IN THE COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law and Equity Division

Claim No. 621 of 2023

BETWEEN

CHRISTISON DELEVEAUX

Claimant

AND

BANK OF THE BAHAMAS LIMITED

Defendant

Before: **The Honorable Madam Justice Carla Card-Stubbs**

Appearances: Arthur L. Minns of Counsel for the Claimant
Jamal Davis of Counsel for the Defendant

Hearing Dates: April 1, 2025 and April 2, 2025

Claimant's Application for judgment on admissions — Part 14 CPR - Whether writing amounts to clear and unambiguous admission

Application to strike out statement of case — Part 26, Rule 26.3 CPR – Whether Standard Claim discloses any reasonable ground for bringing the action – Whether pleaded statute gives rise to private law remedy – Financial Transactions Reporting Act

The Claimant brought an action against the Defendant bank claiming a breach of contract and breach of statutory duty to "provide an accurate and complete accounting of the Claimant's loan account held at the Defendant's bank" and, in particular, statements form the inception of the loan (years 2005 to 2007). The Defendant denied liability under statute and under contract and pleaded that the statements sought had been previously provided in a prior suit. Those statements were contained in the trial bundle prepared by the Claimant.

In response to a request from the Claimant, inhouse counsel for the Defendant responded that the bank was "unable to generate" the statements. The Claimant sought judgment on admissions alleging that the letter was an admission that the Defendant bank failed to maintain the records which was a breach of duty under the statute. The Defendant applied to strike out the Claimant's Standard Claim on, inter alia, the ground that it disclosed no reasonable cause of action.

Held:

1. Application for Judgment on admissions is dismissed.
There is no admission by the statement that the bank is "unable to generate" records that the Defendant owed the Claimant a duty under statute or under contract. Nor can such an admission be inferred. The admission ought to be clear and unambiguous. The letter from Counsel does not amount to an admission in whole or in part of the Claimant's claim.

2. Application to strike out Standard Claim is acceded to. Standard Claim is struck out.

The Financial Transactions Reporting Act 2018 is for the general welfare and well-being of society, including customers, but it does not give a right of action to an individual. It does not give a private law remedy to an individual. There is nothing in the provisions from which one could infer an intention by the legislature to give a private law remedy to a customer on the breach of a statutory duty by a financial institution. Therefore the Claimant has no cause of action based on the statute. Further, the evidence on affidavit and the evidence on the court record (via the Trial Bundle filed by the Claimant) is that the statements sought were supplied to the Claimant. Therefore the Claimant's suit that the bank did not maintain such records is not viable.

RULING

Card-Stubbs J:

INTRODUCTION

[1.] This ruling concerns two applications made by the parties. This Court orally delivered its determination of the applications on June 24, 2025. Written reasons for the determinations are herein contained.

[2.] The Claimant's application is for Judgment on Admissions pursuant to Part 14 Supreme Court (Civil Procedure Rules) 2022, as amended ['CPR']. For the reasons set out below, the application is dismissed.

[3.] The Defendant's application is to strike out the Standard Claim pursuant to Part 26.3 Supreme Court (Civil Procedure Rules) 2022, as amended ['CPR'] and the court's inherent jurisdiction. For the reasons set out below, the application is acceded to.

BACKGROUND

[4.] Both applications were pre-emptive in nature and sought to resolve the matter without recourse to a full-scale trial. I make the observation that the applications were filed in the face of dates already slated for trial. It is useful to set the context of the applications by way of reference to the nature of the action.

THE ACTION

The Claim

[5.] By Standard Claim filed July 27, 2023, the Claimant sued the Defendant for:

> Breach of contract for failure to and continuing to fail to provide an accurate and complete accounting of the Claimant's loan account held at the Defendant's bank. And further, for the Defendant's Breach of its statutory duties and for the Defendant's commission of criminal offences for failure to follow the Statute laws of the Bahamas.

[6.] The Claimant is said to have suffered loss as a result of the said breaches. Such loss is identified as lost opportunities "to restructure and/or refinance his loan with another financial institution other than the Defendant" and stress.

[7.] The Claimant was a client of the Defendant bank. He and his wife had a mortgage facility with the bank which account commenced in March 2005.

[8.] It is common between the parties that by Suit No 240 of 2017, the Defendant bank sued the Claimant and his wife for breach of the mortgage facility. By ruling dated January 29, 2025, judgment was granted to the Defendant Bank against the Claimant and his wife.

[9.] The Claimant alleges that on more than one occasion, the Claimant sought to obtain "a full and complete history report" of the loan account. The Claimant alleges that there were discrepancies on the account and that the Defendant failed to provide him with a statement of accounts commencing from the date of the loan.

[10.] The Claimant relies on email exchanges said to show non-compliance, or, alternatively, the inability to comply, with the request for records from "2005". The Claimant also relies on a letter from general legal counsel of the Defendant that conveyed that the Defendant was "unable to generate" the information sought.

[11.] The Claimant alleges that the Defendant had a duty to keep records from 2005 (the date of the mortgage) by virtue of the Financial Transaction Recording Act 2018 ('FTR2018') and that that duty was implied into the contract between the Claimant and the Defendant. The statutory breaches are identified as:

> (a) Failure to maintain and complete record of customer contrary to section 15; and
>
> (b) Failure to retain or to properly keep records of its customers contrary to Section 18 of the said Act

The Defence

[12.] By Defence filed on September 18, 2023, the Defendant denies that the Claimant had to make several requests for the information and asserts that the information was provided to the Claimant during the course of the civil Suit No 240 of 2017 brought by the Defendant against the Claimant and his wife.

[13.] The Defendant also asserts that there is no duty imposed on it by the statute or by an implied term to provide the records sought. The Defendant asserts:

> There is no obligation upon the Defendant to provide a record of the said loan to the Claimant under the provisions of the Financial Transactions Reporting Act,2018 (hereinafter called "the Act") referred to by the Claimant or at all. Consequently, there is no expressed and/or implied term under the said loan compelling the Defendant to provide a Statement of Account for said loan to the Claimant. Notwithstanding the absence of such expressed and/or implied term, the Defendant has nonetheless at all material times provided the Claimant with a full, complete and accurate accounting of the said loan. The Defendant has not committed any criminal offence under the Act as alleged or at all.

[14.] The parties are therefore joined on issues of law and fact which I will, for these purposes, craft as: whether there is an obligation on the Defendant to provide the records being sought by the Claimant, and, if so, whether the Defendant is in breach of any such obligation and, in any event, whether the records sought were in fact provided.

THE APPLICATIONS

The Claimant's application for Judgment on Admissions

[15.] By Notice of Application filed February 13, 2025, the Claimant seeks judgment on an admission. The application is made "pursuant to Part 14 of the Civil Procedure Rules (CPR) in regards [sic] to an open admission in writing made by the Defendant's internal Legal Counsel to the Claimant's Attorney".

[16.] The grounds for the application are set out as:

(a) That a fundamentally substantive fact and issue to be determined by the Honourable Court is whether the Loan Account Statement for the years 2005-2007 could be produced by the Defendant;
(b) That by virtue of a letter addressed to Counsel for the Claimant, the internal Counsel for the Defendant openly admits that the Defendant's Bank cannot produce the aforementioned Claimant's Loan Statements;
(c) By the aforementioned Defendant's admission, the Defendant has also violated the following laws as pleaded by the Claimant in his Statement of Claim:
    i. Financial Transaction Recording Act;
    ii. Evidence Act;
    iii. Banker's Book Evidence Act.
(d) For all the above reasons, the Claimant seeks Judgment on the aforesaid admission made by the Defendant.

[17.] The Claimant relies on documents produced in an agreed bundle of documents as well as the referenced letter.

[18.] By application filed on March 17, 2025, the Defendant sought to rely on an affidavit of Indira Deal-Sands, maker of the referenced letter. That application was heard and acceded to on April 1, 2025, with costs to the Claimant, for the reasons then given by this Court.

[19.] The Defendant sought to answer the Claimant's application by reliance on that affidavit. The affiant resisted any suggestion of an admission or intimation of a breach and asserted that the records sought had already been provided to the Claimant.

Issue

[20.] The issue before me on this application is whether there is a written admission of the whole or part of the Claimant's claim.

Submissions of the Parties

[21.] The Claimant proffers a letter dated June 5, 2023 from the Defendant's General Counsel as an admission in writing to his claim. By affidavit filed February 13, 2025, the Claimant avers:

> 4. In a letter dated July 5th 2023, the Defendant's General Legal Counsel wrote to my Attorney and stated the following, *"Please by advised that the bank* is *unable to generate statements from the periods of 1st of January 2005 through 31st* of *September 2007"* a copy of the said letter is now produced and shown to me marked and exhibited herewith as "CD-#1".
>
> 5. In that regard, if the Defendant cannot generate my Loan Statements for the years 2005-2007, this would mean that they have admitted my claim when I stated that two years of my loan payments to the Defendant were not accurately and/or properly accounted for. This is exactly what my claim before the Honorable Court amounts to. And the two (2) years are from 2005 to 2007, which I stated.

[22.] The letter referred to, and emanating from the Defendant, reads in part:

> We write further to your letter dated 29th June, 2023 requesting account information pertaining to Christison and Mariyln Deleveaux.
>
> Christison and Mariyln Deleveaux maintains account 166M325072740002 AT THE Bank. Please find enclosed statements from 1st October 2007 to 30th June, 2023. Please be advised that the Bank is unable to generate statements from the period of 1st January 2005 through 31st September 2007.

Should you have any further questions or concerns, please do not hesitate to contact the undersigned.

[23.] Counsel for the Claimant submits that assertions in affidavits previously sworn by witnesses for the Bank that they did supply the Claimant's Loan Statement for the year 2005-2007, were "untruthful". Referring to the statement in the letter, "Please be advised that the Bank is unable to generate statements from the period of 1st January 2005 through 31st September 2007" by Mrs Indira M. Deal-Sands, General Legal Counsel for the Bank of the Bahamas, Counsel for the Claimant submits that the statement "is a complete admission of the claim made by the Claimant in this matter". Counsel also submits that:

> "…the statement "supports what the current President of the Court of Appeal had to say regarding this matter when he wrote the following at line 11 of the Court of Appeal Ruling in the case of Bank of the Bahamas vs Christison Deleveaux et al. SccivApp Vase No 81 of 2019:
>
> > *"Having reviewed the documentation supplied, it is quite clear to us that there is some discrepancy that they have not been able to explain sufficiently to us, and we think that it is in the interest of justice that we allow the appeal and remit the matter back to the Supreme Court for a proper accounting to be undertaken so that the judgment amount can be verified."*

[24.] Counsel for the Claimant submits that the letter shows that the previous statements were to be disregarded as the letter represents the factual position:

> "The Defendant's Bank continued to be untruthful, perhaps thinking that heir unlawful action of lying to the Honorable Court would not be discovered and revealed. In this regard, the Defendant told the Honorable Chief Justice that they did generate year 2005 to 2007 Loan Statement Report to the Plaintiff's herein. They also represented the same in writing and orally to the Court of Appeal. The Defendant (the Bank) knew or ought to have known that they were dishonest and untruthful with their said representation."

[25.] Indira Deal-Sands, General Legal Counsel for the Defendant bank, and the writer of the July 5, 2023 letter, avers by affidavit filed on March 10, 2025 that:

> 4. I am now aware however that the Defendant's record of a Statement of Account for the said mortgage loan for the period 29th day of March, A.D., 2005 through to the 1st day of October, A.O., 2007 was much earlier provided to the Claimant and/or his attorney and is also included in the Claimant's Bundle of Document filed herein on the 28th day of May, A.D., 2024. I have seen and read the said Statement of Account for the said period 29th day of March, A.D., 2005 through to the 1st day of October, A.D., 2007 and verily believe that the same represents the transactions under the said mortgage loan during the said period 29th day of March, A.D., 2005 through to the 1st day of October, A.D., 2007.

[26.] The rest of that affidavit serves to deny any admission of liability in response to the Claimant's case.

[27.] Counsel for the Defendant submits that the issues to be resolved are as set out in the Statement of Facts and Issues between the parties. Counsel for the Defendant submitted that the legal issues in this matter are whether the Defendant had a duty to provide statement of accounts to the Claimant and whether there was any contractual term that provided that the Defendant had to provide the statement of accounts to the Claimant. Counsel for the Defendant argued that the indication in the letter that the statement of account could not be generated for the period 2005 to 2007, does not amount to an admission of the legal issues that are before the court and cannot be construed as the acceptance of liability for the Claimant's claim. Counsel for the Defendant also submitted that the affidavit of Indira Deals-Sands shows that the Claimant was previously provided with the statement of accounts for the period 2005 – 2007.

[28.] Counsel for the Defendant further submitted that the July 5, 2023 letter cannot address the issue of whether there is a duty owed by the Defendant to the Claimant to h a complete full and accurate history of the loan account. Counsel for the Defendant refutes that the statutes relied on (FTR2018 and the Evidence Act) are to be construed in the manner suggested by Counsel for the Claimant.

Legal Analysis and Determination

[29.] The Claimant applies for the grant of a judgment on admissions pursuant to Part 14 CPR. Rule 14.1 (2) and Rule 14. 4(1) of the CPR are relevant in this instance. Rule 14.1 provides:

> 14.1 Making on admission.
>
> (1) A party may admit the truth of the whole or any part of any other party's case.
>
> (2) A party may do this by giving notice in writing, such as in a statement of case or by letter, before or after the issue of proceedings.
>
> (3) A defendant may admit the whole or part of a claim for money by filing an acknowledgement of service containing the admission.
>
> (4) The defendant may do this in accordance with the following rules —
> (a) rule 14.6;
> (b) rule 14.7; or (c) rule 14.8.
>
> (5) A defendant may file an admission under paragraph (4) at any time before a default judgment is entered, but the claimant may apply for assessed costs if the admission is filed after the time for filing an acknowledgement of service has expired.

[30.] Rule 14.4 provides:

> 14.4 Admission by notice in writing – application for judgment.
> (1). Where a party makes an admission under rule 14.1(2), any other party may apply for judgment on the admission.
>
> (2) The terms of the judgment must be such as it appears to the Court that the applicant is entitled to on the admission.

[31.] The January 2024 Practice Guide to the CPR provides helpful guidance. At the notes to Rule 14.1, the following is provided:

> 14.1 Making An Admission In various ways, for the purposes of reducing costs and delay and of narrowing the issues in dispute, the CPR encourages parties, where it is appropriate to make admissions of fact and to concede claims or parts of claim[1]s.
>
> A party may make an admission (the rules use the phrase 'admit the truth of the whole or part of any other party's case): (1) By giving notice in writing (such as in a statement of case or in a letter), (2) He may do so before or after proceedings, and (3) In relation to a claim for money, he may admit the whole or part of the claim by filing an acknowledgement of service containing the admission[2]. Rule 14.1 (2) does not require the admission to be in a particular form, merely that it be in writing. If it is not in writing, it may still be admissible in evidence, but it is not a formal admission for the purposes of Part 14. It could be in a statement of case (typically the defence), by letter, or any written form as long as it is clear.
>
> Cases:
> **Claude Benbow v AG of Trinidad and Tobago (CV 2005-00740) (28 January 2008)** "The admission must speak to facts pertinent to the claim between the parties to a cause or matter. The admission must be clear. There must be an admission to all the constituent parts of the claim made" (as per Madam Justice Pemberton).
> **Greater Manchester Fire and Rescue Service v Veevers [2020] EWHC 2550** (Comm) HHJ Pearce emphasises the point that a party can make a formal pre-action admission. A party who tries an alternative "non-formal" admission may well not get the benefits of saving in costs that an open admission would give rise to.

[32.] The rules provide that an admission may be made in pleadings or in documents such as letters written before the action was brought: Rule 14.(1)(2). In an application for a judgment on admissions, a party must show that the admission resolves an issue of facts

[1] The Supreme Court Practice (1999) Volume 1 Page 378
[2] The Caribbean Civil Court Practice (2011) Page 129

or law in their favour and that such admission would result in an entitlement to a judgment. The admission must be with reference to the party's case and thus must be clear and unambiguous. Judgment, if granted, would be granted on such terms as a Court finds that the applicant is entitled to on an admission: Rule 14.(4)(2). This requires an assessment of the party's case and the alleged admission. Unlike a judgment in default which is a procedural consequence, a judgment on admissions is a judgment on the merits.

[33.] The effect of a clear admission of the whole or part of a claim is that the Defendant cannot, and should not, mount a defence to that claim, or to that part of the claim, that is admitted. An admission is an admission as to liability. There may also be an admission as to quantum. If a specific sum is claimed, the admission may be to the specific sum or part thereof. When an admission is made, no issues are joined between the parties in that regard and therefore that part of the claim may be summarily disposed of. Such a disposition saves time and costs. Such a disposition effects a resolution, in part or in whole, for the affected parties.

[34.] Having regard to the effect of an admission, a court must consider (1) whether there is in fact a clear and unequivocal statement that amounts to an admission of the claim or part of the claim and (2) whether, in the circumstances, it would be just to grant such order "as it appears to the Court that the applicant is entitled to on the admission."

[35.] In this case, the Claimant claims in the Standard Claim filed July 27, 2023:

> 18. Previous requests to provide accurate account of the loan history report made by the Claimant to the Bank have resulted in inaccurate and incomplete reporting of activities on the Claimant's loan bank account held at the Bank.
>
> 19. As a result of the foregoing, the said Bank has breached its Statutory duty under the Financial Transactions Reporting Act 2018. And further, the said Bank has committed a criminal offence by its violation of section 18 of the aforementioned Act. The said Bank has also breach its contract with the Claimant.
>
> **PARTICULARS OF STATUTORY BREACH**
>
> a) Failure to maintain and complete record of customer contrary to section 15; and
>
> b) Failure to retain or to properly keep records of its customers contrary to Section 18 of the said Act
>
> 20. The Claimant further avers that sections of the above-mentioned Financial Transaction Reporting Act are implied terms into the aforementioned signed loan agreement between the Claimant and the Bank. The said implied term to provide the Claimant with the aforementioned accurate and complete loan history report was and continues to be breached by the Defendant.
>
> 21. That not being able to obtain any complete and accurate history report on his loan account from the Defendant has prevented and continues to prevent the Claimant from seeking to restructure the aforesaid loan with another financial

institution. And further, the Claimant wants to ensure and is so entitled to know whether his loan payments are being paid on his loan or whether the same is financing another person's loan.

22. That the aforementioned breaches and statutory violations by the Defendant have caused and continue to cause severe stress on the Claimant.

23. For all the above reasons, the Claimant has suffered damages and loss.

PARTICULARS OF SPECIAL DAMAGES

a) Legal expenses = $48,566.00

AND THE PLAINTIFF CLAIMS:

1. Damages;
2. Loss;
3. A Declaration that the Claimant is and was at all material times lawfully entitled to obtain a complete and accurate history report on his loan account;
4. An Order for specific performance of the Defendant duties owed to the Claimant under the Financial Transaction Reporting Act 2018 and under the inherent jurisdiction of the Honorable Court.
5. Cost;
6. Interest pursuant to the Civil Procedure (Award of Interest)Act 1992 at such rate and for such period as the Honourable Court deems fit and just; and
7. Any additional or further Orders, which this Honourable Court may deem fit and just.

[36.] A good starting point to consider judgment on admissions is to consider the case that a Claimant must make out in the absence of an admission. Such a consideration is also useful to assist the court in determining the nature of the admission and the effect of the admission so that judgment, if granted, is granted on such terms as "it appears to the Court that the applicant [for judgment] is entitled to on the admission". An admission serves to deprive a Defendant of a defence to the claim. An admission obviates the need for the Claimant to prove the fact or issue admitted and can serve to lessen a cost award against the Defendant.

[37.] The issues before me in this case would be (1) whether there was a duty owed by the Defendant to the Claimant pursuant to statute and/or by contract to maintain the records sought , viz, a statement of account for the years 2005 to 2007 and, if so, (2) whether there was a failure to maintain the records as alleged by the Claimant and (3) whether there were losses suffered by the Claimant as a result. The Claimant would be required to show that the Defendant owed a duty to the Claimant pursuant to statute and/or by contract to maintain the records sought , viz, a statement of account for the years 2005 to 2007 and that there was a breach of that duty and that the Claimant suffered loss as a result.

[38.] The letter relied upon communicates that the Defendant bank is "unable to generate" records for the 2005 to 2007 period. This letter was written after affidavits from bank employees (Silbert Clarke and Paulette Butterfield) had been filed and had exhibited records they identified as statements of accounts from 2005 to 2007. The letter was followed by a belated affidavit of Indira Deals-Sands which appears to recant that statement. That affidavit also points out that the statement of accounts for 2005 to 2007 had been exhibited in the Trial bundle of documents which had been filed by the Claimant. The suggestion is that the Claimant has had the statements sought.

[39.] The question therefore is what is to be made of the more recent statement of the General Legal Counsel of the Defendant bank when juxtaposed against the previous affidavits and witness statements filed on behalf of the Defendant bank, which affidavits and witness statements exhibited what were said to be the statements of accounts which were the subject of the request of the Claimant i.e. records for the years 2005 to 2007.

[40.] While the treatment and handling of the statement of accounts of the Claimant and his wife, as shown in the previous action, is cause for concern, it is apparent that the statements of accounts were eventually provided to the Claimant during the course of the prior court proceedings. Again, the nature of the response of the financial institution to the request of a client was less than satisfactory. The Court of Appeal, in the prior proceedings, found that there were discrepancies in the accounts and remitted the matter back to the Supreme Court.

[41.] In the referenced 2017 suit (240/2017), brought against the Claimant by the Defendant bank for a mortgage default, the Court of Appeal found that there had been a discrepancy in the accounting and remitted the matter to the Supreme Court for a proper accounting. By judgment dated January 29, 2025, the learned Chief Justice found that the discrepancy had been addressed and that the accounting had been reconciled. The learned judge granted judgment in favour of the bank. As part of the reconciliation process, the Claimant bank relied on the affidavit of Silbert Clerk. It is common between the parties that that affidavit exhibited what were said to be statements of accounts for the years 2005 to 2007. The judgment of the learned Chief Justice specifically addressed the contents of the affidavit of Paulette Butterfield, which is said to contain the statements of accounts for the years 2005 to 2007. Those statements were served on the Claimant in those proceedings.

[42.] It is clear from the face of the records that the statements sought were produced to the Claimant. Those statements were reproduced by the Claimant for the Trial Bundle in these proceedings. Those statements were relied on to the satisfaction of the learned judge who gave judgment for the Bank in the 2017 suit.

[43.] Counsel for the Claimant argues that the July 5, 2023 letter has "overtaken" prior events. I do not accept this to be so when the evidence before the court is that the statements of account, including records for 2005 to 2007, were previously reproduced in an earlier suit between the parties. The Defendants for their part have resiled from the July 5, 2023 statement in the letter. They do so not on matters that took place subsequent to that statement but by reference to events that took place prior to that statement. The affidavit by the maker of the letter refers to pre-existing documents and the fact that the records, had to the knowledge of the Claimant, been previously supplied notwithstanding the Claimant's non-acceptance of the records as full and accurate.

[44.] It is one thing to assert that the statements are inaccurate and another thing to assert that they were not maintained. I find that the production of those records prior to the institution of this suit is sufficient evidence that the records complained of had been maintained and were provided to the Claimant.

[45.] If the Claimant's assertion is that the records are inaccurate, then the Claimant would be put to proof to show same. An admission that the records were not full and were inaccurate cannot be inferred from a letter that states that the records could not be generated. An admission ought to be clear and unequivocal.

[46.] As I understand it, the case of the Claimant is the failure to maintain and provide records to the Claimant. This is the premise of the claimed losses. The Claimant also argues that the Defendant has a duty to maintain records since the opening of the account with the Defendant bank in 2005 and that the letter which indicates that the bank is unable to generate records for that period is an admission of failure to maintain records. Even if this court were to accept that the statement was an admission of a current failure to maintain records, the letter would be treated as an admission of fact. This court would have to determine what judgment the Claimant would be entitled to on what would be an admission of fact. The statement would not be an admission of liability – it is not an acceptance of a duty owed to the Claimant nor an acknowledgment that a duty was breached. The letter by itself would not advance the Claimant's case on an entitlement to a judgment by which the Defendant would be held liable for the Claimant's loss.

[47.] There is no pleading or further documentation that one could read in conjunction with the letter in order to advance a case of an entitlement to a judgment in whole or in part. The Defence reads:

> With respect to the following paragraphs of the Claimant's Statement of Claim:
> Paragraphs 1: 19 and 20 — There is no obligation upon the Defendant to provide a record of the said loan to the Claimant under the provisions of the Financial Transactions Reporting Act,

2018 (hereinafter called "the Act") referred to by the Claimant or at all. Consequently, there is no expressed and/or implied term under the said loan compelling the Defendant to provide a Statement of Account for said loan to the Claimant. Notwithstanding the absence of such expressed and/or implied term, the Defendant has nonetheless at all material times provided the Claimant with a full, complete and accurate accounting of the said loan. The Defendant has not committed any criminal offence under the Act as alleged or at all.

Paragraph 6: The loan was not repayable until on or around the 25th April, 2005 and the Claimant's first payment thereunder was on the 18th May, 2005.

Paragraph 7: The loan account reveals amounts debited and credited to the same; not necessarily payments debited and credited from the same.

Paragraphs 14: 17, 18, 21 The Claimant has a full, accurate and complete record of the said loan account since by Paragraph 17 of his Statement of Claimant it is admitted by him that he has a record of the said loan account for the period 18th June, 2018 to the 14th July, 2023. Further, during the course of the proceedings of Common Law and Equity Action number 240 of 2017 between the Defendant herein as Plaintiff and the Claimant herein and the said Marilyn Deleveaux as Defendants therein (hereinafter called "the said 2017 Action"), the Claimant and the said Marilyn Deleveaux and/or their Attorney, Arthur Minns received the Affidavit of Silbert Clarke filed in the said 2017 Action. That said Affidavit exhibited a record of the said loan for the period 29th March, 2005 unto the 18th October, 2017. The said Affidavit of Silbert Clarke and the exhibits thereto were included in the Claimant's and Mrs. Deleveaux's Bundle of Documents filed in the Honourable Court of Appeal on the 24th August, 2018. Additionally, by the Affidavit of Claimant filed in the said 2017 Action on the 22nd November, 2019, he acknowledged his receipt and review of the contents of an Affidavit filed by the Defendant in the said 2017 Action on the 8th August, 2019. That said Affidavit filed in the said 2017 Action on the said 8th August, 2019 exhibited a Statement of Account of the said loan for the period 1st October, 2007 unto the 19th July, 2019. In the circumstances, the Claimant has received a full, accurate and complete record of a Statement of Account of the said loan from its inception up to the 14th July, 2023.

[48.] By way of Defence, the Defendant bank denies any liability to the Claimant and asserts that the Claimant has the records complained of.

[49.] There is no admission by the statement that the bank is "unable to generate" records that the Defendant owed the Claimant a duty under statute or under contract. Nor can such an admission be inferred. The admission ought to be clear.

[50.] In the circumstances, I find that the July 5, 2023 letter does not amount to an admission in whole or in part of the Claimant's claim.

[51.] The Claimant's application for a judgment on admissions is dismissed.

The Defendant's Application to strike out Standard Claim

[52.] The Defendant makes its application by Notice of Application filed February 17, 2025. That application reads:

> The Defendant makes an application for the Claimant's Statement of Case including his Claim Form and Statement of Claim filed herein (hereinafter referred to as "the Statement of Case") to be struck out.
>
> The application hereunder is made under the inherent jurisdiction of the Honourable Court and/or pursuant to the Supreme Court Civil Procedure Rules 2022, Rule 26.3.
>
> The grounds of the application hereunder are that the Statement of Case does not disclose a reasonable ground for bringing the claim thereunder and is otherwise frivolous, vexatious, scandalous or is an abuse of process.
>
> The evidence contained in the Schedule hereto is relied upon by the Defendant.

[53.] The evidence contained in the Schedule is a reference to (1) an affidavit of Silbert Clarke filed on October 17, 2017 in the 2017 action between the parties, (2) a witness statement by Paulette Butterfield, bank employee and the judgment of his Lordship, Chief Justice Sir Ian Winder, dated January 29, 2025, delivered in the 2017 action between the parties.

Submissions of the Parties

[54.] The Defendant's submissions may be summarized as follows: (1) there is no statutory obligation to maintain records beyond 5 years, (2) the records were provided to

the Claimant in a prior action and (3) the statute does not confer a private right of action on the Claimant such as to afford the Claimant a cause of action.

[55.] The Defendant submits that the relevant statutory section in this case is the Financial Transactions Reporting Act 2018 Section 15(2)(b) and that the Defendant's statutory obligation was to maintain records for a period of five (5) years from the date of each transaction. The Defendant submits that after the year 2012 there was therefore no obligation upon the Defendant to provide statement of accounts for the said mortgage loan for the period 2005 to 2007. Counsel for the Defendant also submitted that the Defendant had in fact provided the statement of account for the period 2005 to 2007 which was exhibited to the Affidavit of Silbert Clarke filed in the action intituled '**Bank of The Bahamas Limited v. Christison Deleveaux and Marilyn Deleveaux** Common Law and Equity Action Number 240 of 2017'. The Defendant relies on the judgment His Lordship, Sir Winder CJ as evidence that the Defendant Bank had in fact provided a sufficient accounting of the mortgage loan from its inception i.e. 2005. The Defendant also submits that even if there was a breach of the statute as alleged, "such breach would not have afforded the Claimant a private law right or entitlement to bring this action against the Defendant". The Defendant relies on the cases of **X (Minors) v. Bedfordshire County Council** [1995] 2 A.C. 633 and **Garrett v. Ansbacher (Bahamas) Ltd.** [2004] BHS J. No. 459

[56.] The Claimant's submissions may be summarized as follows: (1) the statutory obligation is to maintain records from the inception of the relationship with the client otherwise the financial institution could not properly operate, (2) the statutory duty is necessarily implied in the contract with the client (3) the bank cannot derogate from the common law duty owed to customers and (4) the statute confers a private right of action on the Claimant such as to afford the Claimant a cause of action.

[57.] Counsel for the Claimant submits that the relevant statutory section in this case is the Financial Transactions Reporting Act 2018 Section 15(2)(a) and that the Defendant's statutory obligation was to maintain records from the inception of the mortgage loan, i.e. 2005. The Claimant submits that it would be an absurdity if the banks did not have a duty to maintain records because that would mean that the banks would have an unfair advantage in the contract with the customer and could choose what records to disclose. Counsel for the Claimant argued that the bank had a duty to supply records to customers so that customers could see, for example, what deposits had been made. Counsel for the Claimant submitted that the statutory duty to maintain records was implied into the terms of the mortgage with the Claimant.

[58.] Counsel also submitted that the bank would have to provide a proper accounting if it wished to prove a breach and pursue relief per **Morley v Family Guardian Company Ltd**. Counsel for the Claimant submitted that the legislation mandates the bank to keep proper records which is a safe guard for both the bank and the customer. Counsel for the Claimant also submitted that there is a common law duty to disclose and keep a good record.

Legal Analysis and Determination

[59.] The context of the Defendant's application is that the Claimant alleges that there is a statutory duty imposed on the Defendant to supply the records sought and that the statutory duty is implied in the contract between the parties. The statutory breaches are identified as:

> (a) Failure to maintain and complete record of customer contrary to section 15; and
>
> (b) Failure to retain or to properly keep records of its customers contrary to Section 18 of the said Act

[60.] The imposition of the duty is refuted by the Defendants.

[61.] The Defendant brings its application under Rule 26.3(1)(b) and (c) and under the inherent jurisdiction of the Court on the ground that the Claimant's statement of case "does not disclose a reasonable cause of action, is frivolous, vexatious and scandalous or otherwise an abuse of process."

[62.] Rule 26.3 of the CPR provides as follows:

> 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;
>
> (b) the statement of case or the part to be struck out does not disclose any reasonable ground for bringing or defending a claim;
>
> (c) the statement of case or the part to be struck out is frivolous, vexatious, scandalous, an abuse of the process of the Court or is likely to obstruct the just disposal of the proceedings; or
>
> (d) the statement of case or the part to be struck out is prolix or does not comply with the requirements of Part 8 or 10.

(2) Where —
(a) the Court has struck out a claimant's statement of case;
(b) the claimant is ordered to pay costs to the defendant; and
(c) before those costs are paid, the claimant starts a similar claim against the same defendant based on substantially the same facts,
the Court may on the application of the defendant stay the subsequent claim until the costs of the first claim have been paid.

[63.] Again, the January 2024 Practice Guide to the CPR provides helpful guidance as to the practice and procedure observed in the application of the rules. At the notes to rule 26.3 is provided, in part:

NOTES - PART 26.3
Statement of Case is defined in Part 2.1. The court has a discretion to strike out the statement of case, or a part of the statement of case, on application or by its own initiative (Part 26.2). This rule does not displace the court's inherent jurisdiction to strike out proceedings that abuse its process. Note that if the proceedings were commenced prior to the coming into effect of these rules but are subject to these rules, then the new regime and considerations for striking out will apply.

Cases
Glenard Evans v Airport Authority 2022/CLE/gen/01521 (23 November 2023) (The claimant was allegedly terminated from his employment with an airline until he received his badges/credentials from the defendant. He allegedly applied for a job with another airline and was informed by employees/servants/agents of the defendant before applying that he would be re-issued his badges/credentials. However, the claimant complained that the defendant delayed in responding to his application and only granted him limited access, without reasons and without an opportunity to be heard, which caused the airline to which he applied for a job to rescind its offer of employment. The claimant averred that the actions of the defendant were "malicious and/or reckless and/or negligent" and sought damages, interest and costs. The defendant sought to strike out the claimant's originating summons and statement of claim on the basis that the action was an abuse of process because the claimant chose to proceed by ordinary action instead of judicial review and had brought another identical action against the defendant and on the basis that the claimant had no reasonable grounds for bringing the claim.

The Court held that, as a general rule, it would be an abuse of process, which may be addressed under the inherent jurisdiction, for a claimant to avoid the judicial review procedure and the built-in safeguards therein and go by way of an ordinary procedure to vindicate a public law right or to challenge a public law act or decision (the "exclusivity principle"). CPR 26.3 does not displace the Court's inherent jurisdiction to strike out pleadings which are an abuse of the process of the court. CPR 26.3 (1) is not merely a rule on technicality but it goes to furthering the overriding objective in an appropriate case. If, on review of a statement of case, it is clear that it is groundless, then it would be a waste of time and resources to allow the matter to proceed to trial and for the parties to incur further costs. Dealing with a matter expeditiously and fairly includes acceding to a party's application to pre-empt trial where a statement of case is defective or does not disclose a

reasonable ground for bringing or defending a claim. Striking out is often described as a draconian step and, therefore, striking out should be allowed only in plain and obvious cases. If the application to strike out is complex and requires extended argument and fact-finding, then the case is not appropriate for striking out and such matters are to be resolved at trial. CPR 26.3(1)(b) requires that the statement of case must disclose on its face, a ground or cause of action known in law, for otherwise it is defective and doomed to fail. "No reasonable grounds for bringing the claim" allows for a court to, on considering the statement of case, find that even if the allegations are proven, a party cannot succeed at trial. A court is also empowered to strike out the statement of case under the rule where the pleaded cause of action is not supported in the allegations or is not otherwise viable or justiciable.

On the facts, the Court held that the case fell "squarely within" the exclusivity principle as the case was, at its core, a case for the review of the defendant's decision and the defendant's decision-making process. The public law decision was not collateral but the main issue in the proceedings. The Court further held that the case was fit for striking out as disclosing no reasonable cause of action as the claimant was attacking a decision which had not been overturned, the claimant had failed to show how he was entitled to the badges/credentials that he sought such that the failure by the defendant to issue the badges/credentials would amount to a breach of duty and there was no application to amend.)

Dorothy Bain v Royal Bank of Canada (Bahamas) limited 2014/CLE/gen/00283 **(29 December 2023*)*** (The claimant brought an action against the defendant alleging that the her and her husband's signature had been forged on a promissory date loan application for a loan in the amount of $5,000 and that the defendant wrongfully and without their authority disbursed the loan proceeds and debited their accounts. The claimant applied for leave to amend her statement of claim and the defendant applied to strike out the action on the basis that it disclosed no reasonable cause of action. The Court refused permission to amend, holding that the application to amend was made very late, many of the amendments were evidentiary or narrative in nature, the amendments were unspecific and not tightly drawn, the allegations of fraud or forgery were inadequately particularized and the proposal to add a new claim regarding title documents would have required essentially restarting the case management process which would entail additional cost and delay. The Court acceded to the application to strike out on the basis that the claimant's claim was frivolous as the relationship between the claimant and defendant was not fiduciary and the claimant had exhibited to an affidavit an expert report which contradicted the entire substance of the claimant's case. The Court also granted summary judgment against the claimant.)

Citco Global Custody NV v Y2K Finance Inc HCVAP 2008/022 On hearing an application to strike out for disclosing no reasonable grounds for bringing or defending the claim, the judge should assume that the facts alleged in the statement of case are true. Despite this general approach, however, care should be taken to distinguish between primary facts and conclusions or inferences from those facts. Such conclusions or inferences may require to be subjected to closer scrutiny. Striking out is inappropriate where the argument involves a substantial point of law which does not admit of a plain and obvious answer; or the law is in a state of development; or where the strength of the case may not be clear because it has not been fully investigated. It is also well settled that the jurisdiction to strike out is to be used sparingly since the exercise of the jurisdiction deprives a party of its right to a fair trial, and its

> ability to strengthen its case through the process of disclosure and other court procedures such as requests for information; and the examination and cross–examination of witnesses often change the complexion of a case. Also, before using CPR 26.3(1) to dispose of 'side issues', care should be taken to ensure that a party is not deprived of the right to trial on issues essential to its case. In deciding whether to strike out, a judge should consider the effect of the order on any parallel proceedings and the power of the court in every application must be exercised in accordance with the overriding objective of dealing with cases justly.

[64.] The principles applicable to an application under Rule 26.3 are well-captured in the notes to Rule 26.3. It is well-established that the discretion to strike out should be used sparingly since an order striking out a statement of case serves to drive a party from the judgment seat and that party would not have an opportunity to be heard on the merits of its case. However, striking out is appropriate in plain and obvious cases – this saves costs, expense and judicial time. The court's discretion is to be exercised in accordance with the overriding objective of dealing with cases justly. If the arguments on an application to strike out are complex and requires extensive fact-finding, then the case is not appropriate for striking out. Such legal argument and fact-finding are to be ventilated, explored and tested at trial.

[65.] A statement of case may be struck out for not disclosing a reasonable ground for bringing a claim. This may be, for example, because there is no cause of action pleaded or because the pleaded cause of action is not viable or justiciable. The case of **Glenard Evans v Airport Authority 2022/CLE/gen/01521 (23 November 2023)** confirms that there must be pleaded a ground or cause of action known in law. By the cause of action, the Claimant must show a legal obligation owed to him in law (duty), a breach of that duty and, generally, damage or loss that flow as a result of that breach. "Reasonable ground for bringing a claim" also requires that the pleaded ground ought to be supported by the pleaded allegations of fact. A court may strike out the statement of case if it is clear that even if the allegations were proven, the party could not succeed at trial.

[66.] On this application, it is necessary to revisit the pleaded case of the Claimant. In this case, the Claimant claims in the Standard Claim filed July 27, 2023:

> 18. Previous requests to provide accurate account of the loan history report made by the Claimant to the Bank have resulted in inaccurate and incomplete reporting of activities on the Claimant's loan bank account held at the Bank.
>
> 19. As a result of the foregoing, *the said Bank has breached its Statutory duty under the Financial Transactions Reporting Act 2018*. And further, the said Bank has committed a criminal offence by its violation of section 18 of the aforementioned Act. *The said Bank has also breach [sic] its contract with the Claimant.*
>
> **PARTICULARS OF STATUTORY BREACH**
>
> c) Failure to maintain and complete record of customer contrary to section 15; and

d) Failure to retain or to properly keep records of its customers contrary to Section 18 of the said Act

20. The Claimant further avers that sections of the above-mentioned Financial Transaction Reporting Act are implied terms into the aforementioned signed loan agreement between the Claimant and the Bank. The said implied term to provide the Claimant with the aforementioned accurate and complete loan history report was and continues to be breached by the Defendant.

21. That not being able to obtain any complete and accurate history report on his loan account from the Defendant has prevented and continues to prevent the Claimant from seeking to restructure the aforesaid loan with another financial institution. And further, the Claimant wants to ensure and is so entitled to know whether his loan payments are being paid on his loan or whether the same is financing another person's loan.

22. That the aforementioned breaches and statutory violations by the Defendant have caused and continue to cause severe stress on the Claimant.

23. For all the above reasons, the Claimant has suffered damages and loss.

PARTICULARS OF SPECIAL DAMAGES

b) Legal expenses = $48,566.00

AND THE PLAINTIFF CLAIMS:

1. Damages;
2. Loss;
3. A Declaration that the Claimant is and was at all material times lawfully entitled to obtain a complete and accurate history report on his loan account;
4. An Order for specific performance of the Defendant duties owed to the Claimant under the Financial Transaction Reporting Act 2018 and under the inherent jurisdiction of the Honorable Court.
5. Cost;
6. Interest pursuant to the Civil Procedure (Award of Interest)Act 1992 at such rate and for such period as the Honourable Court deems fit and just; and
7. Any additional or further Orders, which this Honourable Court may deem fit and just.

[67.] The pleaded case of the Claimant is the Defendant's statutory breach per sections 15 and 18 of the FTR2018. The Claimant also pleads a breach of contract. However the contractual term said to be breached is an implied term. The implied term is said to be the duties imposed on the Defendant Bank by the FTR2018. In this matter, the case of the Claimant rests on whether there is a duty imposed on the Defendant by statute, which, if breached, will give the Claimant a right to a remedy. If the duty is implied in the contract, and so not expressly provided for, then the duty must arise at statute.

[68.] This court must therefore determine whether the Financial Transactions Reporting Act (FTR2018) imposed a duty on the Defendant for the benefit of the Claimant and whether the Act expressly or implicitly provides a private law remedy for the Claimant.

[69.] The statutory duties pleaded are itemized as (i) a failure to maintain and complete record of customer contrary to section 15; and (ii) a failure to retain or to properly keep records of its customers contrary to Section 18 of the said Act.

[70.] Section 15 (1) FTR2018 imposes a duty on financial institutions to maintain records. It was not in dispute that the Defendant falls under the definition of "Financial Institution". That definition is found at section 3 of the FTR2018. There was much debate between the parties as to whether the records requested by the Claimant falls under s.15(2)(a) of s. 15(2)(b) of the Act. The distinction is important since there is a difference in the time period for which documents are to be maintained. However, the statutory duty is imposed by section 15(1) and is the same in each instance. Section 15(1) and subsections (2)(a)-(b) read:

> **15. Financial institutions to maintain records.**
> [1.] Every financial institution shall maintain all books and records with respect to their facility holders and transactions in accordance with subsection (2), and the financial institution shall ensure that such records and supporting information are available on a timely basis when required to be disclosed by law.
> [2.] the books and records referred to in subsection (1) shall include, as a minimum-
> (a) records obtained through customer due diligence measures, including account files, business correspondence, and copies of all documents evidencing the identity of facility holders and beneficial owners and the results of any analysis undertaken in accordance with the provisions of this Act, all of which shall be maintained for not less than five years after the business relationship has ended;
> (b) records of transaction, both domestic and international, that are sufficient to permit reconstruction of each individual transaction for both account holders and non-account holders, which shall be maintained for not less than five years from the date of the transaction; and
> (c) …

[71.] Section 18 provides that the failure of a financial institution to retain or properly keep records per the mandate of section 15 is an offence and it makes provision for sanctions for non-compliant financial institutions. Section 18 reads:

> 18. **Record keeping offences.**
> [1.] A financial institution commits an offence under this section where in contravention of section 15 fails, without reasonable excuse, to retain or properly keep records.
> [2.] A financial institution which commits an offence against this section is liable on summary conviction to a fine not exceeding-
> a. In the case of any individual, twenty thousand dollars;
> b. In the case of a body corporate, one hundred thousand dollars.

[72.] Statutory duties are imposed by legislation on legal persons or other entities or bodies identified in the statute. The duty imposed is often a positive duty, requiring the persons, entities or bodies to carry out specified actions. A duty may also restrain the persons, entities or bodies from acting in a certain manner. A breach of a statutory duty can give rise to a private law claim for damages if the statute expressly or implicitly so provides. Where there is no express provision for an available private law remedy, a court must consider the provisions of the statute to determine whether it confers a private right of action. These principles were considered in **X (Minors) Appellants and Bedfordshire County Council Respondents M. (A Minor) and Another Appellants and Newham London Borough Council And Others Respondents E. (A Minor) Respondent and Dorset County Council Appellants Christmas Respondent And Hampshire County Council Appellants Keating Respondent And Bromley London Borough Council Appellants** [1995] 2 A.C. 633 and **Garrett v Ansbacher (Bahamas) Ltd; Mendonca et Al v Ansbacher (Bahamas) Ltd; Biella S.A. et Al v Ansbacher (Bahamas) Ltd et Al**[2004] BHS J No. 459.

[73.] In **X (Minors) Appellants and Bedfordshire County Council Respondents M. (A Minor) and Another Appellants and Newham London Borough Council And Others Respondents E. (A Minor) Respondent and Dorset County Council Appellants Christmas Respondent And Hampshire County Council Appellants Keating Respondent And Bromley London Borough Council Appellants** [1995] 2 A.C. 633 **['X MINORS']**, each of the various plaintiffs brought suits against the local authorities alleging negligence and failure of the authorities to carry out their statutory duties under several acts, including acts passed for the welfare of children and young persons and for educational needs. In each case, the plaintiff sought damages and other relief as a result of pleaded negligence and breach of statutory duties. In each case, at first instance, the claim based on a statutory breach, was struck out as disclosing no cause of action. Those decisions were affirmed on appeal to the Court of Appeal. On appeal to the House of Lords, the Court of Appeal's decision on this issue was affirmed.

[74.] In considering whether a statutory duty could give rise to a private right of action, Lord Browne-Wilkinson made the following observations in giving the judgment of the court, at pages 730 - 732 :

> **General approach**
>
> ***Introductory - public law and private law***
>
> The question is whether, if Parliament has imposed a statutory duty on an authority to carry out a particular function, a plaintiff who has suffered damage in consequence of the authority's performance or non-performance of that function has a right of action in damages against the authority. It is important to distinguish

such actions to recover damages, based on a private law cause of action, from actions in public law to enforce the due performance of statutory duties, now brought by way of judicial review. The breach of a public law right by itself gives rise to no claim for damages. A claim for damages must be based on a private law cause of action. The distinction is important because a number of earlier cases (particularly in the field of education) were concerned with the enforcement by declaration and injunction of what would now be called public law duties. They were relied on in argument as authorities supporting the plaintiffs' claim for damages in this case: I will consider them in a little more detail later.

Private law claims for damages can be classified into four different categories, viz: (A) actions for breach of statutory duty simpliciter (i.e. irrespective of carelessness); (B) actions based solely on the careless performance of a statutory duty in the absence of any other common law right of action; (C) actions based on a common law duty of care arising either from the imposition of the statutory duty or from the performance of it; (D) misfeasance in public office, i.e. the failure to exercise, or the exercise of, statutory powers either with the intention to injure the plaintiff or in the knowledge that the conduct is unlawful.

Category (D) is not in issue in this case. I will consider each of the other categories but I must make it clear that I am not attempting any general statement of the applicable law: rather I am seeking to set out a logical approach to the wide ranging arguments advanced in these appeals.

(A) Breach of statutory duty simpliciter

This category comprises those cases where the statement of claim alleges simply (a) the statutory duty, (b) a breach of that duty, causing (c) damage to the plaintiff. The cause of action depends neither on proof of any breach of the plaintiffs' common law rights nor on any allegation of carelessness by the defendant.

The principles applicable in determining whether such statutory cause of action exists are now well established, although the application of those principles in any particular case remains difficult. The basic proposition is that in the ordinary case a breach of statutory duty does not, by itself, give rise to any private law cause of action. However a private law cause of action will arise if it can be shown, as a matter of construction of the statute, that the statutory duty was imposed for the protection of a limited class of the public and that Parliament intended to confer on members of that class a private right of action for breach of the duty. There is no general rule by reference to which it can be decided whether a statute does create such a right of action but there are a number of indicators. If the statute provides no other remedy for its breach and the Parliamentary intention to protect a limited class is shown, that indicates that there may be a private right of action since otherwise there is no method of securing the protection the statute was intended to confer. If the statute does provide some other means of enforcing the duty that will normally indicate that the statutory right was intended to be enforceable by those means and not by private right of action: *Cutler v. Wandsworth Stadium Ltd*. [1949] A.C. 398; *Lonrho Ltd. v. Shell Petroleum Co. Ltd. (No. 2)* [1982] A.C. 173. However, the mere existence of some other statutory remedy is not necessarily decisive. It is still possible to show that on the true construction of the statute the protected class was intended by Parliament to have

a private remedy. Thus the specific duties imposed on employers in relation to factory premises are enforceable by an action for damages, notwithstanding the imposition by the statutes of criminal penalties for any breach: see *Groves v. Wimborne (Lord)* [1898] 2 Q.B. 402.

Although the question is one of statutory construction and therefore each case turns on the provisions in the relevant statute, it is significant that your Lordships were not referred to any case where it had been held that statutory provisions establishing a regulatory system or a scheme of social welfare for the benefit of the public at large had been held to give rise to a private right of action for damages for breach of statutory duty. Although regulatory or welfare legislation affecting a particular area of
activity does in fact provide protection to those individuals particularly affected by that activity, the legislation is not to be treated as being passed for the benefit of those individuals but for the benefit of society in general. Thus legislation regulating the conduct of betting or prisons did not give rise to a statutory right of action vested in those adversely affected by the breach of the statutory provisions, i.e. bookmakers and prisoners: see *Cutler's case* [1949] A.C. 398; *Reg. v. Deputy Governor of Parkhurst Prison, Ex parte Hague* [1992] 1 A.C. 58. The cases where a private right of action for breach of statutory duty have been held to arise are all cases in which the statutory duty has been very limited and specific as opposed to general administrative functions imposed on public bodies and involving the exercise of administrative discretions.

[75.] In affirming the decisions of the Court of Appeal on the issue of a statutory duty, Lord Browne-Wilkinson opined at page 747 :

The Court of Appeal were unanimous in striking out these claims in both actions. I agree. My starting point is that the Acts in question are all concerned to establish an administrative system designed to promote the social welfare of the community. The welfare sector involved is one of peculiar sensitivity, involving very difficult decisions how to strike the balance between protecting the child from immediate feared harm and disrupting the relationship between the child and its parents. Decisions often have to be taken on the basis of inadequate and disputed facts. In my judgment in such a context it would require exceptionally clear statutory language to show a parliamentary intention that those responsible for carrying out these difficult functions should be liable in damages if, on subsequent investigation with the benefit of hindsight, it was shown that they had reached an erroneous conclusion and therefore failed to discharge their statutory duties.

It is true that the legislation was introduced primarily for the protection of a limited class, namely children at risk, and that until April 1991 the legislation itself contained only limited machinery for enforcing the statutory duties imposed. But in my view those are the only pointers in favour of imputing to Parliament an intention to create a private law cause of action. When one turns to the actual words used in the primary legislation to create the statutory duties relied upon in my judgment they are inconsistent with any intention to create a private law cause of action.

[76.] The case of **X MINORS** was followed in this jurisdiction by the learned Justice Small in **Garrett v Ansbacher (Bahamas) Ltd; Mendonca et Al v Ansbacher (Bahamas) Ltd; Biella S.A. et Al v Ansbacher (Bahamas) Ltd et Al** [2004] BHS J No. 459. The judgment concerned a group litigation with the Plaintiffs seeking to recover investments lost. In three suits, three Bahamian companies sued the Defendant pleading that in breach of contract, breach of trust and breach of statutory duty, the Defendant transferred their money knowing that they would suffer loss. The Defendant applied to have the statements of claim struck out under Order 18, Rule 19 RSC and under the inherent jurisdiction of the court. The learned trial judge noted that the statements of claim did not contain particulars of the duties alleged to be owed by the Defendant to the Plaintiffs or the factual foundation on which the alleged breach of trust is said to have occurred nor did they plead the link between breach of contract and the loss suffered. In relation to the pleaded breach of statutory duty, the learned judge noted at paragraphs 38 to 39:

> 38. The Statements of Claim do not specify the statutory duties under the Mutual Funds Act that the plaintiffs contend were breached. Assuming, for the sake of argument that they are minded to plead sections 15 and 16, as did the plaintiff in the Garrett Action.
>
> 39. Those sections provide:
>
> > "15. A licensed mutual fund administrator shall not provide a principal office to a regulated mutual fund unless it is satisfied that-
> >
> > (a) each promoter of the mutual fund is of sound reputation;
> > (b) the administration of the mutual fund will be undertaken by persons who have sufficient expertise to administer the mutual fund, and
> > (ii) are of sound reputation; and
> > (c) that the business of the mutual fund and any offer of equity interest in it will be carried out in a proper manner.
> >
> > 16. If a licensed mutual fund administrator knows or has reason to believe that a regulated mutual fund for which it provides a principal office, or a promoter or operator of such a mutual fund-
> > (a) is or is likely to become unable to meet its obligations as they fall due;
> > (b) is carrying on business otherwise than in accordance with this or any other Act; or
> > (c) is carrying on business in a manner that is or is likely to be prejudicial to investors or creditors of the mutual fund, the mutual fund administrator shall immediately give the Board written notice of its knowledge or belief giving its reason for that knowledge or belief."

[77.] The learned judge highlighted the hurdles that the Plaintiffs would have to cross in demonstrating that the statute conferred a private right of action for a breach of duty. At paragraph 40, Justice Small opined:

> 40. Even if they plead these sections, these plaintiffs are faced with at least three difficulties. Firstly, where a statute provides for remedies or sanctions for its breach, it normally means that no private right of action is created; secondly breaches of sections 15 and 16 give rise to criminal penalties under section 39(1) of the Act and finally, these plaintiffs would only be able to establish a cause of action if they could demonstrate that the duty in question was imposed for the protection of a limited class of the public and that the Legislature intended to confer on members of that class a private right of action for breach of that duty. *X (minors) v. Bedfordshire County Council* [1995] 2 A.C. 663 at 731.

[78.] The learned judge found that the Statements of Claim disclosed no reasonable cause of action and struck out the actions (paragraphs 44 – 45).

[79.] In the instant case, the Claimant pleads a breach of contract on the breach of an implied term. No further particulars are given in relation to the contract or of the terms of the contract between the parties. The pleaded breach of contract is breach of the Defendant's duties under the FTR2018.

[80.] I note that section 18 provides for sanctions for the failure to comply with section 15. There is no imposition of a duty to act or to refrain from acting. It is difficult to see, and counsel for the Claimant did not pursue the point, how section 18 could be said to impose a statutory duty on the Defendant.

[81.] On the other hand, section 15 clearly imposes a duty on the Defendant to maintain certain records. This section and the legislation must be reviewed to determine whether, in the absence of an express provision, there are provisions from which one might infer an intention by the legislature to confer a private right of action on a class of persons which would include the Claimant.

[82.] I consider the nature of the legislation, whether as a matter of construction the statutory duty was imposed for the protection of a limited class of the public and whether Parliament intended to confer on members of that class a private right of action for breach of the duty and whether the statute itself creates a remedy or sanction for the breach of duty.

[83.] The Financial Transaction Reporting Act 2018 ('FTR2018'), repealed and replaced its precursor, the Financial Transactions Reporting, Chapter 368. Chapter 368 Act was

described as "An Act to impose certain obligations on financial institutions in relation to the conduct of financial transactions; and for connected purposes." While that purpose is not repeated by way of a long title in FTR2018, such a purpose and objective of the statute may be gleaned from the provisions of that Act. Section 2 of FTRA 2018 is the main definition section. Financial institution is defined in section 3. Part II is captioned 'Duty of Financial Institutions'. Throughout the Act, several duties are set out. The financial institutions have duties in relation to, for example, conducting risk assessments, performing customer due diligence and maintaining records. Financial institutions are to develop and implement procedures for the prevention of activities related to identified risks. Financial institutions are to report suspicious transactions. As noted before, if a financial institution fails to comply with these several duties, the statute provides for sanctions. For example, by section 18, non-compliance with section 15 (record keeping), is a criminal offence and can attract a fine. Other examples of sanctions are to be found in the FTR2018, and, in particular, in Part V which is labeled "Offences". Non-compliance may also result in Administrative penalties (section 57).

[84.] The FTR2018 makes provisions for enforcing compliance and for detecting no-compliance and it has several provisions by way of sanctions in the event of non-compliance. What is patently absent is the recognition of an obligation to a customer whose records are being kept. Notably, there is no express provision for suit or for damages or for the assessment of damages for private individuals. The Act places duties on the financial institutions but nowhere in the Act are such duties expressed to be owed to a customer nor is any express right given to a customer to enforce the duties by private action.

[85.] Counsel for the Claimant contends that it would be an absurdity if an obligation to maintain records were not owed to the customer and points out that a bank would have to produce a record if it were to pursue proceedings against a delinquent customer. Counsel relies on **Morley v Family Guardian** SCCivAPP No. 205 of 2012 (Bahamas court of Appeal) for this point. In that case, President Allen considered the obligation of the bank to produce fair accounts to the customer.

[86.] In **Morley v Family Guardian**, the Court of Appeal remitted a matter to the Supreme Court for a proper accounting on an appeal from an Order 77 Rules of the Supreme Court 1978, ('RSC') application and judgment. In that case, judgment was given against the Appellant in a mortgage suit and an order of vacant possession was granted. The order for vacant possession was stayed. The Respondent subsequently applied to have the stay lifted. The Application was supported by an affidavit which showed an increase in the principal sum owing and which stated sums for expenses incurred. The judge at first instance lifted the stay. An appeal was lodged. The Court of Appeal found that there was no sufficient explanation of the increase in the principal sum owing nor was there any

explanation of the expenses incurred. In remitting the matter back to the Supreme Court , President of the Court of Appeal, Honourable Mrs. Justice Allen, as she then was, said at paragraph 17:

> We must admit the apparent drastic increase in the principal amount owed to the respondent is a curious state of affairs. Unlike the Affidavit in Support of the Originating Summons discussed in paragraph 11 above, this affidavit does not provide any supporting information. There is no explanation of how the principal balance rose from $85,000.00 to $135,000.00. Neither is there an indication of how the $53,728.42 in expenses arose. Without any further explanation of these sums one is simply left to speculate and accept that the said sums are duly owed. The information that is being requested by the appellant is essentially within the knowledge of the respondent; it is an old and firmly established principle in law that he who asserts must prove. On the basis of fairness, equity and due process we are of the view that the appellant is entitled to know how the above referenced increases arose.

[87.] In my view, to say that the FTR2018 does not impose an obligation on the financial institution for the benefit of a right of action for the customer is not irreconcilable with the duty considered by President Allen in **Morley v Family Guardian**. It is a fundamental principle of law that he who alleges must prove. A bank who sues a customer bears the burden of proof in relation to its suit. It is therefore for the bank to maintain those that it will need for that purpose. What the FTR2018 does not do is to impose a duty on the bank to maintains records for the customer's purpose.

[88.] Section 17 of the FTR2018 provides that the financial institution is to destroy certain records after a period of time and therefore this duty to destroy records goes against a general obligation to maintain records for the benefit of the customer, as the Claimant maintains. However section 17 also recognizes that the financial institution may have a lawful reason for maintaining the records and so it does not prevent the institution from keeping records that, for example, it needs for the purpose of carrying on its business. It is not incongruous that there is a statute which regulates and mandates the keeping of customer records for purposes of inspection but which fails to impose a duty to the customer on the financial institution.

[89.] Counsel for the Claimant submitted that 'customer" is defined by section 2 of the Act and is an identified limited class for which the Act was passed. Section 2 is a definition section. There are various groups and classes of legal persons that are identified in section 2. The Act regulates financial transactions of financial institutions. Both of those terms are defined. The Act also defines classes of persons that may be involved in a financial transaction – "customer" is only one such class. The identification and definition of 'customer' does not, in my opinion, cause the legislation to be construed as legislation

imposing a statutory duty for the protection of a limited class of the public. Again, several classes of persons are identified in section 2.

[90.] Counsel for the Claimant argues that it was necessary for the FTR2018 to mandate that the financial institutions maintain records from inception so that the customer may have access to them. In other words, the argument is that the benefit of the FTR2018 is for the customer and that it gives the customer a private right of action. I think that argument may be disposed of when one considers the wording of the legislation and of section 17, referred to above. Section 17 deals with the mandatory destruction of records. Section 17 is a provision which requires financial institutions to destroy records that they have maintained pursuant to the Act unless there is a lawful reason for retaining that record. It seems to me that if the statute mandates the keeping of records for inspection and for certain other purposes, and then mandates the destruction of such records, save for the instances mentioned in the statute, then this legislation is geared towards regulating the financial institutions "in relation to the conduct of financial transactions; and for connected purposes." Such legislation may benefit the customer but it does not confer justiciable rights on the customer. The FTR2018 may be seen as legislation passed for the economic welfare of society, including customers, but it does not give a right of action to an individual. It does not give a private law remedy to an individual. There is nothing in the provisions from which one could infer an intention by the legislature to give a private law remedy to a customer on the breach of a statutory duty by a financial institution. A customer of a financial institution must find its remedy elsewhere.

[91.] In the circumstances, I therefore find that the Claimant has no cause of action based on the FTR2018.

[92.] In the filed Standard Claim, there are no particulars of a breach of contract save an implied term based on the statutory duty. For the reason that no cause of action arises to the benefit of the Claimant based on the FTR2018, and in the absence of any factual allegation or evidence that the duty has been otherwise imported into the contract between the parties, I find that the breach of an implied term in the contract is not a sustainable cause of action and is not a reasonable ground for bringing the claim.

[93.] The Claimant's action is premised on the failure to provide records for the period 2005 to 2007. The evidence is that the statements were supplied in the course of the 2017 litigation. I have already noted that the Claimant's request could have been addressed much differently by the Defendant bank. Nevertheless, the evidence is that the statements sought, including the 2005 to 2007 records, were supplied to the Claimant. Therefore the Claimant's suit that the bank did not maintain such records is not viable.

[94.] I note that the Claimant did not pursue or provide legal support for his oral submissions on the bank's obligation not to derogate from a common law duty.

[95.] For the foregoing reasons, I find that the Standard Claim discloses no reasonable ground for bringing the action. The Standard Claim is struck out.

CONCLUSION

[96.] I find that the Financial Transactions Reporting Act 2018 affords the Claimant no private right of action and that the Standard Claim discloses no reasonable ground for bringing the action.

[97.] The Claimant's Standard Claim is struck out with costs to the Defendant.

ORDER

[98.] For the foregoing reasons, the order and directions of this Court are as follows.

IT IS HEREBY ORDERED THAT:

1. The Claimant's application for judgment on admissions is dismissed. The parties shall bear their own costs

2. The Claimant's Standard Claim is struck out. The Claimant shall pay costs to the Defendant, such costs to be assessed if not agreed.

3. Trial dates of July 1 and 2, 2025 are hereby vacated.

Dated this 26th day of June 2025

Carla D. Card-Stubbs, J

Court