IN THE COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law and Equity Division
Claim No. 2021/CLE/gen/00404

BETWEEN:

MORDINA FERGUSON

Claimant

AND

NASSAU FLIGHT SERVICES LTD.

Defendant

Before:	The Honourable Mr. Justice Leif Farquharson
Appearances:	Mrs. Lanisha Rolle for the Claimant
	Messrs. Roger Minnis and Roger Minnis II for the Defendant
Hearing date:	5 May 2025

RULING

1. This is an application by the Claimant by Notice of Application filed on 14 June 2024 seeking summary judgment against the Defendant pursuant to Part 15.2, 15.4 and 15.6 of the *Supreme Court Civil Procedure Rules, 2022* ("***CPR***") or under the inherent jurisdiction of the Court. The grounds for the application are twofold: (i) the Defendant has no real prospect of successfully defending the claim or the issue of liability; and (ii) there is no other compelling reason why the case or the issue of liability should be disposed of at trial.

Factual Background and Procedural History

2. The present action was commenced by generally indorsed Writ filed on 16 April 2021, which was followed by a Statement of Claim filed on 7 June 2021. The Claimant, a former

employee of the Defendant, seeks damages for personal injuries allegedly suffered during the course of her employment on 28 June 2018, when *"the park brake handle of a malfunctioned air conditioning (ac) unit forcefully struck her to the right side of her face when she attempted to place it on a tractor"* (*Statement of Claim*, para.3). According to her, the incident arose as a result of a shortage of staff on the material date, which necessitated the Claimant performing a two-person task by herself, and due to the hazardous state of the material air-conditioning unit, which had not been *"flagged"*.

3. The claim is brought in negligence and for the breach of statutory duties arising under Section 4 the *Health and Safety at Work Act*.[1] There is some measure of overlap in the particulars of breach under both causes of action. Taking them collectively, the Claimant makes complaint that the Defendant (among other things): (i) failed to discharge its duty under section 4(2)(a) of the said Act to ensure, so far as reasonably practicable, that its *"plant and systems of work"* were safe and without risk to health; (ii) failed to provide a safe work environment by ensuring that all work-related equipment, particularly the aforementioned air-conditioning unit, did not pose a risk to safety and health; (iii) failed to provide adequate staffing and supervision; (iv) failed to *"flag"* and remove the said air-conditioning unit; (v) failed to provide a safe system of work; (vi) failed to take reasonable care for the safety of the Claimant and exposed her to unnecessary risk of injury; and (viii) failed to ensure that the Claimant was assisted and/or supervised by another employee when she was transferring the said air-conditioning unit to a tractor.

4. In a Defence filed on 17 September 2021 and comprised predominantly of bare denials, the Defendant denied all liability in the action.

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[1] Section 4 of the *Health and Safety at Work Act* provides:

> *"4.(1) It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees.*
>
> *(2) Without prejudice to the generality of an employer's duty under subsection (1) the matters to which that duty extends include in particular –*
>
> *(a) the provision and maintenance of plant and systems of work that are, so far as is reasonably practicable, safe and without risks to health;*
>
> *(b) arrangements for ensuring, so far as is reasonably practicable, safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances;*
>
> *(c) the provision of such information, instruction, training and supervision as is necessary to ensure, so far as is reasonably practicable, the health and safety at work of his employees;*
>
> *(d) so far as is reasonably practicable as regards any place of work under the employer's control, the maintenance of it in a condition that is safe and without risks to health and the provision and maintenance of means of access to and egress from it that are safe and without such risks;*
>
> *(e) the provision and maintenance of a working environment for his employees that is, so far as is reasonably practicable, safe, without risks to health, and adequate as regards facilities and arrangements for their welfare at work."*

5. Upon the application of the Claimant, by Order dated 7 March 2022 the Deputy Registrar struck out the Defendant's Defence pursuant to Order 18, rule 19(1)(a) of the former *Rules of the Supreme Court*.

6. After the appointment of its current attorneys, the Defendant subsequently made an application to set aside the Deputy Registrar's earlier Order, ostensibly pursuant to Order 19, rule 9 of the former Rules. This application was acceded to by the Deputy Registrar on 23 May 2022, after which the Defendant (with the leave of the Court) filed an Amended Defence on 27 May 2022.

7. By its Amended Defence, the Defendant admits that *"an accident"* occurred; however, it denies the negligence and wrongdoing attributed to it. Significantly, the Defendant avers that the Claimant was fully aware that the task referred to in her Statement of Claim was a two-person task; that there was no need to *"flag"* any unit as alleged because all units had just been serviced by the Defendant's maintenance personnel and were in proper working order; that there is always at least one manager onsite during working hours; and that the accident could not have occurred in the manner alleged (see *Amended Defence*, paras.2-4). The Defendant further avers that at all material times it complied with its statutory obligations and denies the particulars of breach of statutory duty and negligence, respectively. In addition, the Defendant denies that the Claimant suffered the injuries alleged, relying on earlier averments in the Amended Defence which it contends absolve it from all liability.

8. The Claimant subsequently filed a Reply on 30 May 2022, adopting the admissions contained in the Amended Defence but otherwise joining issue with the entirety of the same. She also made reference to the need for further medical treatment and her inability to pay for the same.

9. The next step in the proceedings was the filing of the current application for summary judgment on 14 June 2024.

The Claimant's Affidavit Evidence

10. The Claimant filed two affidavits in support of the present application. The first was deposed to by her and filed on 14 June 2024. The second was deposed to by Dr. Clyde Munnings, Consultant Neurologist, and filed on 17 April 2025.

11. In summary, the Claimant's affidavit indicates that sometime in 2023 she was informed by her previous attorneys that the Defendant made an offer to settle the claim. She instructed them to reject the offer. Following the appointment of her current attorneys in December 2023, there were further settlement discussions. However, these proved futile.

12. The Claimant states that she has been declared to be 100% disabled and contends that any argument over liability will only serve to prolong her suffering and hardship as the Defendant has ceased paying for her medical treatment and, since the filing of the claim, has terminated her employment. She also points out that the Defendant never paid an earlier costs order awarded in her favour following the striking out of its Defence by the Deputy Registrar.

13. The Claimant asserts that the Defendant by its Amended Defence admitted the occurrence of an industrial accident. She also states that the Defendant instructed her to attend doctors and paid for her medical treatment for a period of approximately three years, until the issuance of a *"final report"* declaring her to be 100% disabled. By virtue of this, she says the Defendant by its own conduct has accepted liability and is estopped from contending otherwise. She further asserts that the Defendant is not a medical expert, cannot determine the extent of her injuries and has not refuted the reports of her doctors.

14. At paragraph 21 of her affidavit, she states that her injuries were sustained on the job while carrying out the Defendant's instructions and using the Defendant's equipment, which malfunctioned and caused her serious injury. She maintains that the issue of liability is *"indisputable"* based on the evidence of the medical doctors referred to and exhibited in her affidavit, and the Defendant's conduct in assuming full responsibility for her treatment prior to the filing of the claim. She continues that she had no pre-existing conditions which would have contributed to the extent of her injuries and contends that the only issue to be disposed of is quantum. She further alludes to the need for further medical treatment and assistance.

15. Dr. Munnings' affidavit essentially indicates that at the request of the Claimant's employer he prepared a medical report dated 2 June 2021, which he exhibits to the affidavit. He also briefly discusses his diagnosis of the Claimant's condition and her ability to resume gainful employment, which he advised against.

The Defendant's Affidavit Evidence

16. In resisting the present application, the Defendant relied on an affidavit sworn to by Ricardo Rolle, its general manager, filed on 2 April 2025.

17. In summary, Mr. Rolle asserted that the Claimant exhibited no external injuries at the time of the incident and there were no contemporaneous x-rays showing the injuries allegedly sustained by her. He further observed that it was only after the Claimant was seen by Dr. Munnings that her symptoms seemingly drastically worsened.

18. Mr. Rolle disputed the Claimant's contention that the Defendant had not paid an earlier costs order(s), disclosing a copy of a cheque payable to the Claimant's former attorneys by way of proof. He further stated that any generosity extended to the Claimant was motivated purely by altruistic motives and not as an admission of guilt or by way of assumption of legal responsibility.

19. Mr. Rolle also, importantly, disclosed an internal email prepared by the Defendant's Executive Manager, Plato Thompson, dated 10 June 2021 detailing the results of its internal investigations into the allegations made in the Statement of Claim. This stated in material part as follows:

> *"Good afternoon Rick,*
> *I was able to gather the following information in response to her claim:*
> 1. *She was not a shift leader.*
> 2. *Nil*
> 3. *We have maintenance records that can prove that the preventative maintained check had been completed.*
> 4. *We have witnesses to the fact that she was not working alone, Shannon Gilles and Yaindria Woodside was working with her, furthermore Yainderia was assisting with the tractor and hookup. Yaindria stated that she does not believe that MF was injured.*
> 5. *There were no visible scratches or bruising to the said area of injury.*
> 6. *Mrs. Verneca Ferguson and Barbra Laing was on station and Stephen Hepburn was the duty manager. Mrs. Ferguson conducted the interview and collected the written statement from MF.*
> 7. *The nurse did not find any need to send her to the doctor. She finally went to the doctor he found no injury. Afterward she went to another doctor who made a different diagnose* (sic).
> 8. *The matter was not an industrial accident but, was deemed a workplace incident. The matter was investigated by the Health and Safety committee which included P. Thompson (Lead Investigator) along with Vivian Bain and Lerone Davis. The committee found that the brake was working and the employee was negligent in ensuring that the brake was set properly before walking away."* (Emphasis supplied)

20. Mr. Rolle further stated that the Defendant's investigator concluded that the only way the incident described by the Claimant could have occurred was if she herself had been negligent while using the Defendant's machinery, and that the events as recounted by her were contrary to her training. He accordingly rejected the Claimant's contention that the only issue to be disposed of at trial was quantum and maintained that there were several issues arising for determination, including *"whether or not and if so, to what extent, the Defendant can be deemed responsible for the Claimant's 'injury'"*. Mr. Rolle also denied that the Defendant was seeking to prolong the matter.

The Rival Arguments

The Claimant's Submissions

21. Relying on the judgment of Sir Andrew Morrit, VC in *Celador Productions Ltd. v. Melville* [2004] EWHC 2362 (Ch.), at para.7, Mrs. Rolle identified the guiding principles to be applied in an application for summary judgment as follows:

> *"(a) it is for the applicant for summary judgment to demonstrate that the respondent has no real prospect of success in his claim or defence as the case may be;*
> *(b) a 'real' prospect of success is one which is more than fanciful or merely arguable;*
> *(c) if it is clear beyond question that the respondent will not be able at trial to establish the facts on which he relies then his prospects of success are not real; but*
> *(d) the court is not entitled on an application for summary judgment to conduct a trial on documents without disclosure or cross-examination."*

22. Mrs. Rolle identified five overarching factors which she argued support the conclusion that the Defendant has no real prospect of successfully defending the claim: (i) the accident in question occurred on the job and was caused by the Defendant's equipment; (ii) the Defendant directed the Claimant to attend their selected doctor; (iii) the Defendant admitted to the industrial accident; (iv) the medical report, diagnosis and tests are indisputable; (v) the Defendant admitted to paying legal and other costs associated with the claim.

23. In developing her arguments, Mrs. Rolle contended that the Defendant's Amended Defence and affidavit evidence disclosed what she described as *"a host of admissions"*. In this regard, she asserted that the Defendant admitted the occurrence of the accident which resulted in the Claimant being injured.

24. In relation to the second factor, Mrs. Rolle essentially suggested that the Defendant's actions in sending the Claimant to a doctor whom they selected (and who she subsequently attended for a period of three years), was tantamount to an assumption of legal responsibility, which the Defendant only resiled from when informed that the Claimant's injuries were of a permanent nature. No authority was laid over in support of this proposition.

25. In relation to the third factor, Mrs. Rolle placed central reliance on paragraph 2 of the Amended Defence. This states:

> *"2. The Defendant admits that an accident occurred but not as alleged in paragraph 3 of the Plaintiff's Statement of Claim and states that the Plaintiff was fully aware that it was a task for two persons and that there was no need to flag any unit because they were in proper working condition as they had just been serviced by the Maintenance Department and found to be in proper working order. Further, from subsequent investigations it was concluded that the accident could not have happened as alleged by the Plaintiff."*

26. The fourth factor was based on the medical report by Dr. Munnings dated 2 June 2021, which Mrs. Rolle asserted *"establishes that an accident occurred on the job which caused severe injuries to the Plaintiff and such findings have not been disputed by any other medical practitioner."* She further asserted that whilst the Defendant disputed the extent of the Claimant's injuries, the report of Dr. Munnings is *"self-explanatory and indisputable"*. She further pointed out that the Defendant had not adduced any evidence of the Claimant suffering from a pre-existing condition and had provided no expert evidence to dispute the claim.

27. In support of her contentions in relation to the fifth factor, Mrs. Rolle relied on paragraph 6 of Ricardo Rolle's affidavit. This, she argued, evidenced that the Defendant assumed responsibility for the costs associated with the Claimant's injuries, including legal and medical costs. For the sake of clarity, paragraph 6 of Mr. Rolle's affidavit states as follows:

> *"That the generosity extended to and concern shown to the Claimant were done from a humanitarian point of view and not as an admission of guilt or the assumption of responsibility for the incident."*

28. Mrs. Rolle further asserted that there was no other compelling reason, except in relation to quantum, why the action should proceed to trial. In this regard, she observed that the Defendant's Amended Defence identified no eyewitnesses who were present at the time of the alleged incident, there was no evidence of contributory negligence and there was

no evidence that the Defendant's equipment was safe or maintained according to safety standards prior to the accident. The only live issue was, therefore, quantum.

The Defendant's Submissions

29. Mr. Minnis was considerably more economical in his response to the application. He readily accepted that the governing principles of law as stated in *Celador* were applicable. However, he vehemently disagreed with the Claimant's contention that the Defendant did not have any real prospect of successfully defending the claim. In this regard, he asserted that it was plain from the Amended Defence and the affidavit of Ricardo Rolle that negligence or other wrongdoing was denied. He also emphasised that the internal email detailing the results of the Defendant's investigations into the alleged incident and dated 10 June 2021, disclosed various facts and matters which may potentially absolve the Defendant from liability. Indeed, he said, the email raises questions as to whether the alleged incident even occurred. He further pointed out that the said email identified potential witnesses who the Defendant presumably intends to call at trial.

30. Mr. Minnis asserted that it was simply wrong to suggest that the payment by an employer of an employee's medical expenses was probative of some form of guilt. He also took issue with the Claimant's reference in her affidavit evidence to earlier settlement discussions between the parties which, apart from being subject to without prejudice privilege, were not indicative of liability. He pointed out that notwithstanding the passage of time since the occurrence of the alleged incident, the action is still in its early stages. There has been no discovery, no witness statements and no cross-examination.

31. In the final analysis, Mr. Minnis maintained that it would be profoundly unjust to grant summary judgment in the circumstances. He also identified various live issues which he asserted were only fit for resolution at trial. These included (among others): the Claimant's allegation that the Defendant's equipment malfunctioned; the Claimant's allegation that the Defendant's equipment was not properly serviced and in good working condition; the occurrence of the material incident itself; and the question of injury or damage.

Applicable Legal Principles

32. The jurisdiction to grant summary judgment is addressed in Part 15 of the CPR. Rule 15.2 provides:

> *"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."

33. This is supplemented by Rule 15.6, which states:

"(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."

34. Though stated in the context of the English CPR, I accept that Sir Andrew Morrit, VC's summary in Celador quoted above embodies a number of the principles of law to be applied in applications for summary judgment. This, however, is by no means exhaustive. The role of a judge in considering such an application was also helpfully elucidated by Lord Hobhouse in *Three Rivers District Council and Ors. v. Bank of England (No.3)* [2001] 2 All ER 513, at para.158, where he stated:

> *"....The court may exercise the power where it considers that the 'claimant has no real prospect of succeeding on the claim' and 'there is no other reason why the case or issue should be disposed of at a trial'. The concluding phrase corresponds to the similar phrase used in RSC Ord 14, r.3(1) and has not been relied upon in the present case. The important words are 'no real prospect of succeeding'. It requires the judge to undertake an exercise of judgment. He must decide whether to exercise the power to decide the case without a trial and give a summary judgment. It is a 'discretionary' power, ie one where the choice whether to exercise the power lies within the jurisdiction of the judge. Secondly, he must carry out the necessary exercise of assessing the prospects of success of the relevant party. If he concludes that there is 'no real prospect', he may decide the case accordingly. I stress this aspect because in the course of argument counsel referred to the relevant judgment of Clarke J as if he had made 'findings' of fact. He did not do so. Under RSC Ord 14 as under CPR Pt 24, the judge is making an assessment not conducting a trial or fact-finding exercise. Whilst it must be remembered that the wood is composed of trees some of which may need to be looked at individually, it is the assessment of the whole that is called for. A measure of analysis may be necessary but the 'bottom line' is what ultimately matters. ....*
> *The criterion which the judge has to apply under CPR Pt 24 is not one of probability; it is absence of reality. The majority in the Court of Appeal used the phrases 'no realistic possibility' and distinguished between a practical possibility and 'what is fanciful or inconceivable' ([2000] 2 WLR 15 at 91). Although used in a slightly different context these phrases appropriately express the same idea."* (Emphasis supplied)

35. A very useful summary of the guiding principles was also provided more recently by Freedman J. in *Ventura Capital GP Ltd. v. DNANudge* [2023] EWHC 1631 (Ch). This, in turn, was based on the decision of Lewison J. (as he then was) in *Easyair Ltd. (trading as Openair) v. Opal Telecom.* [2009] EWHC 339 (Ch), which cited a number of the leading

authorities in the area. The reasoning in *Ventura* has also been followed locally in *Glinton v. Adams and Anor.* [2024] BHS J. No.34, a decision of Winder CJ. Freedman J. described the correct approach thus (at para.33)

> (i) *The court must consider whether the claimant (or defendant) has a "realistic" as opposed to a "fanciful" prospect of success.*
> (ii) *A "realistic" claim is one that carries some degree of conviction. This means a claim that is more than merely arguable.*
> (iii) *In reaching its conclusion the court must not conduct a "mini-trial".*
> (iv) *This does not mean that the court must take at face value and without analysis everything that a claimant says in its statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents.*
> (v) *However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application, but also the evidence that can reasonably be expected to be available at trial.*
> (vi) *Although a trial may turn out not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so effect the outcome of the case.*
> (vii) *On the other hand, it is not uncommon for an application under CPR 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. The reason is quite simple: if the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, if the applicant's case is bad in law, the sooner that is determined, the better. If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction."* (Emphasis supplied)

36. The authors of *The Caribbean Civil Court Practice 2024* (3rd. Ed.) have also contributed to the learning on this subject. They provided the following commentary on the nature of

the task to be undertaken by a judge in determining whether a claim or defence, as the case may be, has a *'real prospect'* of success (at pages 189-191):

> *"The court should interpret 'real' as the opposite of fanciful and should not conduct a mini-trial to establish whether a summary disposal was appropriate: Swain v Hillman [2001] 1 ALL ER 91, CA. If there is a real prospect of success, the discretion to give summary judgement does not arise merely because the court concludes success is improbable: Swain v Hillman [2001] 1 ALL ER 91, CA. Accordingly, the power of summary judgment should be approached as a serious step which should be used cautiously and sparingly: Commonwealth Bank Limited v Mark Oscar Gibson (2022) 1 BHA J No 19 (Charles J) (delivered 7 April 2022).*
> *The test under part 15 (ENG CPR 24) is whether there is a real prospect of success in the sense that the prospect of success is realistic rather than fanciful; when undertaking this exercise, the court should consider the evidence which can reasonably be expected to be available at the trial - or the lack of it; it is not appropriate for the court to undertake an examination of the evidence (without a trial) and adopt the standard applicable to a trial (namely, the balance of probabilities). See Royal Brompton Hospital NHS Trust v Hammond (No 5) [2001] EWCA Civ 550, [2001] BLR 297."*
>
> *"On the other hand when, on the evidence before the court at the time of the application, there are issues which remain unresolved and oral evidence may affect the judge's assessment of the facts, then the matter should proceed to trial..."*
>
> *"In the Privy Council decision of Sagicor Bank Jamaica Limited v Taylor-Wright [2018] UKPC 12 (delivered 14 May 2018), the Privy Council asked itself the following questions: 'If a claimant comes to court seeking specific relief, by way of summary judgment, and the defendant, while denying the claimant's case on the facts, advances facts of her own which, if provided, would still entitle the claimant to the relief sought, should the court direct a trial so as to resolve those competing accounts of the facts, or grant summary judgment on the basis that a trial is not necessary to determine whether the claimant is entitled to the relief sought?' The court agreed with Sykes J (as he then was) that summary judgment should be granted."*

Analysis and Disposition

37. Guided by the principles of law discussed above, and having considered the pleadings, the affidavit evidence and the submissions of the parties, I decline to grant summary judgment against the Defendant.

38. Beginning with the pleadings, as indicated the claim is brought in *'negligence'* and *'breach of statutory duty'*. It is trite that the former requires a claimant to establish: the existence of a duty of care owed by the defendant to the claimant; breach of that duty; and damage, which is both causally connected to and a forseeable consequence of the breach (see, for example, *Halsbury's Laws of England* (2018), Vol.78, para.62). The essential

requirements to establish liability for breach of statutory duty broadly include: the existence of a statutory duty imposed upon the defendant, which is intended to confer a private right of action for breach of the same; that the statutory duty is owed to the claimant; breach of the statutory duty; and resultant damage (see *Halsbury's Laws of England* (2021), Vol.97A, para.99).

39. While I readily observe that the Amended Defence filed by the Defendant is not a model of clarity or thoroughness (and, for that matter, neither is the Statement of Claim), it includes averments intended to dispute the liability asserted by the Claimant. For instance, the Defendant asserts that the Claimant was *"fully aware"* that *"a task"* (which appears to be a reference to the task of placing an air-conditioning unit on a tractor, as described in paragraph 3 of the Statement of Claim) was a two-person job; it disputes that the air-conditioning unit in question needed to be *"flagged"* as is alleged or was not in proper working order, seemingly to suggest that it did not pose a hazard; and it states that there was always at least one manager onsite during working hours.

40. As this is an application for summary judgment, the Court is also entitled to consider the affidavit evidence filed by the Defendant, which according to Rule 30.3(2) may include matters of information and belief provided the sources are identified. The significance of this is that the affidavit of Ricardo Rolle purports to speak to the results of the Defendant's internal investigations into the Claimant's allegations, identifying potential factual witnesses in the process. The affidavit also seemingly suggests (among other things): that there are records available to show that a preventative check of some sort had been completed; that the Claimant was not working alone on the material date and was actually assisted by another employee with *"the tractor hookup"*; that a fellow employee who was working with the Claimant on the material date does not even believe that she suffered any injury; and that the Claimant herself may have been negligent (albeit, contributory negligence is not explicitly referenced in the Amended Defence). To my mind, these are all matters which may have a direct bearing upon the resolution of the issue as to whether or not there was a *'breach'* of duty (both in negligence and breach of statutory duty) and, possibly, whether any resultant *'damage'* or injury was in fact suffered.

41. As it stands, there has been no discovery, no evidence led and no testing of evidence through cross-examination. In this state of affairs, it is not possible for me to say with any degree of confidence that the Defendant has *"no real prospect"* of successfully defending the claim or that the issue of liability is a foregone conclusion. I also do not accept that

Dr. Munnings' report (in the absence of any disclosure whatsoever or cross-examination) is conclusive or *"indisputable"* on the issue of liability, as suggested by Mrs. Rolle. Parenthetically, I would note that the clear focus of the report, as is perhaps to be expected, is on the injuries diagnosed and not the causes of the alleged incident at the Claimant's workplace, which Dr. Munnings does not address at all.

42. For completeness, I would add that I do not accept Mrs. Rolle's proposition that the Defendant's acts of paying certain medical expenses of the Claimant (who at the time was apparently still its employee), or paying an earlier costs order(s) made against it, without more, give rise to legal liability for the substantive claim. I also think it entirely inappropriate for me to have regard to the fact that a settlement offer may have been made in my consideration of the application. Equally, the Claimant's complaint of delay in the progress of resolution of the dispute rings a bit hollow when one considers that the alleged incident occurred in June of 2018 but proceedings were not commenced by her until almost three years later in April of 2021. Her complaints of hardship and the need for further medical treatment, whilst regrettable if true, also afford no basis for the grant of summary judgment against the Defendant.

43. The Claimant's reliance on the Court's inherent jurisdiction in her Notice of Application does not take the matter any further. Part 15 of the CPR constitutes an express framework governing the issue of summary judgment. It would therefore be entirely wrong, in my view, to allow this to be circumvented by recourse to the Court's inherent jurisdiction (*Belgravia International Bank & Trust Co. Ltd. v. Sigma and Anor.* [2022] 2 BHS J. No. 114 (CA), at para.62). Equally, the reference in the Notice of Application to *"there being no other compelling reason why the case or issue should be disposed of at trial"* does not take the matter any further. This language, which appears to be taken directly from the English CPR Rule 24.3(b), has not been replicated in the Bahamian CPR. And in any event, it does not relieve an applicant for summary judgment of the obligation to establish that his opponent's claim or defence, as the case may be, does not have a realistic prospect of success.

44. I have also considered the overriding objective. To grant summary judgment in the circumstances described, without discovery or any oral evidence, would not in my view be a just disposition of the present case.

45. For the reasons stated, the Claimant's application for summary judgment is therefore dismissed, with costs in favour of the Defendant to be summarily assessed. I will adjourn this matter for case management at a date to be determined.

L. Farquharson

FARQUHARSON, J.

12 May 2025