

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2025/CLE/gen/00207

IN THE MATTER OF Block 56, Lot No. 2 of Serenity Subdivision

B E T W E E N

SERENITY PROPERTY OWNERS ASSOCIATION LIMITED

Claimant

AND

CAREY DEAN ARNALDO BOOTHE

First Defendant

AND

COLETTE ETHLYN DARVILLE-BOOTHE

Second Defendant

Before: Assistant Registrar Akeira Martin

Appearances: Ms. Ashley Sands of McKinney, Bancroft & Hughes for the Claimant

Heard: On the Papers

RULING

- [1] By Notice of Application filed 23rd April, 2025, the Claimant seeks an order to dispense with service of the Notice of Discontinuance and such further or other directions as the court deems necessary in the circumstances, pursuant to Rules 6.8 and 26.1 (6) of the Supreme Court Civil Procedure Rules, 2022 **(the “CPR”)**. The said Notice of Application is supported by the Affidavit of Berchel Wilson also filed 23rd April, 2025 **(collectively referred to as the “Application”)**.
- [2] The Claimant seeks the order on the ground that the matter was settled prior to its Fixed Date Claim Form and Affidavit of Aldria Nixon both filed 25th March, 2025 **(the “Claim Form”)** being served on the Defendants. Notwithstanding, the CPR mandates service of a Notice of Discontinuance on a Defendant prior to its filing in

accordance with Rules 37.3(1) and (2) of the CPR, before an action can be discontinued. **Rule 37 of the CPR** makes no provision for a Claimant to file a Notice of Discontinuance in the absence of confirmation of its service on a Defendant.

- [3] The Claimant also relies on the overriding objective of the Court set out at **Part 1.1 of the CPR** which requires the Court to deal with cases justly and at proportionate costs. The Claimant submits that it would be inefficient and result in added costs if it were required to attempt to locate the Defendants to serve them with a claim it does not intend to pursue along with the notice to discontinue the claim. The Claimant submits that the order sought would cause no injustice to the Defendants.

The Law and Analysis

- [4] The Application is made pursuant to **Part 1.1, Rule 6.8 and Rule 26.1 (6) of the CPR** which state,

“1.1 The Overriding Objective.

(1) The overriding objective of these Rules is to enable the Court to deal with cases justly and at proportionate cost.

(2) Dealing justly with a case includes, so far as is practicable:

(a) ensuring that the parties are on an equal footing;

(b) saving expense;

(c) dealing with the case in ways which are proportionate to —

(i) the amount of money involved;

(ii) the importance of the case;

(iii) the complexity of the issues; and

(iv) the financial position of each party;

(d) ensuring that it is dealt with expeditiously and fairly;

(e) allotting to it an appropriate share of the Court’s resources, while taking into account the need to allot resources to other cases; and

(f) enforcing compliance with rules, practice directions and orders.”

“6.8 Power of Court to dispense with service.

(1) The Court may dispense with service of a document if it is appropriate to do so.

(2) An application for an order to dispense with service may be made without notice but must be supported by evidence on affidavit.”

“26.1 Court's general powers of management.

(6) In special circumstances on the application of a party the Court may dispense with compliance with any of these rules.”

[5] **Part 37 of the CPR** addresses Discontinuance. **Part 37 of the CPR** states,

“37.1 Scope of this Part.

(1) The Rules in this Part set out the procedure by which a claimant may discontinue all or any part of a claim.

(2) A claimant who —

(a) claims more than one remedy; and

(b) subsequently abandons a claim to one or more remedies but continues with the claim for the other remedies, is not treated as discontinuing part of a claim for the purposes of this Part.

37.2 Right to discontinue claim.

(1) The general rule is that a claimant may discontinue all or part of a claim without the permission of the court.

(2) Notwithstanding paragraph (1) —

(a) a claimant needs permission from the court to discontinue all or part of a claim in relation to which —

(i) any party has given an undertaking to the court; or

(ii) the court has granted an interim injunction;

(b) a claimant who has received an interim payment in relation to a claim, whether voluntarily or pursuant to an order under Part 17, may discontinue only if the —

(i) court gives permission; or

(ii) defendant who made the payment consents in writing;

(c) if there is more than one claimant, a claimant may not discontinue unless —

(i) every other claimant consents in writing; or

(ii) the court gives permission, judgment or otherwise.

(3) If there is more than one defendant the claimant may discontinue all or part of the claim against all or any of the defendants.

37.3 Procedure for discontinuing.

(1) To discontinue a claim or any part of a claim a claimant must —

(a) serve a notice of discontinuance on every other party to the claim in Form G15; and (b) file a copy of it.

(2) The claimant must certify on the filed copy that notice of discontinuance has been served on every other party to the claim.

(3) If the claimant needs the consent of some other party, a copy of the necessary consent must be attached to the filed copy of the notice of discontinuance.

(4) If the claimant needs permission from the court, the notice of discontinuance must contain details of the order by which the court gave permission.

(5) If there is more than one defendant, the notice of discontinuance must specify against which defendant or defendants the claim is discontinued.

37.4 Right to apply to have notice of discontinuance set aside.

(1) If the claimant discontinues without the consent of the defendant or the permission of the court, where such consent or permission is required, any

defendant who has not consented may apply to have the notice of discontinuance set aside.

(2) A defendant may not apply under this rule more than twenty-eight days after the date when the notice of discontinuance was served on that defendant.

37.5 Effect of discontinuance.

(1) Discontinuance against any defendant takes effect on the date when the notice of discontinuance is served on that defendant under rule 37.3(1)(a).

(2) A claim or the relevant part of a claim is brought to an end as against that defendant on that date.

(3) Paragraphs (1) and (2) do not affect —

(a) any proceedings relating to costs; or

(b) the right of the defendant under rule 37.4 to apply to have the notice of discontinuance set aside.

37.6 Liability for costs.

(1) Unless the —

(a) parties agree; or

(b) court orders otherwise, a claimant who discontinues is liable for the costs incurred by the defendant against whom the claim is discontinued, up to the date on which notice of discontinuance was served.

(2) If a claim is only partly discontinued —

(a) the claimant is only liable for the costs relating to that part of the claim which is discontinued; and

(b) unless the court orders otherwise, the costs which the claimant is liable to pay are not to be quantified until the conclusion of the rest of the claim.

37.7 Quantification of costs. If the claimant discontinues part of the case only, the amount of costs must be assessed by the court when the remainder of the claim is resolved.

37.8 Discontinuance and subsequent proceedings.

If the claimant —

(a) discontinues a claim after the defendant against whom the claim is discontinued has filed a defence; and

(b) makes a subsequent claim against the same defendant arising out of facts which are the same or substantially the same as those relating to the discontinued claim; and

(c) has not paid the defendant's costs of the discontinued claim, the court may stay the subsequent claim until the costs of the discontinued claim are paid."

[6] The filing and service of a Notice of Discontinuance renders a matter against a Defendant complete save for the issue of costs. This right was reserved to a Defendant as the discontinuance of a matter under the CPR appears to be synonymous with the Claimant's claim against the Defendant being unsuccessful. Therefore, the Claimant is liable for any costs incurred by the Defendant from the

date the claim form package was served on the Defendant up to the time the matter was discontinued.

[7] In the instant case, the Claim Form was never served on the Defendants and the matter was settled, leaving no need for service. While, the provisions of **Part 37 of the CPR** do not provide a Court with a discretion to dispense with service of the Notice of Discontinuance, **Rule 6.8 of the CPR** makes allowance for the dispensation of service of a document if the Court deems it appropriate to do so.

[8] Additionally, **Part 1.2 of the CPR**, which dictates how the overriding objective of the Court should be applied, allows for the Court to construe the CPR liberally to secure, *inter alia*, a just and least expensive determination of every cause or matter on its merits. **Part 1.2 of the CPR** states,

“1.2 Application of overriding objective by the Court. (1) The Court must seek to give effect to the overriding objective when — (a) exercising any powers under these Rules; (b) exercising any discretion given to it by the Rules; or (c) interpreting these Rules. (2) These Rules shall be liberally construed to give effect to the overriding objective and, in particular, to secure the just, most expeditious and least expensive determination of every cause or matter on its merits.”

[9] As the Claim Form was never served on the Defendants, they have no knowledge of the claim and by extension no time or money was expended to defend the claim. As such, it would be futile to serve the Notice of Discontinuance on the Defendants, who have since, on the Claimant's own evidence, settled the matter with the Claimant without the intervention of the Court and would result in the Claimant incurring additional expenses to serve both the Defendants.

[10] Moreover, there would be no prejudice to the Defendants who were not aware of the matter against them, therefore, it cannot be said that they would be deprived of their right to seek costs.

[11] In the circumstances, I consider that this is an appropriate case for the Claimant to dispense with the service of the Notice of Discontinuance on the Defendants which is hereby ordered.

Dated the 30th day of July 2025



Akeira Martin
Assistant Registrar