IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2015/CLE/gen/01333

BETWEEN

(1) WILTON LIVINGSTON SAUNDERS
(2) NIVRON LIMITED ET AL

Claimants

AND

(1) SUNSHINE FINANCE LIMITED
(2) SHARON WILSON & CO. (A FIRM)

Defendants

Before: The Honourable Madam Justice Simone I. Fitzcharles

Appearances: Mr. Craig Butler and Mr. Alton McKenzie for the Claimants
Mrs. Gail Lockhart-Charles, KC and with her Mrs. Syann Thompson-Wells for the Defendants

6, 26 September, 5, 10, 12 October 2023, 12 July 2024

RULING

FITZCHARLES J.

Introduction

1. This is a ruling concerning three applications made by Wilton Livingston Saunders ("the First Claimant") and Nivron Limited ("the Second Claimant") (collectively, "the Claimants") pertaining to a claim commenced by them against Sunshine Finance Limited ("the First Defendant") and Sharon Wilson & Co. (A Firm) ("the Second Defendant") (collectively, "the Defendants").

2. By way of a Notice of Application filed on 1 September 2023, the Claimants sought the following reliefs, that –

   i. pursuant to Rule 15.2 of the CPR Rules, 2022 (as amended) and/or under the Court's inherent jurisdiction that the Defendants have no real prospect of succeeding on the claim or the issue;

   ii. pursuant to Rule 28.13 of the CPR Rules, 2022 (as amended) and/or under the Court's inherent jurisdiction that the Defendants' defence be struck out in its entirety and/or proportionally as the Court deems just for having failed to disclose documents; and

   iii. pursuant to Rule 20.1 of the CPR Rules, 2022 (as amended) and/or under the inherent jurisdiction that the Claimants be granted leave to re-amend their statement of case.

3. The grounds on which the Claimants sought the above-mentioned reliefs are as follows, that –

   i. the Claimants be granted summary judgment as the Defendants have no real prospect of succeeding on the claim or the issue;

   ii. the Defendants' defence be struck out in its entirety or proportionally for the reasons, that –

      (a) the Defendants have failed to disclose documents as per the Court's Order;
      (b) the Claimants during the discovery process requested numerous documents and said requests have not been complied with;

   iii. the Claimants be granted leave to re-amend their statement of case for the following reasons –

      (a) the Defendants will not be prejudiced;

(b) the principles as enunciated in McPhee v Nesbitt 2014 and Commonwealth Bank v Gibson 2020 apply; and

(c) Order 20 Rules 5 and 7 of the Rules of the Supreme Court, Chapter 54 ("the RSC") apply.

4. The Notice of Application was supported by the following evidence –

   i. First Supplemental Affidavit of Wilton L. Saunders filed on 14 June 2023;

   ii. Second Supplemental Affidavit of Wilton L. Saunders filed on 14 June 2023;

   iii. Third Supplemental Affidavit of Wilton L. Saunders filed on 14 June 2023;

   iv. Fourth Supplemental Affidavit of Wilton L. Saunders filed on 27 June 2023;

   v. Affidavit of Lawrence Taylor filed on 27 June 2023; and

   vi. Summons filed on 14 June 2023.

5. In this ruling, where the Court refers to each application individually, the particular application may be referred to as (i) the Summary Judgment application; (ii) the Strike Out application; and/or (iii) the application to Re-Amend Statement of Case. Conversely, where the Court refers to the three applications collectively, they may be referred to as the applications.

6. The Court, through an oral ruling delivered on 6 September 2023, dismissed the Claimants' Summary Judgment application, finding that this was not the proper case for Summary Judgment as the Defendants possess a real prospect of defending the claim or issues, and there are serious issues to be tried. The Court promised to produce a written ruling on the Summary Judgment application at a later time along with a written ruling on the remaining two extant applications, and does so now.

7. For reasons set out below, the Court is satisfied and orders that, regarding the evidence adduced, submissions made by the respective Counsel, and relevant law, the applications ought to be dismissed. The Defendants shall have the costs of and occasioned by the applications to be paid by the Claimants to be assessed by the Court if not agreed. The costs shall be fit for two Counsel. If the costs are not agreed upon, Counsel shall submit written submissions on costs within thirty (30) days from the date of this ruling for the Court's consideration.

Factual Background

8. Something went terribly wrong with the management of this claim. The claim that touches and concerns the applications is stretched back over the best part of some nine (9) years. The claim commenced in 2015 and has been protracted through the judicial

system by various interlocutory applications and changes of Counsel. It will become apparent momentarily, from the brief factual background and procedural history herein below, that this claim should have proceeded to trial. Regrettably, that was not the case and the claim was not managed with due expedition.

9. The facts that touch and concern this claim are somewhat undisputed and may be gleaned from the pleadings, evidence, and bundle of documents between the parties.

10. The First Claimant is and was at all material times a citizen of the Commonwealth of The Bahamas who is employed with the Royal Bahamas Defence Force.

11. The Second Claimant is and was at all material times a body corporate duly incorporated and existing under the laws of the Commonwealth of The Bahamas to hold title to an unnumbered lot of land situate in Strachan's Subdivision in the Eastern District of Nassau, The Bahamas and to facilitate the condominium development process on that lot of land ("the Subject Land").

12. The First Defendant is and was at all material times a body corporate and existing under the laws of the Commonwealth of The Bahamas conducting business as a financial and/or money lending institution.

13. The Second Defendant is and was at all material times a law firm providing legal services in the Commonwealth of The Bahamas and practicing at Delvest House on East Shirley Street and Highland Terrace, New Providence, The Bahamas.

14. In or about December 2010, the First Claimant approached the First Defendant to obtain a loan to complete the purchase of the Subject Land from one Kevin Brown and to complete the construction of the two-story structure that was situated upon the Subject Land.

15. The First Claimant and one Demetrius Saunders ("the guarantor") obtained consecutive loan facilities collectively valued at $397,251.71 from the First Defendant, which was secured by a mortgage over the Subject Land.

16. The First Claimant alleges that the Second Defendant insisted on acting as his Counsel in the mortgage transaction. The First Defendant, which was represented by the Second Defendant, instructed the Second Defendant to execute a title report relative to the mortgage. The Second Defendant conducted the title report and in the report described the title relative to the Subject Land as good and marketable. The First Defendant instructed the Second Defendant to prepare the mortgage.

17. The First Claimant executed the mortgage document, which contained a clause that allowed the First Defendant to levy charges against the mortgage without prior approval of the First Claimant. The mortgage was upstamped on two occasions by the Second Defendant. The Second Defendant relied on the title report for both upstampings.

18. The First Claimant further alleges that he never received the funds from the loan facilities, notwithstanding his salary is being deducted for the repayment of the loan facilities. Moreover, not all of the documents executed by the Defendants were signed by both himself and the guarantor, he alleges.

19. The First Claimant further alleges that it was discovered that the Subject Land was encumbered and the Second Defendant advised him that the encumbrance could easily be corrected through the quieting process. He further submits that the Second Defendant undertook to complete the quieting process without cost, but the quieting was never completed nor was the construction of the two-story structure situated on the Subject Land.

20. As a consequence, the Claimants commenced the present claim against the Defendants.

21. The Defendants, on the other hand, deny the allegations put forward by the Claimants. The Defendants have long maintained and invite the Court to find, at trial or otherwise, that the Second Defendant never acted for the First Claimant. They aver that the Second Defendant is and was at all material times the legal representative for the First Defendant. They further aver that the First Claimant is and was at all material times represented by the law firm of V. Alfred Gray and Co.

22. The Defendants submit that the First Defendant agreed to extend the loan facilities to the First Claimant and the guarantor on the terms that were set out in the loan agreement. The loan agreement was signed by the First Claimant and the guarantor. The execution of the loan agreement indicated the parties' acceptance of the terms contained therein.

23. The Defendants further contend that the Second Defendant never agreed to act on behalf of the First Claimant to cure any title defects or to bear the cost of curing any title defects. They submit that, in conformity with standard banking and commercial transactions where lending institutions invariably select the Counsel that they will engage to represent them in drawing up the documents to give effect to a loan agreement, the First Defendant selected the Second Defendant to act on its behalf in connection with the agreement relative to the loan facilities and matters arising therefrom.

24. The Court, at this time, finds it illustrative, prudent and helpful to set out the chronological order of the claim and the manner in which the claim proceeded through the judicial system:

DATE	ACTION TAKEN
28 August 2015	The Claimants by way of a Specially Indorsed Writ of Summons commenced the claim against Sunshine Financial Limited and Sharon Wilson (trading as Sharon Wilson & Co.) for negligence and/or breach of fiduciary duty by the First

	Defendant and negligence by the Second Defendant. The Claimants sought the following reliefs, namely – i. an itemized and chronological statement of the mortgage account; ii. a declaration that the mortgage be nullified; iii. damages; iv. loss of profit; v. interest pursuant to the Civil Procedure (Award of Interest) Act, 1992; vi. further or other relief as the Honourable Court deems just; and vii. costs At this time, the Claimants were represented by Hanna, Kellman & Associates.
2 September 2015	Memorandum of Conditional Appearance entered by Sharon Wilson & Co. (A Firm).
2 September 2015	Notice of Conditional Appearance entered by Sharon Wilson & Co. (A Firm).
10 September 2015	Memorandum of Conditional Appearance entered by Sunshine Finance Limited.
10 September 2015	Notice of Conditional Appearance entered by Sunshine Finance Limited.
16 September 2015	Summons filed seeking an Order that the Writ of Summons filed be set aside against Sharon Wilson.
16 September 2015	Affidavit of Indira Gaitor filed supporting the Summons seeking an Order that the Writ of Summons filed be set aside against Sharon Wilson.
22 September 2015	Summons filed seeking an Order that the Writ of Summons filed be set aside against Sunshine Finance Ltd.
22 September 2015	Affidavit of S. Rosel Moxey filed supporting the Summons seeking an Order that the Writ of Summons filed be set aside against Sunshine Finance Ltd.
27 November 2015	Notice of Change of Attorney filed that V. Alfred Gray & Co. have been appointed Attorneys for the Claimants in place of Hanna, Kellman & Associates.
5 February 2016	Amended Writ of Summons and Amended Statement of Claim filed by the Claimants. The Defendants were substituted for Sunshine Financial Ltd. and Sharon Wilson (trading as Sharon Wilson & Co.). The Claimants sought the following reliefs, namely – i. specific performance of the agreement or, in the alternative, damages for breach of the agreement, to be assessed; ii. an accounting as to monies paid by the First Defendant to the Second Defendant and how applied by the Second Defendant or as to monies by the First Defendant and how applied or used; iii. payment or repayment or refund of all money or monies paid by the First Claimant or on his behalf to the Defendants pursuant to or under the agreement and or under the mortgage; iv. an Order that the First Claimant's salary be and is freed from the salary deduction under or pursuant to the agreement or any deduction whatsoever;

	v. further or other relief; and vi. costs
8 March 2016	Notice of Entry of Conditional Appearance entered by Sunshine Finance Ltd.
8 March 2016	Memorandum of Conditional Appearance entered by Sunshine Finance Ltd.
8 March 2016	Notice of Entry of Conditional Appearance entered by Sharon Wilson & Co. (A Firm).
8 March 2016	Memorandum of Conditional Appearance entered by Sharon Wilson & Co. (A Firm).
23 March 2016	Summons filed seeking an Order that the Amended Writ of Summons filed herein be set aside on the ground that the purported amendment to the Writ of Summons is contrary to Order 20 Rule 1 of the Rules of the Supreme Court, Chapter 54 ("the RSC") and that the costs of and occasioned by this application be paid by the Claimants.
23 March 2016	Affidavit of Indira Gaitor filed supporting the Summons seeking an Order that the Amended Writ of Summons filed herein be set aside.
31 March 2016	Notice of Withdrawal filed that the Claimants hereby withdraw the Amended Writ of Summons filed on 5th February 2016 against Sunshine Financial Limited and Sharon Wilson (Trading as Sharon Wilson & Co.).
19 April 2016	Summons filed seeking an Order that the Claimants be granted leave to Amend the Original Writ of Summons.
25 April 2016	Notice of Change of Attorney filed that Gail Lockhart Charles & Co. has been appointed to act as Attorneys for the Second Defendant, Sharon Wilson (Trading as Sharon Wilson & Co.) in place of Sharon Wilson & Co.
25 April 2016	Notice of Taxation filed to have the costs of the Second Defendant taxed.
25 April 2016	Statement of the Parties filed on behalf of the Second Defendant.
25 April 2016	Bill of Costs filed on behalf of the Second Defendant.
2 June 2016	Affidavit of Nyrandra Brown filed in objection to the Second Defendant's application for costs by Notice of Taxation filed on 25 April 2016.
2 June 2016	Notice of Change of Attorney filed that Temple Law Chamber has been appointed to act as Attorneys for the First Claimant, Wilton Livingston Saunders, in the matter herein.
5 July 2016	Summons filed seeking an Order for leave to amend the Writ of Summons filed in the matter.
5 July 2016	Affidavit of Wilton Livingston Saunders filed in support of the Summons seeking an Order for leave to amend the Writ of Summons filed in the matter.
18 August 2016	Notice of Hearing filed for the hearing of the Notice of Taxation filed on 25 April 2016.
29 August 2016	Summons filed seeking an Order for leave to amend the Writ of Summons filed in the matter.
13 December 2016	Notice of Adjourned Hearing filed indicating that the hearing for the Notice of Taxation filed on 25 April 2016 and scheduled for 19 October 2016 is now scheduled for 25 May 2017.
9 August 2016	Amended Writ of Summons filed by the Claimants. The Claimants sought the following reliefs, namely –

	i. an itemized and chronological statement of the mortgage account; ii. declaration that the mortgage is nullified; iii. damages; iv. loss of profit and/or all other consequential loss; v. interest pursuant to the Civil Procedure (Award of Interest) Act, 1992; vi. further or other relief as the Honourable Court deems just; and vii. costs.
11 August 2017	Consent Order filed herein in these proceedings and it was hereby ordered by consent as follows, that – i. the Claimants are granted leave to amend their Writ of Summons filed herein on 28 August 2015 as set forth in the draft Amended Writ of Summons attached thereto; ii. the action as against Sharon Wilson (Trading as Sharon Wilson & Co.), the Second Defendant herein, contained in the Writ of Summons, filed herein on 28 August 2015, is hereby struck out as disclosing no reasonable cause of action, as against the Second Defendant; iii. the costs of and occasioned by the Second Defendant's application to strike out shall abide the outcome of the proceedings; iv. the action as against Sunshine Financial Ltd., the First Defendant, contained in the Writ of Summons, filed herein on 28 August 2015, is hereby struck out as disclosing no reasonable cause of action, as against the First Defendant; v. the costs of and occasion by the Second Defendant's application to strike out shall abide the outcome of the proceedings; vi. the Amended Writ of Summons, filed herein on 5 February 2016, shall be deemed invalid and of no effect; vii. the costs of and occasioned by the Claimants' amendments to the Writ of Summons shall abide the outcome of the proceedings; viii. Sunshine Finance Ltd., the First Defendant on amendment, and Sharon Wilson & Co. (a Firm), the Second Defendant on amendment, shall be at liberty to enter an appearance to the action within 14 days of the date hereof, if necessary; ix. Sunshine Finance Ltd., the First Defendant on amendment, and Sharon Wilson & Co. (a Firm), the Second Defendant on amendment, shall file and serve their Defences within 30 days of the date hereof; x. the Claimants shall be at liberty to file and serve a Reply within 14 days of service of the Defendants' respective Defences; xi. the Claimants shall file a Notice of Referral to Case Management Conference and apply to the Listing Office of the Supreme Court for a Case

	Management Conference within 28 days of service of the Defendants' respective defences; and xii. costs are in the cause.
22 August 2017	Notice of Change of Attorney filed that Martin, Martin, and Co. has been appointed attorneys for the Claimants in this action in the place of Temple Law Chambers and V. Alfred Gray and Co.
11 October 2017	Summons filed seeking an Order for leave that the Claimants be granted leave to amend the Statement of Claim filed in the matter.
14 November 2017	Amended Summons filed seeking an Order for leave that the Claimant be granted leave to amend the Statement of Claim filed in the matter in the manner as shown in the proposed Amended Statement of Claim.
20 March 2018	Summons filed seeking an Order for leave that the Claimant be granted leave to amend the Statement of Claim filed in the matter in the manner as shown in the proposed Amended Statement of Claim.
25 May 2018	Summons filed seeking an Order for leave that the Claimant be granted leave to amend the Statement of Claim filed in the matter in the manner as shown in the proposed Amended Statement of Claim.
11 January 2019	Amended Writ of Summons filed by the Claimants.
1 May 2019	Amended Statement of Claim filed by the Claimants. The Claimants sought the following reliefs, namely – i. specific performance of the agreement or, in the alternative, damages for breach of the agreement, to be assessed; ii. an accounting as to monies paid by the First Defendant to the Second Defendant and how applied by the Second Defendant or as to monies paid by the First Defendant and how applied or used; iii. payment or repayment or refund of all money or monies the Court shall find due to the First Claimant or on his behalf to the Defendants pursuant to or under the agreements and/or further relief; iv. a determination on the question of payment or delivery up of the said rent and security deposit; v. an Order that the First Claimant's salary be and is freed from the salary deduction under or pursuant to the agreement or from any deduction whatsoever; vi. further or other relief; and vii. costs.
15 May 2019	Defence of the First and Second Defendants filed to the Amended Statement of Claim.
25 July 2019	Case Management Notice filed by the Claimants.
26 September 2019	Notice of Change of Attorney filed that Outten IP has been appointed to act as Attorneys for the First Claimant, in place of Martin, Martin, and Co.
3 August 2022	Notice of Change of Attorney filed that Bowleg McKenzie Associates has been appointed to act as Attorneys for the

	Claimants.
9 August 2022	Notice of Intention to Proceed filed by the Defendants.
11 August 2022	Notice of Referral to Case Management Conference filed by the Claimants.
21 February 2023	The parties appeared and the Court made Case Management directions for the trial of the claim.
21 March 2023	The Defendants filed their List of Documents, respectively.
23 March 2023	The Claimants filed their List of Documents.
22 May 2023	Notice of Change of Attorney filed that Messrs. Craig F. Butler, Esq. has been appointed Attorneys for the First and Second Claimants in this matter in place of Bowleg McKenzie Associates.
24 May 2023	Expert Witness Report – Samuel J Wilkinson filed on behalf of the Claimants.
18 July 2023	Witness Statement – Wilton Livingston Saunders filed on behalf of the Claimants.
18 July 2023	Witness Statement – Demetrius Saunders filed on behalf of the Claimants.
18 July 2023	Witness Statement – Sharlyn Smith filed on behalf of the Defendants.
18 July 2023	Witness Statement – Taveres K. LaRoda filed on behalf of the Defendants.
29 August 2023	Notice of Hearing filed relative to the Summons filed 14 June 2023 for the hearing of the present applications.
01 September 2023	Notice of Application by Claimants filed for reliefs determined in this Ruling: Summary Judgment, Strike Out of Defendants' Defence, Re (Re-Re-Re) Amendment of claim.

The Civil Procedure Rules – The Bahamas

25. In 2022, The Bahamas promulgated its Supreme Court Civil Procedure Rules, 2022 (as amended) ("the CPR Rules"), which came into operation on 1 March 2023. The CPR Rules were tailored to remedy perceived defects encountered by the civil litigation system under the former rules of the Court – the Rules of the Supreme Court, Chapter 54 ("the RSC"). The promulgation and implementation of the CPR Rules ushered in the new regime of the administration of procedural justice in The Bahamas. The Court is now vested with broad case management powers to ensure that effect is given to the overriding objective of the CPR Rules. The progress and/or management of claims governed by the CPR Rules is now in the hands of the Court unlike under the RSC where it was placed in the hands of the litigants' attorneys: **See Gilbert Kodiliyne and Vanessa Kodilinye, *Commonwealth Caribbean Civil Procedure* (3rd Ed.) p.1. Part I of the CPR Rules** read as follows –

> "**1.1. The Overriding Objective.**
>
> (1) The overriding objective of these Rules is to enable the Court **to deal with cases justly and at proportionate cost**.
>
> (2) Dealing justly with a case includes, so far as practicable:
> (a) ensuring that the parties are on equal footing;
> (b) saving expense;

(c) dealing with the case in ways which are proportionate to –
   (i) the amount of money involved;
   (ii) the importance of the case;
   (iii) the complexity of the issues; and
   (iv) the financial position of each party;
(d) ensuring that it is dealt with expeditiously and fairly;
(e) allotting to it an appropriate share of the Court's resources, while taking into account the need to allot resources to other cases; and
(f) enforcing compliance with rules, practice directions and orders.

1.2 Application of overriding objective of the Court.

(1) The Court **must** seek to give effect to the overriding objective when –
   (a) **exercising any powers under these Rules;**
   (b) **exercising any discretion given to it by the Rules; or**
   (c) **interpreting these rules.**

(2) **These Rules shall be liberally construed to give effect to the overriding objective and, in particular, to secure the just, most expeditious and least expensive determination of every cause or matter on its merits.**

1.3 Duty of parties

(1) It is the duty of the parties to help the Court to further the overriding objective.

(2) In applying Rules to give effect to the overriding objective the Court may take into account a party's failure to keep his duty under paragraph (1)."

[Emphasis added]

26. The Court, in now managing claims that fall under the CPR Rules, will generally not have regard to the RSC and the case law that interpreted provisions under the RSC. This is particularly the case where the wording of the particular provision being tested in the Court under the CPR Rules differs in wording from that under the RSC. Guidance on the latter position is founded in the Jamaican High Court decision of **Sebol Ltd. and Another v Ken Tomlinson (as the Receiver of Western Cement Company Ltd.) and Another Claim No. HCV 2526/2004** wherein Sykes J (as he then was) at paragraph 25 made the following commentary –

> "25. The CPR is a new procedural code. We must not keep resurrecting cases decided on the old rules that had a particular wording. The wording in the CPR was deliberately changed…"

27. Additionally, while the trial date for this matter was obtained during the case management conference in February 2023, the filing of the 3 applications now being considered under the 1 September 2023 Notice of Application was certain to disrupt the trial date set for November 2023. These circumstances, in addition to the parties' reliance upon the CPR, prompted the Court's consideration of these applications in a CPR context.

Issues

28. The disposal of the applications mandated the Court to consider and determine issues which may be distilled into three salient questions, namely –

    i. Whether the Defendants have no real prospect of succeeding on the claim or the issue relative to these proceedings entitling the Claimants to summary judgment;

    ii. Whether the Defendants' defence should be struck out for non-compliance with an order or direction for disclosure given by the Court in these proceedings; and

    iii. Whether the Claimants ought to be permitted to amend their statement of case before trial.

Application One – Summary Judgment

The Claimants' Case

29. The Claimants' case rested predominantly on the premise that the rules relating to Summary Judgment in The Bahamas were updated in 2022 and those rules make it clear that Summary Judgment is available to both claimants and defendants. In this instance, it is the Claimants who seek Summary Judgment. The Court may make an order for Summary Judgment if –

    i. a claimant has no real prospect of succeeding on the claim or the issue; or

    ii. a defendant has no real prospect of successfully defending the claim or the issue.

    The Court may order Summary Judgment at its own discretion even where neither party made an application for Summary Judgment.

30. Learned Counsel for the Claimants, Mr. Alton McKenzie, contended that the Defendants have failed in material particulars to answer the claim put forward by the Claimants. He argues that the Defendants have up to this juncture of the claim put forward no reasonable defence in law to dispute the Claimants' case. Consequently, the Claimants should be given Summary Judgement.

31. Mr. McKenzie further contended that the Claimants' Summary Judgment application was grounded on the simple fact that the Second Defendant at all material times provided the First Claimant with a report on title regarding the Subject Land. The Second Defendant's professional report on title was relied upon by the First Defendant to provide the First Claimant with a mortgage attached to the Subject Land.

32. Mr. McKenzie further argued that the Second Defendant's submissions and defence that it never acted for the First Claimant in the mortgage transaction cannot be supported in law. He argues that for all intents and purposes, the relationship between the First Claimant and the Second Defendant demonstrated that of an attorney-client relationship. The Defendants cannot hold that they have a good and arguable defence as the actions taken by them were done when they had actual and/or constructive knowledge of the title deficiencies associated with the Subject Land.

33. Mr. McKenzie, also contended that the actions of the Defendants were willful and deliberate, in that –

    i. V. Alfred Gray and Co. did not act on behalf of the Claimants in preparing the mortgage despite requesting via letter permission to do so. The firm was barred from doing so by the Defendants and this can be seen from the correspondence emanating from the Second Defendant requesting the invoice in respect of the firm's services;

    ii. the Defendants had both actual and constructive knowledge, at the time the mortgage was sought, that a full investigation of title had to be undertaken as the Conveyance from Kevin Brown to the First Claimant prepared by V. Alfred Gray and Co. was unstamped and unrecorded – a fact which (the Claimants contend) the First Claimant during initial discussion brought to the attention Frank Smith and Sharlyn Smith;

    iii. the Second Defendant could not place reliance upon any title searches or reports on title by V. Alfred Gray and Co. as they were not requested, and further, the said reports were privileged between V. Alfred Gray and Co. and the First Claimant. The Second Defendant was obligated to undertake its own investigation of title in order to provide a report on title to the First Defendant;

    iv. at the date of knowledge of the deficiencies with respect to title not being of a good and marketable quality the Second Defendant was obligated to cease any further activity with respect to the mortgage and obligated to advise the First Defendant to do the same as the land provided could not form the basis of good collateral;

    v. the First Defendant advised the Second Defendant nonetheless to prepare documentation after having notice of title deficiencies relating to the mortgage inclusive of upstamping the mortgage on two occasions;

    vi. the First Defendant continued to operate the mortgage account well after he was aware that the land could not form the basis of collateral;

vii. in a letter dated 15 December 2011, the Second Defendant acknowledged that the width of a partially completed apartment exceeded one lot;

viii. the Second Defendant issued three opinions on title wherein they opined that the title was good and marketable (which was not the case);

ix. Stafford Coakley submitted a survey report on 18 September 2012 which detailed the deficiencies based on the building encroachments;

x. as a result, the Second Defendant refused to complete the paperwork in the condominium process even before being provided with the survey report;

xi. the Second Defendant via letter dated 10 January 2012 advised the First Defendant that there were problems with title;

xii. the Second Defendant nonetheless gave a report on title saying the same was good and marketable on 24 January 2013 and the Defendants utilized clauses under the subheadings power of attorney and upstamping contained in the mortgage documents and most importantly did not notify and/or receive the authorization of the First Claimant to upstamp the mortgage for a second time in the amount of $397,251.71; and

xiii. there can be no defence on the part of the Defendants as to why in the face of indisputable knowledge that the title was defective the mortgage upstamping was authorized.

34. Mr. McKenzie ultimately contended that Summary Judgment in this instance is appropriate as the First Defendant extended loan facilities for which there was no securing collateral. As it was not stated that they were unsecured facilities, all the actions taken by the Defendants were voidable. Accordingly, Summary Judgment is not fanciful at all considering the circumstances. Reliance was placed on **Gathina Int'l Limited v Replay Destinations (Bahamas) Limited BS 2022 SC 020, Commonwealth Bank Limited v Mark Oscar Johnson 2021/CLE/gen/00084, Swain v Hillman [2001] 1 All ER 91** and **Higgs Construction Company v Patrick Devon Robert and Shenique Esther Rena Roberts 2017/CLE/gen/00801**.

The Defendants' Case

35. The gravamen of the Defendants' case rests on the premise that the principles upon which the Court will grant an order for Summary Judgment are well established and have been frequently rehearsed by the courts. It is axiomatic that Summary Judgment will only be ordered in 'plain and obvious' cases.

36. Learned Counsel for the Defendants, Mrs. Gail Lockhart Charles, K.C., contended that in light of the well-established principles of Summary Judgment, the Claimants have utterly failed to establish that there is no arguable defence to their claim. Indeed, a review of the pleadings will show that the Claimants' case is vague, contradictory, and unsupported by the evidence before the Court. The Defendants assert that the evidence before the Court shows, and the Court will be invited at trial to find, that –

   i. the First Defendant did not accede to a request from V. Alfred Gray and Co. to prepare the mortgage in the matter and engaged the Second Defendant to act on its behalf in the transaction, which the Second Defendant agreed to do;

   ii. the Second Defendant rendered an invoice to the First Defendant dated 25 February 2011 which covered the Second Defendant's professional charges to its client, the First Defendant, for the preparation of documents to give effect to the loan facilities and disbursements which included stamp duty, search fees, and monies payable to V. Alfred Gray and Co. to settle the invoice issued by V. Alfred Gray and Co. for professional services rendered by V. Alfred Gray and Co. to the First Claimant;

   iii. the services rendered by the Second Defendant (the relevant Attorney) were rendered to the First Defendant in relation to the preparation of the relevant documentation and were required to be paid by the borrowers in accordance with clause 7 of the Commitment Letter: *The legal fees relevant to the documentation hereof shall be for your account. You hereby commit to sign any and all documents which the Attorney might reasonably request to give full effect to this Agreement;*

   iv. additionally, the First Claimant and the Guarantor signed off on the letter from the First Defendant's President, Mr. Frank Smith, to the First Defendant's Financial Controller agreeing and accepting the release of funds to settle the Second Defendant's invoice;

   v. the Second Defendant did not act for the First Claimant in the purchase of the Subject Land, nor did the Second Defendant advise the First Claimant on title. All documents prepared by the Second Defendant were prepared upon the instructions of and for the benefit of its client, the First Defendant. Such documents were presented to the First Claimant for signature in accordance with the commitment made by him to sign all documents that he might reasonably be requested to sign to give full effect to the agreements governing the loan facilities;

   vi. the First Claimant agreed to the terms of the mortgage (including clause 17 thereof which gives the mortgagee the right to upstamp) as is evidenced by his signature on the same; and

vii. all disbursements of mortgage funds were properly made as evidenced by the transaction record exhibited together with all relevant supporting documents.

37. Mrs. Lockhart-Charles, K.C., ultimately contended that the defence filed by the Defendants is not merely arguable, it is compelling. Counsel states that by contrast, the Claimants' case is, on analysis, unarguable and doomed for failure. It is not appropriate for the purposes of this application to set out every point that the Defendants will rely on at trial in answer to the Claimants' claim. Specifically, for the purposes of this application, the Defendants contend, it suffices for the Defendants to establish that they have a defence that is more than fanciful. Consequently, the Summary Judgment application ought to be dismissed with the costs of and occasioned by the application to be paid to the Defendants by the Claimants. The Defendants placed reliance upon **Bolton Pharmaceuticals Co. 100 Ltd. v Doncaster Pharmaceuticals Group Ltd. and Others [2006] All ER (D) 389 (May)** and **Mark Oscar Gibson Sr. v Bank of The Bahamas SCCivApp No.43 of 2020**.

Law and Discussion

38. The contents herein below serve as the Court's written ruling relative to the Summary Judgment application and not a reconsideration thereof.

39. Summary Judgment is dealt with under **Part 15 of the CPR Rules**, which provides as follows –

"PART 15 – SUMMARY JUDGMENT

15.1 Scope of this Part.
This Part sets out a procedure by which the Court may decide a claim or a particular issue without a trial.

15. 2 Grounds for summary judgment.
The Court may give summary judgment on the claim or on a particular issue if it considers that the –

(a) claimant has no real prospect of succeeding on the claim or the issue; or
(b) defendant has no real prospect of successfully defending the claim or the issue.

15.3 Types of proceedings for which summary judgment is not available.
The Court may give summary judgment in any type of proceedings except –
(a) admiralty proceedings in rem;
(b) probate proceedings;
(c) proceeding by way of a fixed date claim;
(d) proceedings for –
(i) claims against the Crown;
(ii) defamation;

(iii) false imprisonment;
(iv) malicious prosecution; and
(v) redress under the Constitution.

15.4 Procedure

(1) Notice of application for summary judgment must be served not less than fourteen days before the date fixed for hearing the application.
(2) The notice under paragraph (1) must identify the issues which it is proposed that the Court should deal with at the hearing.
(3) The Court may exercise its powers without such notice at any case management conference.

15.5 Evidence for the purpose of summary judgment hearing.

(1) The applicant must –
(a) file affidavit evidence in support with the application; and
(b) serve copies of the application and the affidavit evidence on each party against summary judgment is sought,
at less than fourteen days before the date fixed for hearing the application.

(2) A respondent who wishes to rely on evidence must –
(a) file affidavit evidence; and
(b) serve copies on the applicant and any other respondent to the application;
at least seven days before the summary judgment hearing.

15.6 Powers of the Court on application for summary judgment.

(1) The Court may give summary judgment on any issue of fact or law whether or not the judgment will bring the proceedings to an end.
(2) Where the proceedings are not brought to an end the Court must also treat the hearing as a case management conference."

40. Summary Judgment eliminates the need for a trial of a claim or issue. This is particularly the case where the claim, issue, and/or defence relative thereto presents no realistic prospect of being successful. The Court's jurisdiction to order Summary Judgment is discretionary and derives from its case management powers. The Court, when exercising its Summary Judgment jurisdiction need not conduct a mini-trial on the claim, issue, or defence relative thereto.

41. The law on Summary Judgment is well-established and has been frequently rehearsed by the courts. Summary Judgment should only be ordered in plain and obvious cases where it is explicitly clear, on the evidence, that there ought not to be a trial. Thus, giving effect to the Court's overriding objective under the CPR Rules. Otherwise, it would be an outright abuse of the Summary Judgment process.

42. Guidance on the Court's Summary Judgment jurisdiction is founded in the celebrated decision of **Swain v Hillman and another [2001] All ER 91** wherein Lord Woolf MR at pages 92 and 95 expressed the following sentiments –

> "The power of a court to make a summary order is now contained in Pt 24 of the Civil Procedure Rules (CPR)...

Under r 24.2, the court now has a very salutary power, both to be exercised in a claimant's favour or, where appropriate, in a defendant's favour. It enables the court to dispose summarily of … claims or defences which have no real prospect of being successful. The words 'no real prospect of succeeding' do not need any amplification, they speak for themselves. The word 'real' distinguishes fanciful prospects of success or as Mr. Bidder QC submits, they direct the court to need to see whether there is a 'realistic' as opposed to a fanciful prospect of success…

It is important that a judge in appropriate cases should make use of the powers contained in Pt 24. In doing so he or she gives effect to the overriding objectives contained in Pt 1. It saves expense; it achieves expedition; it avoids the court's resources being used up on cases where this serves no purpose, and I would add, generally, that it is in the interests of justice. If a claimant has a case which is bound to fail, then it is in the claimant's interests to know as soon as possible that that is the position. Likewise, if a claim is bound to succeed, a claimant should know that as soon as possible."

43. Judge LJ in **Swain (supra)** at page 96 further expounded on the following sentiments regarding the Court's Summary Judgment jurisdiction –

"To give summary judgment against a litigant on papers without permitting him to advance his case before the hearing is a serious step. The interest of justice overall will sometimes so require. Hence the discretion in the court to give summary judgment against a claimant, but limited to those cases where, on the evidence, the claimant has no real prospect of succeeding.

This is simple language, not susceptible to much elaboration, even forensically. If there is a real prospect of success, the discretion to give summary judgment does not arise merely because the court concludes that success is improbable. If that were the court's conclusion, then it is provided with a different discretion, which is that the case should proceed but subject to appropriate conditions imposed by the court."

44. Additional assistance on the Court's Summary Judgment jurisdiction was founded in the decision of **Bolton Pharmaceutical Co 100 Ltd. v Doncaster Pharmaceuticals Group Ltd and others [2006] All ER (D) 389 (May)** wherein Mummery LJ at paragraph 4 adjudged as follows –

"4. Summary judgment procedures, which are designed for swift disposal of straightforward cases without trial, are only where the applicant demonstrates that the defence (or the claim, as the case may be) has no real prospect of success and if there is no other compelling reason why the case or issue should be disposed of at trial: CPR Part 24.2. Thus, without the assistance of pre-trial procedures, such as disclosure of documents, and without the benefit of trial procedures, such as cross-examination, the court's function is to decide whether the defendant's prospect of successfully establishing the facts relied on by him is "real", that is more than "fanciful" or "merely arguable."

45. The Court also finds wisdom in the commentary made on the Court's Summary Judgment jurisdiction by the learned authors **Gilbert Kodiliyne and Vanessa Kodiliyne** in their text, ***Commonwealth Caribbean Civil Procedure*** **(3rd Ed.)** at page 64, which states as follows –

> "… the policy of the CPR is to knock out weak cases at an early stage of the proceedings, whether the weakness is on the defendant's side or the claimant's side. It was felt by the framers of the CPR that it was not in the interest of litigants to pursue cases or put up defences that were doomed to fail, and the result of which would be unnecessary costs burdens."

46. The burden rests on the applicant seeking Summary Judgment to show that the claim, issue, or defence relative thereto presents no realistic prospect of succeeding. The applicant further has to show that there is no other compelling reason why the case should be disposed of at trial. It is only after this burden has been discharged by the production of credible evidence in support of the application that the burden shifts to the respondent to show that they have more than a fanciful prospect of success: **see ED & F Man Liquid Products v Patel [2003] EWCA Civ 472** and **Patel v Minerva Services Delaware, Inc. and others [2023] EWHC 853 (Ch)**

47. The Court, having summarized the facts relative to the present claim, reviewed the evidence presented thus far and considered the submissions made by the respective Counsel and the relevant law on Summary Judgment, is not satisfied that this is the appropriate case for the Court to exercise its discretion and order Summary Judgment. In my judgment, the Claimants have failed to discharge their burden in demonstrating that the Defendants present no real prospect of successfully defending the claim or that their defence is so inherently weak that it is bound to fail, thus attracting unnecessary costs burdens. In my view, the defence filed by the Defendants presents more than an arguable or fanciful defence. In fact, it is sufficiently vigorous to rise above any engulfing tide of summary judgment. Furthermore, the Claimants have not put forth any compelling reasons on why Summary Judgment should be ordered in their favour and/or their claim not be tested and disposed of at trial.

48. There are serious issues relative to this claim that need to be tested and/or ventilated at trial. The Court has considered the issues and contentions of the parties. The averments set out in paragraphs 29 through 33(xiii) and 36(i) through (vii) above have to be established and appropriate conclusions drawn as a result thereof by the Court. In my view, it is only with the benefit of the refining fire of the trial process that this claim can be genuinely disposed of. It is in the interest of justice and fairness that the Defendants be allowed to answer the claim at trial and not be driven from the judgment seat through an administrative or abbreviated process.

<u>Application Two: Strike Out Application</u>

The Claimants' Case

49. The Claimants' case on the strike out hinges on the footing that the Defendants have not wholly complied with the Court's Case Management Order made on 21 February 2023 wherein it was ordered, that –

> "there shall be an exchange and inspection of documents on or before Tuesday 18 April 2023."

The Claimants argue that the Defendants have refused to wholly comply with the Case Management Order and are in breach thereof. They say the Defendants have failed to disclose specific documents and have offered no argument in defence of their non-compliance with the Case Management Order. According to the Claimants, despite their numerous requests for said disclosure the Defendants have deliberately sought to conceal specific documents from them. This has allegedly caused prejudice and injustice to the Claimants and have prevented the Claimants from adequately mounting their case against the Defendants. The requested and undisclosed documents include –

i. full schedule of loans starting from 17 December 2010 to the current date;
ii. instructions issued by the First Defendant to the Second Defendant in relation to the two upstampings;
iii. amortization schedule;
iv. the names and details of persons associated with the loan number 3125;
v. disbursement of payments relating to the $21,500 cheque;
vi. the original signed documents for the upstampings;
vii. copies of the consent sheet signed by both the First Claimant and the Guarantor to release all cheques issued online printout;
viii. commitment letter relating to the upstampings;
ix. a copy of instructions from the First Defendant to the Second Defendant in relation to the mortgage;
x. copy of $500.00 cheque dated 16 April 2012;
xi. invoice from the Second Defendant in relation to the First Claimant's Quieting Action;
xii. the identity of persons who cashed cheque number 006698 at the First Defendant;
xiii. the identity of persons who cashed cheque number 006935 at the First Defendant;
xiv. the identity of persons who cashed cheque number 006758 at Arawak Homes;
xv. further all emails, letters, and other correspondence as between the First Defendant and Second Defendant;
xvi. the First Claimant requested and/or numerous requests were made by the Attorneys acting for the First Claimant to the Defendants seeking information related to the mortgage. The information was not forthcoming and the numerous requests were ignored by the Claimants. The First Claimant sought the assistance of the Securities Commission, Financial Intelligence Unit, Scotiabank, Royal Bank of Canada, Commissioner of Police, Commercial Crimes Unit of the Royal Bahamas Police Force, Central Bank of The Bahamas, Office of the Attorney General, Ministry of National Security and Office of the Prime Minister. The First Claimant seeks specific disclosure of all emails, letters received and forwarded, correspondence, and noted telephone conversations with any of the above-mentioned parties as they related to the Claimants' mortgage facility whether those documents are presently in their possession, had been in their possession and/or whether they have or had knowledge of the same.

Consequently, the Claimants insist that Court should exercise its discretion and strike out the Defendants' defence in whole or in part as the Defendants have continued to breach the Case Management Order without good reason.

50. Mr. Butler contended that the Court has a series of grounds upon which it may strike out a statement of case. These grounds include –

    i. where there are no reasonable grounds to bring the claim;
    ii. where there is an abuse of the process of the Court; and
    iii. where there is a failure to comply with a rule, practice direction, order, or direction given by the Court in proceedings.

    Strike out is a harsh remedy and is usually applied in extreme cases. Strike out means that either all or part of the claim or defence is put to death. The gravity of a strike out application lies in its ability to deprive a party of a fair trial or a substantive legal right.

51. Counsel for the Claimants submitted that in the instant case, there are failures on the part of the Defendants to disclose, which has made it impossible for the Claimants to meet its obligations. Specifically, the Claimants' expert report was incomplete as it was detailed in the Second Supplemental Affidavit of Wilton L. Saunders filed 14 June 2023 at paragraph 10. Further, there is no reasonable chance of the claim being defended as the actions of the Defendants were willful and done when the Defendants had constructive knowledge of the pertinent facts.

52. Mr. Butler further contended that the Claimants seek to amend their Notice of Application at the hearing to include an application pursuant to Rule 28.5 of the CPR Rules for an order for specific disclosure relative to the above-mentioned requested and undisclosed documents. Although the amendment will be sought at the date of the hearing, the Defendants will not be prejudiced or disadvantaged in any way as the Second Affidavit of Wilton L. Saunders filed on 14 June 2023 at paragraph 10 itemized the specific documents needed which were requested and still not forthcoming.

53. Counsel for the Claimants also contended that the Defendants have not adequately discharged their disclosure obligations. The Lists of Documents provided by the Claimants are incomplete which is patently evident when looking at the nature of the requests. In the circumstances, the Claimants submit they are entitled to specific disclosure of the specified documents.

54. The Claimants ultimately asserted that in keeping with the new CPR Rules and the intent of the rules to narrow discovery, any request in respect to specific disclosure is germane to the issues at hand and the Claimants apply for specific disclosure as they were not satisfied with the extent to which the Defendants had so far discharged their disclosure obligation. The disclosure was incomplete in that numerous documents were missing from the Defendants' Lists of Documents. The Claimants therefore seek specific disclosure of whether or not the Defendants have or had possession, custody, or power of certain types of documents. The documents are not only directly relevant

to the proceedings but they have been specifically identified and the gathering and correlation of the same is not onerous and not costs prohibitive. Reliance was placed on **The Attorney General of The Bahamas and another v Matthew Sewell [2021] 1 BHS J No. 210** and **Federico Riege v Sarkis D. Izmirlian and another 2021/CLE/gen/001260**.

The Defendants' Case

55. The crux of the Defendants' case is that the Claimants' Strike Out application is confused and ill-conceived. The Court ought to give short shrift to the application. Consequently, the Strike Out application ought to be dismissed.

56. Learned Counsel for the Defendants, Mrs. Gail Lockhart-Charles, K.C., contended that having regard to the currently pleaded case and the evidence before the Court, the Defendants have complied with their disclosure obligation. The Court is also referred to the Witness Statement of Sharlyn R. Smith filed on 18 July 2023 and the Witness Statement of Tavares LaRoda filed on 18 July 2023 and filed on behalf of the Second and First Defendants, respectively. The Defendants state that these witness statements produce all of the relevant documentation. In the case of the Witness Statement of Tavares LaRoda, full accounting is given as to the disbursement of the loan funds. The Defendants therefore aver that there is nothing in this case that approximates a breach of the Court's Case Management Order let alone a breach of such severity as to warrant the draconian remedy of striking out the Defendants' defence.

57. Mrs. Lockhart Charles, K.C., ultimately contended that true to the haphazard fashion in which this litigation has been pursued by the Claimants (filing a writ and withdrawing it, refiling, amending, and at the eleventh hour seeking to recast the entire case by re-amendment, multiple changes of attorney, and so on) the Claimants have sought to introduce a new application in addition to their Amended Summons by seeking at the hearing to re-amend the Amended Summons to seek disclosure orders. The Defendants noted that the disclosure that the Claimants appear to be pursuing would not be justified in any event, as they relate to the proposed re-amended Statement of Claim which has not as yet been approved by the Court, and all disclosure required by the current state of the pleadings has been provided.

Law and Discussion

58. Under the CPR Rules, the former regime known as discovery has been replaced by a narrowed or more precise regime known as disclosure. The CPR Rules established two categories of disclosure, namely, standard disclosure and specific disclosure. Unless specific disclosure has been ordered by the Court, parties are not obligated to disclose non-specified documents. Standard disclosure only mandates parties to disclose documents that are directly relevant to the matters in question in the proceedings. The rule of law established in the celebrated decision of **Compagnie Financière et Commerciale du Pacifique v Peruvian Guano (1882) 11 QBD 55** has

been purposefully excluded under the CPR Rules. Thus, giving effect to the Court's overriding objective while also seeking to ensure that the fair trial concept remains intact. The duty of disclosure is continuous until the conclusion of the proceedings.

59. Disclosure is governed by **Part 28 of the CPR Rules**. **Rule 28.1 (3) and (4)** outlines the manner in which a party fulfills his disclosure obligation and the circumstances that may make a document directly relevant to the matters in question in the proceedings, respectively. The provisions read as follows –

"Part 28 – DISCLOSURE AND INSPECTION OF DOCUMENTS

28.1 Scope of this Part.

...

(3) A party "discloses" a document by revealing that the document exists or has existed.

(4) For the purposes of this part a document is "directly relevant" if –

(a) the party with control of the document intends to rely on it;
(b) it tends to adversely affect that party's case; or
(c) it tends to support another party's case,

but the rule of law known as "the rule in Peruvian Guano" does not apply to make a document "directly relevant"."

60. A party's disclosure obligation is limited to documents that are or have been in the party's control and possession. **Rule 28.2 (1) and (2)** outlines as follows –

"28.2 Duty of disclosure limited to documents which are or have been in party's control.

(1) A party's duty to disclose documents is limited to documents which are or have been in the control of that party.

(2) For this purpose a party has or has had control of a document if –
(a) it is or was in the physical possession of that party;
(b) the party has or had a right to inspect or take copies of it; or
(c) the party has or had a right to possession of it."

61. The Court's jurisdiction relative to specific disclosure is found in **Rule 28.5**, which provides as follows –

"Rule 28.5 Specific Disclosure.

(1) An order for specific disclosure is an order that a party must do one or more of the following things –
(a) disclose documents or classes or categories of documents specified in the order;

(b) disclose documents relevant within the principle relating to discovery of documents, or alternatively, directly relevant, to a specified issue or issues in the proceedings.

(c) carry out a search to the extent stated in the order for –

(i) documents relevant, in the sense indicated in paragraph (b), or directly relevant to the proceedings or to a specified issue or issues; or

(ii) documents of a particular description or class or in a particular category or identified in any other manner,

and disclose any documents within the scope of the order located as a result of that search.

(2) An order for specific disclosure may be made on or without an application.

(3) An application for specific disclosure is to be made on notice and unless in special circumstances at a case management conference.

(4) An application for specific disclosure may identify documents –

(a) by describing the class to which they belong; or

(b) in any other manner.

(5) An order for specific disclosure may require disclosure only of documents which are directly relevant to one or more matters in issue in the proceedings."

62. The criteria the Court must weigh before ordering specific disclosure is found in **Rule 28.6**. It states as follows –

"28.6 Criteria for ordering specific disclosure.

(1) When deciding whether to make an order for specific disclosure, the Court, must consider whether specific disclosure is necessary in order to dispose fairly of the claim or to save costs.

(2) The Court must have regard to –

(a) the likely benefits of specific disclosure;

(b) the likely costs of specific disclosure; and

(c) whether it is satisfied that the financial resources of the party whom the order would be made are likely to be sufficient to enable that party to comply with such order.

(3) If, having regard to paragraph (2)(c), the Court would otherwise refuse to make an order for specific disclosure it may nonetheless make such an order on terms that the party seeking the order must pay the other party's costs of such disclosure in any event.

(4) If the Court makes an order under paragraph (3) it must assess the costs to be paid in accordance with rule 71.6.

(5) The party in whose favour such order for costs was made may apply to vary the amount of costs so assessed."

63. Guidance on the Court's jurisdiction to order specific disclosure is found in The Bahamian Supreme Court decision of **Federico Riege v Sarkis Izmirlian and Another 2021/CLE/gen/001260** wherein Winder CJ adjudged at paragraphs 8 to 11 –

> " 8. The CPR is not centered around the making of an affidavit as the former RSC did. An order for specific disclosure under the new rules however, requires an applicant only to disclose documents which are *directly* relevant to the one or more matters in issue in the proceedings. The distinction is noted as *Lord Woolf* stated in his *Access to Justice Report, 1996*, which ushered in the civil procedure reforms in the UK, that "two of the major generators of unnecessary costs in civil litigation were *uncontrolled discovery* and expert evidence."
>
> 9. The Defendants rely on the guidance to be found in the case of ***Berkeley Administration Inc. and McClelland 1990 FSR 381*** and the dicta of Mustill LJ discussing the relevant principles in respect of Order 24 Rule 7. Having regard to Rule 28.5(1)(b) I accept that this authority is as relevant for the purposes of the RSC as the CPR. According to Mustill LJ in ***Berkeley Administration Inc. and McClelland*** there is no jurisdiction to make an order for the production of documents unless (a) there is sufficient evidence that the documents exist which the other party has not disclosed; (b) the document or documents relate to matters in issue in the action; and (c) there is sufficient evidence that the document is in the possession, custody or power of the other party.
>
> 10. I have considered the application of the Plaintiff, the gist of which is that there ought to be other material which may be available and disclosable. I am satisfied that the Plaintiff's application is speculative. The Plaintiff holds the view that there must be some other relevant internal communication between the defendants and their agents which supports their case of fraudulent misrepresentation on the part of the Defendants. I am not satisfied that they have satisfied the threshold set in Berkeley Administration Inc. and McClelland in that there is insufficient evidence that these other documents exist which the Defendants have not disclosed or that there is sufficient evidence that these documents are in the possession, custody or power of the Defendants.
>
> 11. In any event, notwithstanding the absence of evidence that some specific disclosure is warranted, I am satisfied that the relief sought in the application has already been provided by the Defendants. The affidavit of Sarkis Izmirlian avers that there are no relevant non-privileged documents in the possession of the Defendants which have not been disclosed in their respective lists of documents."

64. Failure to comply with an order for disclosure will attract appropriate sanctions. The sanctions likely to be imposed are found in **Rule 28.13**. However, the type of sanction likely to be imposed will generally depend on the category of disclosure not complied with. **Rule 28.13** outlines the following –

> **"28.13 Consequences of failure to disclose documents under order for disclosure.**

(1) A party who fails to give disclosure by the date ordered or to permit inspection, may not rely on or produce at the trial any document not so disclosed or made available for inspection.

(2) A party seeking to enforce an order for disclosure may apply to the Court for an order that the other party's statement of case or some part of it be struck.

(3) An application under paragraph (2) relating to an order for specific disclosure may be made without notice but must be supported by evidence on affidavit that the other party has not complied with the order.

(4) On an application under paragraph (2) the Court may order that unless the party in default complies with the order for disclosure by a specific date that party's statement of case or some part of it be struck out."

65. For instance, regarding a breach of an order for standard disclosure, the party who failed to disclose runs the risk of being prevented from relying on or producing at the trial any document not so disclosed. With regards to a breach of an order for specific disclosure, the party who failed to disclose runs the risk of having his statement of case or some part of it struck out. The Court may also make an unless order mandating the defaulting party to disclose by a specified date or have his statement of case or some part of it struck out. Even a casual reading of **Rule 28.13** will reveal such an interpretation.

66. The Court's jurisdiction to strike out relative to a failure to comply with an order for specific disclosure extends from the Court's wide case management power found in **Part 26 of the CPR Rules**, particularly, **Rule 26.3 (1)(a)**, which states –

"**26.3 Sanctions – striking out statement of case.**

(1) In addition to any other power under these Rules, the Court may strike out a statement of case or part of a statement of case if it appears to the Court that –

(a) there has been a failure to comply with a rule, practice direction, order or direction given by the Court in the proceedings …"

67. However, the Court is cognizant that its strike out jurisdiction is a severe and draconian measure that has serious implications on the party upon which such power was exercised, for instance, bringing that party's search for justice to an immediate end; driving him from the judgment seat. Consequently, the Court's strike out jurisdiction should be used sparingly and as a matter of last resort; as a shield and not a sword. Fairness and justice require so.

68. The Court finds comforting wisdom in the approach taken by the Caribbean Court of Justice (CCJ), when faced with the issue of striking out a party's statement of case, in the decision of **Barbados Rediffusion Service Ltd. v Asha Mirchandani and Other (No.2) (2006) 69 WIR 52** which was approved by McDonald–Bishop JA (Ag) in the Jamaican Court of Appeal decision of **The Commissioner of Lands v Homeway Foods Limited and Stephanie Muir [2016] JMCA Civ 21** wherein it was stated at paragraph 52 as follows –

"52. Some of the pertinent considerations that have been enunciated by the CCJ, at paragraphs [45] to [47], have been distilled and set out in point form below, simply for ease of reference rather than on account of any rejection of their Lordships' formulation.

(i) Strike out orders should be made either when that is necessary in order to achieve fairness or when it is necessary in order to maintain respect for the authority of the court's orders. In this context, fairness means fairness not only to the non-offending party but also to other litigants who are competing for the finite resources of the court.

(ii) If there is a real risk that a fair trial may not be possible as a result of one party's failure to comply with an order of the court, that is a situation which calls for an order striking out that party's case and giving judgment against him.

(iii) The fact that a fair trial is still possible does not preclude a court from making a strike out order. Defiant and persistent refusal to comply with an order of the court can justify the making of a strike out order. While the general purpose of the order in such circumstances may be described as punitive, it is to be seen not as retribution for some offence given to the court but as a necessary and, to some extent, a symbolic response to a challenge to the court's authority, in circumstances in which failure to make such a response might encourage others to disobey court orders and tend to undermine the rule of law. This is any type of disobedience that may properly be categorized as contumelious or contumacious.

(iv) It must be recognised that even within the range of conduct that may be described as contumelious, there are different degrees of defiance, which cannot be assessed without examining the reason for the noncompliance.

(v) The previous conduct of the defaulting party will obviously be relevant, especially if it discloses a pattern of defiance.

(vi) It is also relevant whether the non-compliance with the order was partial or total.

(vii) Normally, it will not assist the party in default to show that non-compliance was due to the fault of the lawyer since the consequences of the lawyer's acts or omissions are, as a rule, visited on his client. There may be an exception made, however, when the other party has suffered no prejudice as a result of the noncompliance.

(viii) Other factors, which have been held to be relevant, include such matters as (a) whether the party at fault is suing or being sued in a representative capacity; and (b) whether having regard to the nature of the relief sought or to the issues raised on the pleadings, a default judgment can be regarded as a satisfactory and final resolution of the matters in dispute.

(ix) Regard may be had to the impact of the judgment not only on the party in default, but on other persons who may be affected by it."

69. The Court, having regard to the circumstances of the present claim, evidence presented thus far, submissions made by the respective Counsel, and relevant law, is satisfied that the present application to strike out the Defendants' defence or some part thereof is misguided and not appropriate. The Case Management Order made on 21 February 2023, which includes an order for disclosure, resembles that of an order for standard disclosure and not an order for specific disclosure. Strike out is not the appropriate sanction and/or consequence for failure to comply with an order for standard disclosure as provided for by the CPR Rules. Further and paramount, the Claimants have not satisfied the Court by the production of sufficient and credible evidence that the Defendants have not wholly complied with the Case Management Order relative to disclosure.

70. The documents requested by the Claimants and purportedly undisclosed by the Defendants are specific. There has been no order for specific disclosure rendered in this claim nor is there credible evidence that an application for specific disclosure has ever been formally sought. Perhaps, Counsel for the Claimants foresaw the latter obstacle when he attempted, through his submissions, to amend the Notice of Application relative to strike out application to include an alternative relief for specific disclosure. Counsel for the Claimants is no neophyte; he is a seasoned and learned Counsel. Notwithstanding that the CPR Rules is a fairly new regime in The Bahamas, he ought to have known how to properly move the Court on interlocutory applications in civil proceedings and/or amendments relative thereto. In any event, the Claimants have not satisfied the Court that the threshold has been met to warrant the Court to make an order for specific disclosure on its own motion. The Claimants have not satisfied, that – (1) the requested documents exist or have existed; (2) the requested documents are directly relevant to matters in question in the proceedings; and (3) there is sufficient and credible evidence that the requested documents are in or have been in the custody, control or power of the Defendants.

71. The requested documents are speculative and the exercise may be perceived as the Claimants' fishing expedition. Moreover, as quite correctly put forth by Mrs. Gail Lockhart-Charles, K.C., the requested documents, if they do exist, purport to be needed to support the Claimants' case as outlined in the proposed Re-amended Statement of Case: the subject of one of the applications before the Court that had yet been determined. The Court, having a cursory view of the evidence presented by the Defendants thus far, is satisfied that there has been adequate disclosure for the Claimants to put forward their case against the Defendants. The Court, having regard to its mandate and the overriding objective enshrined in the CPR Rules, is satisfied that it ought not to exercise its discretion and strike out the Defendants' defence or some part thereof for their purported failure to comply with the Case Management Order made in these proceedings, particularly, the order relative to disclosure.

Application Three: Re-Amendment of Statement of Case

The Claimants' Case

72. The Claimants' case for amendment relies upon the principle that the Court may, at any stage of the proceedings, allow a party to amend his statement of case, in such manner and on such terms as may be just. The Claimants say that the amendments may be necessary for the purpose of determining the real question in controversy between the parties. The Claimants argue that their proposed re-amendment unequivocally introduces no new causes of action. Rather, they state, the proposed re-amendment centers specifically around the pleading of fraud and the reformatting of the Claimants' case for ease of flow. The Claimants say that the Defendants will not be prejudiced and nothing contained in the proposed re-amendment ought to have taken the Defendants by surprise. In the present claim, the pre-trial review has not taken place and the re-amendments will not cause a delay, the Claimants argue. Consequently, the Court, in the exercise of its discretion, should grant the Claimants' leave to Re-Amend their Statement of Case.

73. Mr. Butler, contended that the purported *"serious allegations against professional people"* in the proposed re-amendment are not substantiated. Apart from Ms. Sharlyn Smith, who is already a witness to these proceedings, the other "professional person" who is relevant or has direct involvement in this claim is Mr. Frank Smith. A subpoena has already been filed for Mr. Frank Smith's testimony to require him to clarify why his signature is on certain cheques made out in the name of the First Claimant and that the First Claimant has not received the funds which he is required to pay every month from his salary.

74. Counsel for the Claimants submitted that there is no injustice to the Defendants as it relates to the perceived lateness of this application. The issues pertaining to this claim will not be compromised but made much clearer to the Court once all of the facts have been properly pleaded after full disclosure is ordered. The Claimants assert that the Defendants themselves do not claim injustice, but rather have continuously cast aspersions against the Claimants for decisions in applications made and changing of attorneys.

75. Mr. Butler contended that the continuous and intentional concealment of relevant information by the Defendants should negative their proposed intention to rely on limitation as a defence. The Defendants cannot be allowed to use limitation as a defence when they have and continue to deliberately conceal information and fail to disclose said information specifically that is relevant to the matters and issues between the parties. Fraud was initially claimed in the Statement of Claim filed herein. Furthermore, from the letter dated 23 August 2022 from the law firm of Bowleg McKenzie Associates and exhibited to the Witness Statement of Wilton L. Saunders filed on 16 June 2023, the issue of fraud was raised and also at paragraph 44 of the letter, the need to amend was broached.

76. The Claimants ultimately contended that they should not only be allowed to re-amend their Statement of Case as proposed in the draft re-amendment but also be allowed any additional amendments that the Claimants may seek if the Defendants are further order to disclose if the Court does not accede to the Claimants' request to strike out. Reliance was placed on **Cropper v Smith (1883) 26 Ch D 700, The Bahamas Telecommunications Company Ltd. v Island Bell Limited SCCivApp No. 188 of 2014, Cave (Respondent) v Robinson Jarvis & Rolf (A Firm)(Appellant) [2002] UKHL 18, Darnelle Osbourne and others v The Honourable Thomas Desmond Bannister (In his capacity as the Minister of Public Works and the Minister charged with responsibility for the Board of BPL and BEC and others BS 2020 SC 8**, and **Jennifer Bain v Family Guardian Insurance Company Limited 2016/CLE/gen/00217**.

The Defendants' Case

77. The Defendants' firm position is that the proposed re-amendment sought by the Claimants is a complete recasting of the claim, introducing new causes of action at a time when the trial date in this claim has been scheduled for November, all pre-trial directions have been dealt with and all that is left is for the Court to finally adjudicate the claim. It is a claim the Defendants – one a law firm and the other a lending institution – have had hanging over their heads for nine (9) years. The Defendants argue that the newly-minted allegations that the Claimants seek to introduce at this late stage, namely, fraud, conversion, breach of fiduciary duty, gross negligence, and conspiracy (all being introduced for the first time on the eve of trial and long after the expiry of the relevant limitation period) relate to matters which are alleged to have occurred more than ten (10) years ago.

78. Mrs. Lockhart-Charles, K.C., invited the Court to compare and contrast the Amended Writ of Summons filed on 5 February 2016 with the proposed re-amended Statement of Claim. To do so would reveal the width and breadth of the rewrite and how absurd it is for the Claimants to suggest (as their Counsel did at the last hearing) that the proposed revisions do not introduce anything new. The Amended Statement of Claim filed on 5 February 2016 never once mentioned the words fraud, conspiracy, negligence, gross negligence, breach of trust, or conversion.

79. Mrs. Lockhart-Charles, K.C., asserts that the Defendants have been harassed by vexatious litigation for almost ten years and it would be completely inconsistent with the overriding objective and established principles if the Claimants were allowed to refashion their claim now that trial is finally within striking distance. The Defendants say that as professional people they have suffered long enough from the Claimants dragging their heels and failing to advance the proceedings in the decade since filing. Such extensive amendments to plead serious allegations against professional people, they contend, would no doubt require additional witness statements, and pleadings and warrant the launch of strike out applications by the Defendants themselves because the evidence before the Court indicates that the Claimants have no reasonable prospect of proving such wild allegations.

80. Counsel for the Defendants, Mrs. Lockhart-Charles, K.C., ultimately contended that there is also the matter of the Limitation Act, Ch 83. Consequently, the Claimants' application to Re-Amend their Statement of Case is not an application the Court should entertain, particularly, having regard to the lengthy delay and the prejudice that will be inflicted on the Defendants, who will have to spend time responding to the proposed amended pleading. The Defendants rely on the overriding objective and the principles set out above to assert that enough of the Court's resources have already been eaten up by the Claimants' action, which has dragged on for almost ten (10) years. Reliance was placed on **Rose and others v Creativityetc Limited and others [2019] EWHC 1043 (Ch)**, and **Philmore Ogle (Liquidator appointed by Court for Jamincorp international Merchant Bank Limited) v Jamaican Citizens Bank Limited Supreme Court Civil Appeal No.51/24.**

Law and Discussion

81. Under the CPR Rules, the Court may permit a party to change his statement of case at a case management conference or at any time on application to the Court. The Court is fully aware that the central basis behind permitting a party to change his statement of case is to ensure that the true question in controversy between the parties is being determined by the Court. However, the Court's jurisdiction relative to permitting a party to change his statement of case may only be deployed provided the relevant factors have been considered as expressed under the CPR Rules. Changes to a party's statement of case is controlled by **Part 20 of the CPR Rules** and **Practice Direction CPR PD20 No. 7 of 2023. Rule 20.1** reads as follows:

> "**20.1 Changes to statement of case**
>
> (1) A statement of case may be amended once without the Court's permission at any time prior to the date fixed by the Court for the first case management conference.
>
> (2) The Court may give permission to amend a statement of case at a case management conference or at any time on an application to the Court.
>
> (3) When considering an application to amend a statement of case pursuant to paragraph (2), the factors to which the Court must have regard are –
>
> (a) how promptly the applicant has applied to the Court after becoming aware that the change was one which he wished to make;
> (b) the prejudice to the applicant if the application was refused;
> (c) the prejudice to the other parties if the change were permitted;
> (d) whether any prejudice to any other party can be compensated by the payment of costs and/or interest;
> (e) whether the trial date or any likely trial date can still be met if the application is granted; and
> (f) the administration of justice.

(4) A statement of case may not be amended without permission under this rule if the change is one to which any of the following applies –
(a) rule 19.4; or
(b) rule 20.2

(5) An amended statement of case must include a statement of truth under rule 3.8.

(6) The Chief Justice may, by practice direction, set out additional factors to which the Court must have regard when considering an application under this rule."

82. **Paragraph 2 of Practice Direction CPR PD20 No. 7 of 2023** provides as follows –

"**2. Application to change statement of case where the permission of the court is required.**

2.1 The application may be dealt with at a hearing or, if rule 11.14 applies, without a hearing.

2.2 When making an application to change a statement of case, the applicant should file with the court:
(1) the application and affidavit in support, together with
(2) a copy of the statement of case with the proposed changes.

2.3 Where permission to change has been given, the applicant should within 14 days of the date of the order, or within such other period as the court may direct, file with the court the amended statement of case.

2.4 A copy of the order and the amended statement of case should be served on every party to the proceedings, unless the court orders otherwise."

83. With regard to the principles governing the exercise of the Court's jurisdiction to permit a party to change his statement of case, the Court draws guidance from the English High Court Decision of **Rose and Others v Creativityetc Limited [2019] EWHC 1043 (CH)** wherein Eyre J at paragraphs 34 and 40 posited –

"34. I must at all times have regard to the Overriding Objective. Whatever stage proceedings have reached a proposed amendment will not be permitted if it does not disclose a cause of action or defence with a real prospect of success. In that respect the court has to have regard to the test applied in determining summary judgment applications with the distinction being drawn between claims or defences which are fanciful and those which are properly arguable and have a real prospect of success. Moreover, an amendment will not be permitted at any stage in the proceedings if it contains a claim or defence which is not properly pleaded in the sense of being sufficiently clear to enable the other party to know the case which that party has to answer…

40. At the early stages of proceedings the interest in allowing the real dispute between the parties to be determined and in allowing each party to put forward its best case is likely to predominate. That is because normally at that stage the prejudice to the other side; the waste of court time; and the adverse effect on

other litigants are likely to be less than they later become and so they are unlikely to prevail. As a case progresses and the later an amendment is proposed then those factors will normally acquire greater weight because as a case progresses the prejudice, waste, and adverse effect will normally become greater. Similarly the later in the process an amendment is proposed then normally the less justified will be a party's contention that it is unjust for that party to be prevented from raising the new matters. A party who delays in putting his or her full claim or defence forward runs the risk of being seen as the author of his or her own misfortune."

84. Particularly, where there is a limitation challenge to a party's application to change his statement of case, the provisions in **Rule 20.2** are engaged. These provisions read as follows –

"20.2 Changes to statements of case after the end of relevant limitation period.

(1) This rule applies to a change in a statement of case after the end of a relevant limitation period.

(2) The Court may allow an amendment the effect of which will be to add or substitute a new claim but only if the new claim arises out of the same or substantially same facts as a claim in respect of which the party wishing to change the statement of case has already claimed a remedy in the proceedings.

(3) The Court may allow an amendment to correct a mistake as to the name of a party but only where the mistake was –
  (a) genuine; and
  (b) not on which would in all the circumstances cause reasonable doubt as to the identity of the party in question.

(4) The Court may allow an amendment to alter the capacity in which a party claims."

85. With respect to a limitation challenge to a party's application to change his statement of case, which involves an allegation of fraud and/or matters closely related thereto, the Court is guided by the adeptly summarized dicta of Adderley J in the Bahamian Supreme Court decision of **Ali and others v Coutts and Company Limited and other [2009] 1 BHS J No. 34** wherein it was posited at paragraphs 9 and 10, respectively –

"9. Under section 5 of the Limitation Act, 1995 Chapter 83 Statute Laws of The Bahamas the Limitation period for contract and tort actions is six years. Section 41 reads as follows:

"5. (1) The following actions shall not be brought after the expiry of six years from the date in which the cause of action occurred, that is to say –

(a) actions founded in simple contract (including quasi contract)

10. In the case of fraud the limitation period extends for six years from the time the plaintiff discovered the fraud or would have with reasonable diligence. Section 41 reads as follows:

"Section 41 ... where in the case of an action for which a period of limitation is prescribed by this act where

(a) the action is based upon the fraud of the defendant; or...

the period of limitation shall not begin to run until the plaintiff has discovered the fraud or could with reasonable diligence have discovered it."

86. Based on the circumstances of the present claim, the evidence presented thus far, the submissions made by the respective Counsel, and the relevant law, I am not satisfied that the Court ought to exercise its discretion and permit the Claimants to re-amend their statement of case.

87. The claim that touches and concerns the present application to re-amend the Claimants' statement of case commenced some nine (9) years ago and has undergone a series of interlocutory applications and changes of Counsel. Among the interlocutory applications made relative to the present claim are at minimum four (4) applications for the Claimants to amend their statement of case. The Claimants have now moved the Court seeking another application to re-amend their statement of case. Such re-amendment was sought at the eleventh hour and well after the case management conference. All of the pre-trial and/or case management directions have been complied with and/or ought to have been complied with at this stage of the claim. The present application to re-amend the Claimants' statement of case and the two extant applications undoubtedly hampered the pre-trial review scheduled for this claim on 12 October 2023 (as ordered by the Case Management Order dated 23 February 2023). Thus, resulting in the pre-trial review date having to be aborted.

88. A perusal of the Claimants' proposed re-amendment readily reveals that it includes new causes of action against the Defendants, namely, fraud, conversion, and/or conspiracy to defraud. These causes of action were never expressly pleaded before the Court nor can they be gleaned from current facts set out in the Claimants' pleadings. The proposed re-amendment is more than a mere reformatting of the Claimants' claim. It is an outright recasting of the Claimants' claim. Even a cursory comparison of the Claimants' current pleadings and their proposed re-amendment would uncloak the truth of these findings.

89. The Claimants have not satisfied the Court that they would be prejudiced in any way if the proposed re-amendment is refused. They had ample time to adequately construct their claim. They failed to do so. Consequently, the Claimants are the authors of their misfortune. The Court is further satisfied that a fundamental obstacle associated with the Claimants' proposed re-amendment goes beyond whether it would survive a limitation challenge by Defendants: the issue is whether it presents a

reasonable prospect of succeeding if it is allowed. The answer to the latter is in the negative.

90. The Claimants' proposed re-amendment, if allowed, would present a fanciful claim founded on speculative accusations, which cannot be supported by one scintilla of evidence presented in these proceedings thus far. Counsel for the Claimants has already conceded to this point, albeit subtly, when he stated that the issues pertaining to this claim will not be compromised but made much clearer to the Court once all of the facts have been properly pleaded after full disclosure is ordered. Moreover, the Claimants propose they should not only be allowed to re-amend their Statement of Case as proposed in the draft re-amendment but also be allowed any additional amendments that they may seek (in the event the Defendants are further ordered to disclose and the Court does not strike out the Defence). The Court has already determined that the Defendants have adequately complied with the standard disclosure order made in these proceedings and there is no basis for the Court to order specific disclosure.

91. Further, the Court considers that the prejudice likely to be faced by the Defendants if the Claimants' proposed re-amendment is allowed is elevated. Such prejudice is unlikely to be diminished by the payment of costs and/or interest. The proposed re-amendment, if allowed, would no doubt require additional witness statements and pleadings to be filed by the Defendants and may warrant the launch of strike out applications by them. The prospect of such strike out applications succeeding would indeed be high. The Defendants may also be financially burdened with having to retain an expert to defend themselves against the new claims made against them in the Claimants' proposed re-amendment.

92. More fundamentally, the Claimants' proposed re-amendment, if allowed, is contrary to the administration of justice and/or the overriding objective of the CPR Rules. Litigation must have an end. Parties should not be dragged into fathomless litigation, being made to suffer the unduly onerous financial burden of defending themselves in such proceedings. In the present claim, some nine (9) years have elapsed. Enough of the Court's valuable judicial time and resources have been expended as a result of the mismanagement of this claim. The Claimants' application to re-amend their Statement of Case is therefore refused.

Conclusion

93. The Court, having regard to its Ruling and the reasons as set out above, hereby makes the following Orders –

    i. the applications filed herein by the Claimants and dealt with in this Ruling are dismissed;

ii. the Defendants shall have the costs of and occasioned by these applications to be paid by the Claimants, which costs shall be assessed by the Court if not sooner agreed by the parties;

iii. the costs of and occasioned by these applications shall be fit for two Counsel;

iv. if the costs are not agreed upon by the parties, Counsel for each side shall proffer written submissions on costs within thirty (30) days from the date of this Ruling for the Court's consideration;

v. the trial of this claim and/or any issue relative thereto is to proceed forthwith; and

vi. a pre-trial trial review hearing shall take place at 9:00 am on 19 September 2024.

Dated 12 July 2024

Simone I. Fitzcharles
Justice