

**IN THE COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
COMMON LAW AND EQUITY DIVISION
CLAIM NO. CLE/GEN/ 00611 OF 2024**

BETWEEN:

LISA FOX

Claimant

AND

SANDRA FOX

First Defendant

DENNIS FOX

Second Defendant

BRIAN DEAN

Third Defendant

Before: Hon. Chief Justice Sir Ian R. Winder

Appearances: Lessiah Rolle with Gavin Cassar and Lisa Fox for the Claimant

Cheryl T. Whyms with Michelle Petty Horton for the First and Second Defendants

Jameca Basden for the Third Defendant

Hearing Date: 16 June, 2025

DECISION

SIR IAN WINDER CJ

This is the application of the First and Second Defendants (the Foxes) for permission to file a counterclaim and to add CIBC Caribbean Bank (Bahamas) Limited as an additional party to the action.

- [1.] The action was commenced on 11 July, 2024 alleging damages for breach of contract, false arrest and detention, defamation and payment of legal fees.
- [2.] The Claimant was arrested on 11 July, 2024 and subsequently charged in with the offence of stealing by reason of service. The arrest and charge followed complaints to the police authorities by the Foxes of allegations of misappropriation of funds. The funds were derived from a cheque in the sum of \$129,061.29 ("The Trust Funds") made payable to "The Edith Glass Trust, Dennis Fox and Sandra Fox TTEs". The cheque came into the Claimants possession in February 2022 as a result of her engagement by the Foxes.
- [3.] The Foxes defended the action in a Defence filed on 31 October, 2024, in which all wrongdoing was denied.
- [4.] By Amended Notice of Application, the Foxes now apply for permission to file a Counterclaim and to add CIBC Caribbean Bank (Bahamas) Limited as a party to the Counterclaim. The application is supported by the affidavits of the Foxes and exhibits the proposed pleadings.
- [5.] As against the Claimant, the Foxes seek to make a counterclaim for damages in the sum of \$137,601.83. They allege breach of fiduciary duty, breach of contract and conversion.
- [6.] As against CIBC Caribbean Bank (Bahamas) Limited, the Foxes also seek to claim damages in the sum of \$137,601.83. They allege conversion of the cheque in the sum of \$129,061.29 written to "The Edith Glass Trust, Dennis Fox and Sandra Fox TTEs" and/as constructive trustee of the said cheque being the knowing recipient of trust property.
- [7.] The Foxes assert that the cheque was not endorsed to the Claimant and that no permission was given to the Claimant to deposit the cheque into her clients' account. They allege that on 10 February, 2022, the Trust Funds improperly cleared in the Claimant's law firm's clients' account.

The Application

- [8.] Rule 18.4 and 18.5 of the Supreme Court (Civil Procedure) Rules provides:

“18.4 Defendant’s counterclaim against the claimant.

(1) A defendant may make a counterclaim against a claimant by filing particulars of the counterclaim in Form G11.

(2) A defendant may make a counterclaim against a claimant—

- (a) without the Court’s permission if he files it with his defence; or**
- (b) at any other time with the Court’s permission.**

(3) Part 9 does not apply to a claimant who wishes to defend a counterclaim.

18.5 Counterclaim against a person other than the claimant.

(1) A defendant who wishes to counterclaim against a person other than the claimant must apply to the Court for an order that that person be added as an additional party.

(2) An application for an order under paragraph (1) may be made without notice unless the Court directs otherwise.

(3) Where the Court makes an order under paragraph (1), it will give directions as to the management of the case.”

[9.] The Claimant opposes the application and says that:

(1) The Foxes do not have locus standi to bring the claim as the third defendant and his brother Ulysses Dean were given power of attorney over the funds by Edith Glass.

(2) Attorney Michelle Horton ought not be permitted to appear for the Foxes given that she may be a potential witness at the trial.

[10.] I did not accept the objection on behalf the Claimants as valid.

[11.] Ms Basden, counsel for the Third Defendant, supported the application by the Foxes and contended that such power of attorney as her clients now possess did not preclude the recovery of the funds by the Foxes.

[12.] It would be incredible that the Claimant would purport to deduct substantial sums from the Trust Funds, on account of her fees claimed against the Foxes but nonetheless assert that they have no right to make a claim to recover these funds.

[13.] As to the objection to Mrs. Horton's participation, any value which she may have as a potential witness to the action has no bearing on whether the Counterclaim should issue or CIBC Caribbean Bank (Bahamas) Limited should be added as a party to the action.

[14.] The Foxes submit that:

(1) The addition of the Bank is desirable within the meaning of CPR Part 18, as their presence is necessary for the Court to comprehensively adjudicate all the issues in dispute.

(2) The proposed counterclaim is closely connected to the facts underlying the Claimant's case. The court's case management powers under the CPR is in the interest of justice to grant permission to include this counterclaim in the proceedings.

(3) Adding the Bank and allowing the counterclaim will:

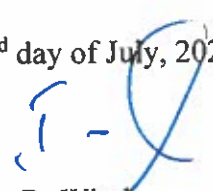
- a) avoid multiple proceedings involving substantially the same facts;
- b) prevent inconsistent judgments;
- c) promote judicial economy and procedural efficiency.

(4) There is no undue prejudice to the Claimant or any party. Any potential inconvenience can be addressed through appropriate case management directions.

[15.] I accept the submissions of the Foxes and will accede to the Foxes Applications and grant permission to issue the Counterclaim against the Claimant and CIBC Caribbean Bank (Bahamas) Limited (as an additional party). The documents are to be filed within the next 7 days.

[16.] I will hear the parties on the issue of costs.

Dated the 3rd day of July, 2025



Sir Ian R. Winder
Chief Justice