited's attorneys say that the petitioner's attorneys have been aware of the intended appeal since October 2025 and assert that the issue of the petition is an abuse of process because Patty Court Limited disputes the debt on the grounds that it intends to appeal against the award on a point of law. It is also said that the petition has been issued to subvert the appeal process, and that the petition should be dismissed or stayed pending the determination of the appeal as an abuse of process.

Patty Court Limited asserts that the advertisement of the petition will (in effect) ruin the business of the company because of the consequent damage to its commercial reputation and it will likely become insolvent. The submission is made that the balance of justice therefore is in favour of granting an injunction to restrain advertisement of the petition, and for further directions for the stay or adjournment of the petition.

This application has been made on an *ex parte* basis. No explanation has been given as to why the petitioner has not been given due notice of the application. This is contrary to the practice direction **2011 No 6** which requires notice to be given except in circumstances where the giving of notice will likely defeat the purpose of the application. The petition has been listed for 6 March 2026, and it is unclear when it will be advertised. While the court acknowledges that this uncertainty may create a risk of damage to the commercial reputation of Patty Court Limited that would justify an urgent application, it does not justify the failure to give notice to the petitioner's attorneys of the application: it may well be that the advertisement could have been suspended pending the hearing of the application by consent, but no effort was made to arrive at an agreed position. There is no reason why the matter could not realistically have been dealt with on an *inter partes* basis, or at least on an *ex parte* on notice basis.

The court is hampered in its assessment of the basis of the application for an injunction which asserts that the debt is *bona fide* disputed on substantial grounds because the award has not been produced so it is impossible to understand the context in which it is said that the issues that are the subject of the appeal arise out of the arbitration award. Reading them in isolation, their meaning is opaque. Even though it appears to relate to the construction of an exclusion clause, it is difficult to understand whether there is indeed an arguable point of law arising out of the arbitration that would justify the grant of leave to appeal, or that would support the assertion that the debt is genuinely disputed on substantial grounds. That will be the subject of a separate application before the judge who hears the application for an extension of time when that application is made, and the court expresses no view on its merits, but simply records that it is not possible to make any evaluation of it in balancing where the interests of justice lie.

Further, there is no explanation of the delay. There is no affidavit that explains the history of the matter, but it has only been addressed by counsel in argument which is not satisfactory. It is said that the rules regarding appeals on points of law under the Arbitration Act 1986 in relation to domestic arbitrations is obscure and gives rise to justifiable confusion as to the time limits, but no explanation of what this means is given. The court infers that the question is whether there is a six-week limit (as in ordinary appeals to the court of appeal) or 2 weeks in relation to decisions requiring leave to appeal to the court of appeal. As an appeal under section 29 of the Arbitration Act 1986 requires leave to be given by the Supreme Court, the reason for this confusion is not well understood. Nor has an explanation been given as to the reason for the delay in (a) filing the originating summons or (b) prosecuting it or getting it issued and served.

If the time limit was 2 weeks, then the leave application ought to have been issued by 24 July 2025. If the time limit was 6 weeks, the application should have been issued by the end of August 2025.

A document entitled Application was filed on 8 August 2025, (15 days after the time limit had expired) with a supporting affidavit. However, counsel has accepted that this application for an extension of time in which to appeal was not correctly filed in accordance with the rules and that no grant of an extension has been made, and therefore no leave has been given yet for the appeal. This is important because the applicant has made serious and unjustified assertions of bad faith against the petitioner's attorneys which are unsupported by any evidence. The petitioner's averment that no appeal has been filed against the award is legally and factually true.

The Originating Summons that was filed on 18 November 2025 has nothing in support of it and was filed without leave having been given. It was not issued for reasons that remain unclear, but no effort was made to have it issued or enquire for the reasons for the delay.

No agreement was reached as to the extension of time for filing of the application for leave to appeal. The petitioner's attorneys did not issue the petition until 23 January 2026. In the affidavit in support of the petition the petitioner states that the rental arrears are not disputed, but the cross claims were disputed, and these were dismissed by the arbitrator, and the essence of the appeal relates to these cross claims. This is accepted by Patty Court Limited's counsel.

The court is being asked to exercise its discretion as to whether the balance of justice favours the grant of an injunction so that the petition is not advertised, and for further directions for the stay or adjournment of the petition.

The court does not consider that there is any reason to adjourn or stay the petition on this hearing because the petition proceedings can be regulated at the petition hearing date, and appropriate directions given on an *inter partes* basis. The only prejudice that Patty Court Limited can point to is the (allegedly wrongful) advertisement of the petition and the injury to its commercial reputation that would (or might) flow. This has been put forward by way of submission, and even though there is no evidence in support of this, the court is prepared to assume in Patty Court Limited's favour that the prejudice claimed is genuine.

The court is very hesitant to grant such relief on the strength of the facts asserted by Patty Court Limited: there is no clear demonstration of what the arguable points of law are, how they arise or what the effect of those arguments would be. The court cannot infer that the grounds upon which the appeal will be pursued are 'substantial'.

However, it is well established by Court of Appeal authority in Bermuda that a disputed cross claim is not a proper basis to refuse a winding up petition based on an undisputed debt: see **Glencore Grain Ltd v Agros Limited** [1997] Bda LR 7.

Therefore, the premise on which the present application is made runs counter to the general rule that applies in winding up proceedings that a creditor is entitled to seek a winding up order if an undisputed debt is unpaid after a proper demand has been made under sections 161 and 162 of the Companies Act 1981. If there is a failure to pay a just demand made under those provisions, the debtor company is *deemed* to be insolvent.

Accordingly, the court is not minded to grant exercise its powers to grant an injunction requested *unless* adequate steps are taken to secure payment of the debt established by the arbitration award which is the subject of the statutory demand.

The court would be prepared to grant the injunction to restrain advertisement of the petition on the undertaking of Patty Court Limited to pay the full amount of the award either into court or into the client trust account of the petitioner's attorneys pending the outcome of Patty Court Limited's application for leave to appeal. The court has received confirmation that such an undertaking will be given. In order to give the company sufficient time to arrange payment, it is ordered that payment must be made before the close of business hours on Wednesday 25 February 2026.

If the monies are not paid by the due date, the injunction shall lapse without further need to apply to the court and the petition may be advertised in the ordinary way, and the petition can proceed on the petition hearing date. The court will reserve the costs of today's application to the petition hearing date.

Patty Court Limited's attorneys will draw an order in those terms and file it with the court and serve it on the petitioner's attorneys. In the meantime, Patty Court's Limited's attorneys will immediately notify the petitioner's attorneys of the terms and effect of the Order made today.

Patty Court Limited is also directed to issue its application for an extension of time in which to apply for leave to appeal under section 29 of the Arbitration Act 1986 within 7 days so that (if an extension of time is granted) the application for leave to appeal can progress. Patty Court Limited cannot properly achieve a *de facto* stay of payment by delaying making its own application for leave to appeal. If the application for an extension of time in which to apply for leave to appeal is not issued within 7 days the terms of this order will lapse.

It seems to me that these terms will strike a proper balance of justice between the parties' competing interests: if Patty Court Limited is permitted to appeal, then the landlord has the comfort of knowing that the undisputed amount of unpaid rent is secured in the event the appeal is ultimately unsuccessful. If Patty Court Limited succeeds in its appeal (assuming leave is granted), then the funds can be returned to Patty Court Limited. If leave is not granted then the arrears can be paid immediately, or if the appeal is ultimately unsuccessful, there will be no delay in recovering the arrears of rent.

Assuming those conditions are met, Patty Court Limited and the petitioner can seek appropriate directions for the onward conduct of the proceedings the petition hearing date in the light of events that have occurred between now and then. Of course, this is an *ex parte* order and the petitioner can always apply to set it aside or vary it in the normal way.

For obvious reasons this ruling will not be published (except to the parties) until after the determination of the application for leave to appeal hearing, or in the event the conditions for the grant of the injunction are not met, after the petition hearing date.

Dated this 14th day of April 2026



THE HON. MR. JUSTICE ANDREW MARTIN
PUISNE JUDGE OF THE SUPREME COURT