COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law & Equity Division

2024/CLE/gen/No. 00643

BETWEEN

SHERNAL McKAY BETHEL

Claimant

AND

SCOTIABANK (BAHAMAS) LIMITED

Defendant

Before:	The Honourable Justice Darron D. Ellis
Appearances:	Arthur Minns for the Claimant
	Shannelle Bethel for the Defendant
Hearing Date:	26 June 2025

Civil Procedure–Supreme Court Civil Procedure Rules 2022 Part 14 and Part 19- Judgment in Default-Judgment on Admissions-What constitutes an Admission- Criteria necessary to grant Judgment on Admissions-Admission of Liability and or Negligence-Addition, Substitution and Removal of Parties-Threshold to add an additional party-Principles on which application should be considered.

The Claimant, via a Notice of Application filed on 3 February 2025, made an application for judgment on admissions pursuant to Part 14 of the Supreme Court (Civil Procedure) Rules, (CPR), section 18 of the Conveyancing and Law of Property Act and the inherent jurisdiction of the Court. The application was made on the basis that the Defendant, via its

agent, wrote a letter dated 26 February 2024 to the Claimant admitting the claim. The Defendant opposed this application, contending that there was no admission of liability, but rather that the letter in question admitted certain facts that do not meet the requisite tests for granting a judgment on admission by the Court.

The Defendant also made an application, filed on 28 March 2025, pursuant to Part 19 of the CPR, to add the law firm of Ryan and Co. as a party to the proceedings on the basis that the matter can be resolved more effectively and that the Defendant is not a proper party to the proceedings. This application was opposed by the Claimant.

Held: At the hearing of this matter on 26 June 2025, the Court made an oral ruling denying the application of the Claimant for judgment on admission and acceding to the application of the Defendant to add the law firm of Ryan and Co. as a party to the proceedings.

1. When an application is made for a judgment on admissions in a matter premised upon negligence and breach of contract in the exercise of the Court's discretion, the Court must consider whether the admission is an admission of liability and is clear, unambiguous, and unequivocal. Furthermore, the Court must consider whether the admission demonstrates that the Defendant acknowledges negligence and that the Claimant has suffered damages as a result. **Ellis v Allen** [1914] Ch 904; **Precious Thompson-Curry v The Attorney General of The Commonwealth of The Bahamas et al** 2022/CLE/gen/868; **Rankine v Garton Sons & Co. Ltd (1979) 2 All ER 1185** and **Blundell v Rimmer** [1971] W.L.R. 123 and **CPR Part 14** referred to.

2. It is an established legal principle that an applicant for judgment on admission in a matter based on breach of contract and negligence needs to prove to the Court that the admission in question is clear, unambiguous, and unequivocal. An analysis of the factual and legal evidence demonstrates that the admission is not clear or unambiguous as it relates to the claim of the Claimant. The admission is simply an admission of partial facts of the claim. The Defendant clearly contends that it is not liable. Therefore, the Court dismisses the application of the Claimant. **Wing v Thurlow** [1903] 2 Ch 509; **CPR 14**; **Precious Thompson-Curry v The Attorney General of The Commonwealth of The Bahamas et al** 2022/CLE/gen/868; **Rankine v Garton Sons & Co. Ltd** (1979) 2 All ER 1185; **Blundell v Rimmer** [1971] W.L.R. 123; **Rose v Powell** [2015] SVGHCV 2004/0224; **Forbes v Ferguson (Acting Commissioner of Police) and Attorney General** [2010] BS 2010 SC 7; **Perrin v Short** [1997] Lexis Citation 1905 relied upon.

3. When considering an application to add a party as a Defendant the Court must determine whether the Proposed Defendant to be added is needed so that the Court can (a) resolve all the issues in the proceedings, or (b) there is an issue involving the new party and an existing party which is connected to the matters in dispute and it is desirable to add that party to resolve it- **CPR 19** referred to.

4. Applying the principles established in **Pawley v Whitecross Dental Care & Ors** [2021] EWCA Civ 1827; **Bristol & West Building Society v Mothew** [1998] Ch 1 (CA); **Stanhope Pension Trust Ltd and another v the Registrar of Companies and another** [1994] 1 BCLC 166; **Gurtner v Circuit** [1968] 1 All ER 328; **Molavi v Hibbert and others** [2020] EWHC 121 (Ch); **Santley v Wilde** [1899] 2 Ch 474; **Moor v Anglo-Italian Bank** (1879) 10 Ch D 68 **Re Vandervell's Trusts (No. 2)** [1974] Ch 269; **Glaxo v Somerville** BVI CA 2004, the Court is of the mindset that the addition of the Proposed Defendant is needed to resolve the issues between the parties, the Court therefore accedes to the application of the Defendant.

JUDGMENT

Ellis J

Introduction and Background

[1.] The Claimant filed a claim on 18 July 2024 against the Defendant, alleging breach of contract and negligence for the failure to return the Claimant's recorded and registered conveyance and satisfaction of mortgage. The Claimant also claims damages and loss in respect of negligence and breach thereof. The Claimant filed a Statement of Claim on 23 August 2024. Paragraph 1 of the Claimant's claim reads as follows:

> *"The Claimant's Claim against the Defendant is for Breach of Contract, failure to return to the Claimant the recorded and registered conveyance and the Satisfaction of Mortgage, notwithstanding the said mortgage having been satisfied by the Claimant since year 2019."*

The Evidence

Claimant's Evidence

[2.] On 2 February 2025, the Claimant filed an affidavit in which she deposed that she had entered into a mortgage agreement with the Defendant in or about 2001. She stated that the Defendant required her to select legal representation from a list of firms approved by the Defendant, and that she accordingly retained the firm of Ryan & Co.

[3.] The Claimant averred that, in order to secure the mortgage, she deposited the backing titles with Ryan & Co., who also acted on behalf of the Defendant. She further

deposed that she satisfied the mortgage in 2019. The Claimant complains that, notwithstanding satisfaction, her repeated requests for the return of the backing titles and other documents have been refused. The Defendant contends that the documents have not been returned because Ryan & Co. failed to deliver them. The Claimant asserts that the Defendant is vicariously liable for the acts and omissions of Ryan & Co.

Defendant's Evidence

[4.] In paragraph 9 of its Supplemental Defence, the Defendant denies the allegations contained in the Statement of Claim and further denies that it has admitted liability to the Claimant's claim. At paragraph 19, the Defendant pleads: *"Save as is hereinbefore expressly admitted, the Defendant denies each and every allegation in the Statement of Claim as if the same had been hereinbefore set out and traversed seriatim."*

[5.] The Defendant's affidavit evidence was filed on 10 March 2025. In that affidavit, the Defendant denies that the Claimant was compelled to select legal representation from a restricted list of attorneys. The Defendant avers that Ryan & Co. had historically acted for the Claimant on at least five prior occasions and were therefore not imposed by the Defendant.

[6.] The Defendant denies any admission of negligence and maintains that Ryan & Co. failed to return the relevant documents. The Defendant further asserts that it has discharged all obligations owed to the Claimant, denies the existence of any agency relationship between itself and Ryan & Co., and reiterates its categorical denial of all allegations of negligence.

[7.] Both applications were heard by the Court on 26 June 2025. The Court, after hearing arguments from both sides and reviewing and considering the affidavit evidence in an oral ruling, denied the application of the Claimant and acceded to the application of the Defendant to add the Law Firm of Ryan and Co. as a defendant. I now put my reasons for those decisions in writing below.

[8.] This judgment arises in proceedings pursuant to Part 14 and 19 of the CPR and section 18 of the Conveyancing and Law of Property Act. The Claimant is seeking a judgment on admissions, and the Defendant is seeking to add the law firm of Ryan and Co. as a Defendant.

Application for Judgment on Admission

Issues

[9.] The principal issue for determination is whether the letter written by the Defendant, which contains an alleged admission, is sufficient to warrant the entry of judgment on admissions under the CPR or whether the matter ought to proceed to trial for resolution of the disputed issues.

Submissions of the Claimant

[10.] The Claimant submits that the Defendant has admitted liability through a letter issued by its agent on 26 February 2024. Counsel for the Claimant contends that this letter constitutes an acknowledgement of negligence on the part of the Defendant and demonstrates that the Claimant has suffered loss as a result. The letter, which is relied upon as evidence of such admission, is set out below:

February 26th, 2024

Mr. Arthur L. Minns
Counsel and Attorney-at-Law
Notary Public
Nassau, The Bahamas

Dear Mr. Minns,

Re: Ms. Misky (now Bethel)

We write with reference to the above-captioned client and acknowledge your letter of the 15th instant.

The law firm of Ryan & Co., which received Ms. Misky's (now Bethel) instructions to prepare her conveyance and the instructions from the Bank to prepare the mortgage, failed to return to the bank the conveyance and mortgage duly registered and recorded. You may be aware that the Bank has been resolving this issue for several months, including a solution to resolve the title defect identified following Ryan & Co.'s failure to have Ms. Misky-Bethel's conveyance and mortgage deeds stamped and recorded. The Law Firm has since been dissolved.

The Bank previously confirmed that the mortgage has been repaid and a satisfaction of mortgage was prepared (see attached). The understanding is that your client requires the requisite title deeds which include the satisfaction and discharge her interest. In this regard, the Vendors of the property have been located and will be engaged to assist.

We will provide you with a detailed update within the next two weeks.

Sincerely,
John Scavella Director, Legal & Corporate Affairs

[11.] The Claimant further submits that the letter acknowledges the essence of her claim, namely the Defendant's failure to return the Claimant's original mortgage documents after she had satisfied the mortgage indebtedness. Counsel contends that the letter expressly confirms that Ryan & Co., the law firm instructed by the Defendant to prepare the mortgage, failed to return to the Defendant both the conveyance and the duly registered mortgage. It is argued that this omission constitutes the root of the Claimant's case.

[12.] The Claimant relies in particular on the second paragraph of the letter, which states that steps were being taken to "rectify and resolve" the Claimant's concerns. Counsel submits that this wording, coupled with the acknowledgement of the failure identified in the letter, amounts to an admission of negligence on the part of the Defendant. It is further contended that the letter recognises that Ryan & Co., acting on behalf of the Defendant, failed to perform their duties in respect of the registration, recording and returning of the mortgage documents.

[13.] With respect to damages, the Claimant submits that the letter itself recognises her continuing need for the mortgage documents and thereby acknowledges that loss has been sustained. Counsel contends that, as more than five years have now passed, the Claimant has been deprived of opportunities to sell the property and has been unable to obtain financing secured against it.

[14.] It is further submitted that the Defendant is vicariously liable for the acts and omissions of Ryan & Co., on the basis that the firm acted as the Defendant's agent. In addition, the Claimant argues that she was compelled to select Ryan & Co. from a restricted list of lawyers approved by the Defendant. Counsel for the Claimant adds that it is immaterial that the Defendant does not have physical possession of the documents, as they are deemed to have constructive possession through their agent, Ryan & Co. Accordingly, it is argued that if the documents were unstamped, unfiled, or lost, the Defendant remains liable.

[15.] Counsel for the Claimant also submitted without evidence that the law firm of Ryan and Co. has been dissolved.

Submissions of the Defendant

[16.] Counsel for the Defendant submits that the Defendant unequivocally denies that the letter of 26 February 2024 amounts to an admission of liability. It is argued that the letter merely records that Ryan & Co., the Claimant's own chosen attorneys, failed to return the duly stamped and recorded mortgage deed, and instead provided only an unstamped and unrecorded copy, which the Defendant subsequently forwarded to the Claimant's then attorney, Mr. Obie Ferguson. The Defendant contends that the letter is simply a statement of facts. Reliance is placed on the reasoning of Fraser SJ (as she then was) in **Precious Thompson-Curry v The Attorney General of the Commonwealth of The Bahamas et al** 2022/CLE/gen/868. In this matter, the Court held that the correspondence being presented as an admission constituted no more than a statement of fact, falling short of the clear and unequivocal standard required to constitute an admission.

[17.] At all material times, the Defendant has denied any breach of contract and or negligence. It was submitted by counsel for the Defendant that the Claimant has not demonstrated that the Defendant admitted either to negligence or to the damages allegedly suffered as a consequence thereof. In these circumstances, it is submitted that the Claimant has failed to satisfy the test articulated in **Rankine v Garton Sons & Co. Ltd** (1979) 2 All ER 1185 and **Blundell v Rimmer** [1971] 1 WLR 123 at 126, where Payne J observed that:

> "In an action for negligence, the cause of action has two elements: first, the breach of duty to the plaintiff, that is to say, in this case, the negligence; and secondly, damage suffered by the plaintiff. The plaintiff does not establish any right to judgment without evidence and proof of both of those elements."

[18.] Counsel for the Defendant submits that although the Claimant discharged the mortgage on 30 September 2019, no request for a satisfaction was made until 7 July 2022. The Defendant complied within three weeks, as evidenced by its letter of 26 July 2022, by which both the satisfaction and a copy of the mortgage deed were delivered to the Claimant's Counsel. From that date, the Claimant has been in possession of these documents. It is further argued that, even if a duty of care were owed—which is denied—the Defendant discharged any such duty by promptly providing the relevant documents upon request. On this basis, Counsel contends that the claim must fail.

[19.] Counsel further contends that the Defendant bears no responsibility for the stamping and recording of the mortgage deed, the satisfaction, or the conveyance relating to the mortgaged property. It is argued that this obligation rests with the Claimant, as expressly provided in clause 4(12) of the mortgage deed. If the requisite stamp duty was paid by the Claimant to Ryan & Co., then any claim properly lies against that firm, which acted as the Claimant's attorney in the purchase of the property, rather than against the Defendant.

[20.] Counsel for the Defendant further submits that the Claimant has suffered no loss and has failed to demonstrate to this Court that she has sustained any damage as alleged. It is argued that, applying the principle in **Precious Thompson-Curry**, the correspondence

relied upon does not amount to an admission of negligence. The Defendant maintains that it was not negligent, and that even if negligence were established, the Claimant has not proved that she suffered any loss as a result.

[21.] The Defendant also contends that no employer–employee or agency relationship existed between itself and Ryan & Co., such as would give rise to vicarious liability for that firm's actions or omissions. Finally, the Defendant reiterates its unequivocal denial that the letter dated 26 February 2024 constitutes an admission of liability.

[22.] The Defendant invites the Court to adopt the reasoning found in **Precious Thompson-Curry**, and to conclude that the correspondence relied upon by the Claimant constitutes no more than a statement of fact. It is submitted that the letter falls short of the clear and unequivocal standard required to amount to an admission. The Defendant emphasises that it has consistently denied negligence, and that the Claimant has failed to establish either breach or resulting damage. Accordingly, it is argued that the test in **Rankine v Garton** and other authorities for the granting of judgment on admissions is not satisfied, and the claim must fail. The Defendant therefore submits that the alleged admission cannot be relied upon for the granting of a judgment on admission.

The Law

[23.] The general rule is that where a party admits a claim, or any part of it, whether in correspondence or in the pleadings, the opposing party may apply for judgment on admission. To proceed to a full trial in respect of matters no longer in dispute would run counter to the overriding objective of saving expense and ensuring the efficient use of the parties' and the Court's resources.

[24.] The governing principles applicable to applications for judgment on admissions are well-established in Bahamian civil procedure. The relevant provisions are contained in Part 14 of CPR. Part 14.1 provides that a party may admit the truth of the whole or any part of another party's case, whether by formal notice or otherwise. Part 14.3 confers upon the Court the power to enter judgment on such admissions. Part 14.1(1) provides that:

> "14.1 Making an 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. ....
>
> (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 services has expired."

[25.] Part 14.4 of CPR provides:

> "14.4 Admission by notice in writing – application for
>
> (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."

[26.] The principles from the case law such as **Ellis v Allen** [1914] 1 Ch 904, **Precious Thompson-Curry** and **Rankine v Garton** can be generalize in these terms: *Has the Defendant made a clear, unambiguous, and unequivocal admission of fact which, taken alone or together with other admitted facts, would entitle the Claimant to the judgment sought?* If that question is answered in the affirmative, the Court may properly enter judgment on the admission. From the case law, it is gleaned that:

a) the admission must be unequivocal and clearly establish liability on the point in question;
b) where the admission is only partial, the court has discretion: it may grant judgment for the part admitted and allow the dispute on the remainder to continue;
c) The court will not construe a disputed or arguable statement as an admission—doubt is resolved in favour of trial.

[27.] In **Rankine v Garton**, the court made clear that a judgment on admission in negligence cannot be entered unless two elements are established: first, an acknowledgement of negligence; and second, proof that the claimant has suffered damage as a result. Both components are indispensable, as together they constitute the complete cause of action in negligence. The judge, quoting *Payne J* in **Blundell v Rimmer** wrote at page 1184:

> In an action for negligence, the cause of action has two elements: (1) the breach of duty to the plaintiff, ie in this case the negligence, and, (2) damage suffered by the plaintiff. The plaintiff does not establish any right to judgment without evidence and proof of those elements. The letter from the defendant's solicitors of 26th October 1970 was an admission only of negligence and it was a denial of damage, and until, therefore, damage was proved by evidence, the plaintiff in my view was not entitled to judgment on the admission, because no claim against the defendant had been established; no admissions of fact had been made on which he became entitled to a judgment or order in pursuance of RSC Ord 27, r 3.' "...

[28.] In **Perrin v Short** [1997] Lexis Citation 1905, Hirst LJ endorsed **Rankine v Garton**, accentuating that a claimant may only succeed in obtaining judgment on admission where there is a clear and unequivocal admission. It was stated at the "Held paragraph" :

> "nothing short of a clear admission of liability, both of negligence causing the accident and of damage resulting from the accident caused by the negligence was enough to entitle the plaintiff to judgment."

[29.] When an admission is only partial, the Court retains the discretion to enter judgment on the admitted part while allowing the rest of the claim to proceed to trial. In exercising that discretion, however, the Court must be satisfied that the admission being relied upon is not just an arguable concession but one that clearly and unequivocally establishes liability for the specific part of the claim in question.

[30.] The central question for this court remains whether the admission found in the letter of 26 February 2024, read fairly and in its proper context, constitutes a clear and unequivocal acceptance of the facts necessary to establish a breach of contract and/or negligence, as well as the damages alleged, such as would justify the judgment sought.

Analysis and Application

[31.] Part 14.1 of the CPR provides that judgment on admission may be entered where an admission is made in writing, whether in a statement of case, correspondence, or other document, and whether before or after the commencement of proceedings.

[32.] In paragraph [9] of the Supplemental Defence, the Defendant acknowledges that the Claimant's attorney failed to return the duly stamped and recorded mortgage to the Defendant. On its face, this admission engages Part 14.1(1) and (2) to a certain extent. However, the Court must also apply the principles articulated in the cases above, which require that any admission relied upon be clear and unequivocal regarding the breach of contract, negligence, and the alleged damages.

[33.] The Defendant maintains that the acknowledgement falls short of an admission of negligence or liability on its part and therefore remains a matter requiring determination at trial.

Does the Admission constitute Admission of Liability?

[34.] The Claimant's claim is founded upon breach of contract and negligence. The Claimant seeks damages arising from the Defendant's alleged failure to return the duly recorded and registered conveyance and satisfaction, notwithstanding that the mortgage was satisfied in 2019. The Court also notes that in the pleadings, the Claimant states that the Defendant is vicariously liable for the actions or omissions of Ryan and Co.

[35.] The present application rests upon an alleged admission contained in a letter dated 26 February 2024, written by the Defendant's agent. In determining whether judgment on

admission should be entered, the Court must consider whether the statements in that letter amount to a clear and unequivocal admission of liability. The relevant portion of that letter provides as follows:

> *"The law firm of Ryan & Co., which received Ms. Misky's (now Bethel) instructions to prepare her conveyance and the instructions from the Bank to prepare the mortgage, failed to return to the bank the conveyance and mortgage duly registered and recorded. You may be aware that the Bank has been resolving this issue for several months, including a solution to resolve the title defect identified following R. Co.'s failure to have Ms. Misky-Bethel's conveyance and mortgage deeds stamped and recorded. The Law Firm has since been dissolved.*
>
> *The Bank previously confirmed that the mortgage has been repaid and a satisfaction of mortgage was prepared (see attached). The understanding is that your client requires the requisite title deeds, which include the satisfaction and discharge of her interest. In this regard, the Vendors of the property have been located and will be engaged to assist.*
>
> *We will provide you with a detailed update within the next two weeks."*

[36.] I have considered the contents of the letter. While certain statements therein acknowledge aspects of the Claimant's case—namely, that the duly recorded conveyance and mortgage were not returned to her—the admission is not comprehensive. The Defendant does not accept the full extent of the liability alleged, nor does the letter concede the essential facts necessary to entitle the Claimant to the entirety of the relief sought. Certainly, there is no admission of damage suffered by the Claimant as is required in cases dealing with negligence.

[37.] In its Defence, the Defendant maintains that the documents in question were in the possession of the Claimant's attorney, who failed to return the documents. The Defendant's position is that any liability rests with the Claimant's attorney, who holds the documents, and not with the Defendant. The Defence further avers that the Defendant had no obligation to stamp or record a satisfaction of the mortgage upon repayment of the loan. Rather, it is said that the Defendant discharged its obligation by issuing a satisfaction evidencing repayment of the mortgage. Finally, the Defendant denies that the Claimant's attorney was its servant or agent.

[38.] The authorities emphasise that, for an admission to be considered valid, it must be clear, unambiguous, and unequivocal. The Courts have consistently warned against treating what is, in essence, only a partial concession or a matter still subject to dispute as an admission. If there is any doubt or ambiguity, the appropriate course is to direct that the case proceed to trial, allowing the issues to be fully determined on the evidence.

[39.] **Forbes v Ferguson (Acting Commissioner of Police) and Attorney General** [2010] 1 BHS J No. 4, 2009/CLE/gen/00338 involved a case where the plaintiff sought judgment on admission under Order 27, Rule 3 of the Rules of the Supreme Court, based on the defendants' admission that they had retained the plaintiff's passport after his release. The Court reiterated the principle that an admission must be clear, unambiguous, and

sufficient to establish liability without the need for further investigation. The Court found that the admission relied upon was insufficient, as it did not address the key issues in dispute—whether the passport had been unlawfully seized, whether constitutional rights had been violated, and whether the plaintiff had suffered quantifiable harm.

[40.] In **Rose v Powell** [2015] SVGHCV 2004/0224, the Eastern Caribbean Supreme Court examined an application for judgment on admission under the CPR based on the defendant's acknowledgement of an encroachment. On the facts, the Court found that the Defendant's acknowledgement could not constitute an unequivocal admission, as it was made subject to a statutory defence. Consequently, the application for judgment on admission was refused. The Court reaffirmed that an admission must be absolute, unconditional, and unequivocal; a qualified or contingent statement will not be sufficient.

[41.] The Court is not minded to grant a judgment on admissions in the present case. Although the Defendant's letter contains statements which may properly be characterised as admissions of certain facts, those admissions do not amount to an acceptance of the Claimant's case in its entirety. At most, they represent partial admissions of fact rather than liability. In my view, such partial acknowledgements are insufficient to warrant the entry of judgment on admission.

Does the Admission Constitute an Admission in Negligence?

[42.] The Claimant's claim is founded upon contract and negligence. In negligence cases, the burden of proof lies firmly on the claimant, who must prove two main points: first, that the defendant's act or omission in breach of duty directly caused the alleged loss; and second, that the claimant actually suffered damage as a result. As Kodilinye states in Commonwealth Caribbean Tort Law (3rd ed., 2003) at page 64, three elements are crucial to the tort of negligence: "(a) the existence of a duty of care owed by the defendant to the plaintiff; (b) a breach of that duty; and (c) damage suffered by the plaintiff or his property resulting from the breach." Therefore, the Court must consider whether the statements made by the Defendant amount to an admission covering these key requirements.

[43.] In **Perrin v Short**, the Court confirmed that a partial admission—such as recognising certain facts while disputing others, especially regarding causation or damage—does not entitle a Claimant to judgment on admission. Judgment can only be entered where the admission covers the essential elements of the claim in full.

[44.] In this case, although the Defendant accepts that the duly stamped mortgage was not returned, it explicitly denies negligence, recklessness, and any causal link between that omission and the loss alleged. Therefore, what is admitted is limited to factual matters and does not amount to an acceptance of liability or legal responsibility. There is no admission that any negligence is attributable to the Defendant, nor is there any concession that the

Claimant suffered damages as alleged. On the contrary, the Defendant avers that any fault lies with the Claimant's attorney.

[45.] I am therefore satisfied that the admission relied upon is limited to factual matters and does not extend to negligence or liability. To my mind, it falls short of the requirement that an admission be clear, unequivocal, and unambiguous so as to find liability without further inquiry. The proper course is that the matter proceed to trial.

[46.] Accordingly, I am not satisfied that the Defendant's letter, taken on its own, amounts to a clear, unambiguous, and unequivocal admission of negligence sufficient to entitle the Claimant to judgment on the claim.

Application to add the law firm of Ryan and Co. as a Defendant

[47.] The Defendant submits that it was wrongly added as a Defendant and that the Law Firm of Ryan and Co. should be a Defendant. The Claimant opposes this application.

The Issue

[48.] The principal issue is whether, pursuant to the CPR and case law, the Court should grant the Defendant's application to (i) add the Proposed Defendant as a party and (ii) remove or substitute the existing Defendant on the basis that the existing Defendant is not a proper or necessary party to the claim. In particular, the Court must determine whether there is a real issue to be tried, as between the Claimant, the Defendant and the Proposed Defendant connected with the matters in dispute, and whether it is desirable to add that party so that all issues can be resolved effectively and justly within these proceedings.

Submissions of the Defendant

[49.] Counsel for the Defendant submits that the application to add the Proposed Defendant ought to be granted pursuant to CPR Part 19 It is argued that there exists a real issue to be tried between the Claimant and the Proposed Defendant, arising out of the same subject matter, and that the joinder of the Proposed Defendant is therefore both necessary and desirable in order for all issues to be determined comprehensively and justly.

[50.] Counsel states that the Claimant's case is for the return of documents related to a mortgage; however, the evidence before the court demonstrates that the law firm of Ryan and Co. has these documents in its possession. It is clear that the issues in this case cannot be properly resolved without hearing from Ryan and Co. There are real issues to be tried

between Ryan and Co. and the present parties, which arise out of the same subject matter underpinning the present cause of action.

[51.] Reliance is placed on the principle that the Court should, so far as possible, avoid a multiplicity of proceedings and the risk of inconsistent findings by ensuring that all parties against whom relief is, or may properly be sought, are before the Court in a single action. It is further submitted that the discretion under CPR Part 19 should be exercised consistently with the overriding objective, as joinder will promote efficiency, save expenses, and enable the Court to resolve the dispute fairly as between all parties.

Submissions of the Claimant

[52.] Counsel for the Claimant resists the application to add the Proposed Defendant. It is contended that the requirements of CPR Part 19 are not satisfied, as no genuine issue arises between the Claimant and the Proposed Defendant that is sufficiently bound up with the matters already in dispute. The claim, as framed, is properly directed at the existing Defendant, and the addition of a further party would serve only to complicate the proceedings, increase costs, and cause delay. The Court was then invited not to exercise its discretion to add Ryan and Co. as a Defendant.

The Law

[53.] The Court's jurisdiction to add, remove, or substitute parties is contained in CPR 19. The rules empower the Court to direct that a party be added where it is desirable to do so in order that all issues in the proceedings may be determined, or where there is an issue between the proposed party and the existing matters in dispute in the proceedings, and it is desirable to add the new party so that the Court can resolve that issue. Conversely, the Court may order the removal of any person who is neither a proper nor a necessary party.

[54.] The central consideration is whether the participation of the proposed party is necessary or desirable for resolving all matters in controversy. The authorities emphasise that there must exist a genuine, and not merely fanciful, issue to be tried between the parties and the Proposed Defendant, and that such issue must be closely connected with the subject matter of the claim. The Court must also consider whether the rights of the proposed party would be directly affected by the outcome of the proceedings and whether their presence is necessary to ensure the effective and complete determination of all issues in the matter. This was highlighted in **Stanhope Pension Trust Ltd and another v the Registrar of Companies and another** [1994] 1 BCLC 166 page 170, where the learned judge quoted *Lord Diplock* in **Gurtner v Circuit** [1968] 1 All ER 328 at 336:

> 'Clearly the rules of natural justice require that a person who is to be bound by a judgment in an action brought against another party and directly liable to the

plaintiff upon the judgment should be entitled to be heard in the proceedings in which the judgment is sought to be obtained. A matter in dispute is not, in my view, effectually and completely "*adjudicated upon*" unless the rules of natural justice are observed and all those who will be liable to satisfy the judgment are given an opportunity to be heard.

[55.] The Judge further quoted *Lord Denning* at page 169, where he said:

> "It seems to me that when two parties are in dispute in an action at law, and the determination of that dispute will directly affect a third person in his legal rights or in his pocket, in that he will be bound to foot the bill, then the court in its discretion may allow him to be added as a party on such terms as it thinks fit. By so doing, the court achieved the object of the rule. It enables all matters in dispute to "be effectually and completely determined and adjudicated upon" between all those directly concerned in the outcome."

[56.] Guidance is further found in the case of **Molavi v Hibbert and others** [2020] EWHC 121 (Ch), where it was stated:

> "47. There is no inherent or general discretion to add a new party to existing proceedings. In **RE Pablo Star** [2018] 1 WLR 738 at [47] Sir Terence Etherton MR put it very simply: "CPR r 19.2 confers a discretion on the court to join a party if the conditions in rule 19.2(2)(a) or (b) are satisfied".
>
> 48. CPR 19.2 (2) provides as follows:
> "The court may order a person to be added as a new party if –
> (a) it is desirable to add the new party so that the court can resolve all the matters in dispute in the proceedings; or
> (b) There is an issue involving the new party and an existing party that is connected to the matters in dispute in the proceedings, and it is desirable to add the new party so that the court can resolve that issue.
>
> 49. The two limbs are different and independent. Even if one or other (or both) are satisfied, the addition of a party does not follow automatically. The use of the word 'may' in the first line shows that the court must stand back and exercise an overall discretion even if one or other (or both) of the threshold criteria are satisfied."

[57.] The Bahamian CPR part 19.2 uses the same language.

[58.] The Judge continued at paragraph 50:

> "The power to add a party to existing proceedings is essentially a case management decision. An order will only be made if it would further the overriding objective in the concrete circumstances of the case. This is clear from In Re Pablo Star at [60], in which the following was said:

> "In considering whether or not it is desirable to add a new party pursuant to CPR r 19.2(2) the lodestars are the policy objective of enabling parties to be heard if their rights may be affected by a decision in the case and the overriding objective in CPR Pt 1."

.....

56. In re Pablo Star, the Court of Appeal held in [48] that the first limb of CPR 19.2(2) should be interpreted as containing two conditions: (1) the new party can assist the court to resolve the matters in dispute in the proceedings and (2) it is desirable to add the new party to achieve that end". The Court of Appeal also stated that CPR 19.2(2) ought to be given a wide interpretation. The words "in dispute" ought to be read as "in issue".....

64. For an applicant to succeed with an application under CPR 19.2(1)(b), three conditions must be met: (1) an issue must be identified between the proposed new party and an existing party (2) the issue must be connected to the matters already in dispute in the proceedings (3) it is desirable to add the new party so that the court can the issue identified in condition (1).

65. As to Condition (1) it is clear that it is not necessary for the issue between the new party and the existing party to be a cause of action: see XYX v Transform Medical Group [2014] EWHC 4056 at [22], in which a number of authorities are cited to the this effect.

66. Condition (2) is the critical condition. The issue between the existing and the proposed new party must be connected to the matters already in issue in the proceedings. The nature of the required connection is not prescribed. In some cases, the connection will be in the form of an overlap of factual evidence between the existing proceedings and issue with the proposed new party – see, for example, Dunlop Haywords (DHL) Ltd. v Erinaceous Insurance Services Limited [2009] EWCA Civ 354 at [88].

67. In other cases, the connection is that the new party is concerned in with the outcome in some way such that it is desirable to have all parties connected to the dispute before the court in one set of proceedings so that they are bound by the outcome. This was the case for the excess insurers proposed to be added as defendants in Dunlop Haywords (DHL) Ltd. v Erinaceous Insurance Services Limited [2009] EWCA Civ 354 at [89].

68. In some cases, it is an existing Defendant who raises an issue which makes it desirable that another party be joined: see e.g. Sheikhar Dooma Shetty v Al Rushaid Petroleum Investment Company [2011] EWHC 1460 (Ch) at [15].

69. Connection is clearly a matter which can only be determined on the facts of the individual case.

70. Under Condition (3) the court must be satisfied that the joinder is desirable to resolve the issue between the existing party and the proposed new party. In other words, even if there is a connection between the new

> issue and the existing issues in the proceedings, the question is whether it is really desirable that the proposed new party be joined to resolve that issue or whether it is better to let it be resolved in separate proceedings.

[59.] Another notable case is **Pawley v Whitecross Dental Care & Ors** [2021] EWCA Civ 1827. This case was not raised by either Counsel, and Counsel for the Claimant did not specifically rely on the principles discussed therein. However, this Court felt that a discussion of this case is warranted in the circumstances. The Court of Appeal judgment emphasises that CPR Part 19 governs addition and substitution of parties. The judgment reviews the procedural requirements—such as consent, evidence, and linkage of the new party's issue to existing disputes—and reiterates that joinder is not automatic but must be justified in each case.

[60.] In this case, the claimant was a patient at the defendants' dental practice for six years, during which time she was treated by four different dentists. She brought a claim against the defendants (the partnership of the business), alleging that her treatment had been negligent. She chose to sue the defendants rather than the dentists who treated her, contending that the defendants owed her a non-delegable duty of care or were vicariously liable for the dentists' negligence. The defendants denied the allegations and applied to join the dentists as additional defendants to the claimant's claim.

[61.] The Court of Appeal allowed the appeal of the claimant, overturning the lower court judges' decision to add the dentists as defendants on the ground that the Judge failed to give any adequate weight to the statement of *Coulson J* to the effect that a claimant could not be forced to bring proceedings against defendants and become liable for their costs. It should be noted that the Claimant did not raise this argument in this case. The Court stated at paragraph 23:

> "In summarising the submissions before him, the Judge referred to the judgment of Coulson J in Milton Keynes Borough Council v Viridor (Community Recycling MK) Ltd [2016] 6 Costs LR 1041 on an application to join a defendant against the wishes of the claimant. At paras 9–12 of Viridor, Coulson J said:
>
> > '9. First, I do not consider that the court has the power to join a party as a defendant, in circumstances where the claimant opposes that joinder. No authority in support of such a novel proposition was cited to me.'
>
> *Coulson J* then set out the terms of CPR r 19.2(2) and continued:
>
> > '11. The proposed joinder of VWML is not caught by either of these provisions. There is no matter in dispute between the Council and VWML; indeed, the Council has made it plain that, because there is no dispute between it and VWML, it does not wish for VWML to be joined into the proceedings as a defendant. Neither is there any pleaded issue between VWML and the defendant.
> >
> > 12. Furthermore, I consider that it would be a nonsense if a defendant could join another defendant into the proceedings against the claimant's

> wishes, in circumstances in which that claimant would then become potentially liable for the costs of the new defendant. A claimant is entitled to bring proceedings against the parties with whom it considers that it has a dispute. A claimant cannot be forced to issue proceedings against any other party. Accordingly, these amendments fail in principle.'

[62.] The Court continued at paragraphs 42 to 45:

> " If a defendant wishes to involve an additional party in a case such as the present, the conventional route (as was recognised by the district judge and the Judge) is to join them by Part 20 proceedings, particularly if they have an interest (as the defendants obviously do in the present case) in securing an indemnity or a contribution from the Part 20 defendant.....
>
> 45 For these reasons, I consider that the claimant is entitled to succeed on Ground 1 because inadequate weight was given by the courts below to the principle expressed by Coulson J in Viridor [2016] 6 Costs LR 1041."

[63.] However, the Court noted that there are exceptions to this case

> **"46 It will be apparent from what I have said already that there may be exceptional cases in which different considerations apply. Nothing that I say should be taken as casting doubt upon the jurisdiction available to the court in an appropriate case involving a GLO, or upon the established jurisdiction in cases such as Gurtner v Circuit [1968] 2 QB 587. However, there is nothing exceptional about this case."**

Discussion and Analysis

[64.] At first glance, **Pawley v Whitecross** suggests that the Court should not permit the joinder of a proposed defendant when the claimant objects, as is the case in the present instance. Nonetheless, a detailed review reveals that **Pawley v Whitecross** acknowledges exceptions to this rule, drawing upon precedents established in **Gurtner v Circuit** and **Molavi v Hibbert**. As such, the present case may be distinguished from the circumstances considered in **Pawley v Whitecross.**

[65.] **Pawley v Whitecross** may be distinguished on several grounds. Notably, this case presents two potential principals for the agent, in contrast to **Pawley v Whitecross**, which involved a single principal. In **Pawley v Whitecross**, it was uncontested that the dentists who were not subject to litigation were agents of the defendant practice, thereby establishing the defendant as the principal and the proposed defendants as its agents. In the current matter, the defendant may be regarded as the principal with the proposed defendant as its agent. However, unlike in **Pawley v Whitecross**, the Claimant here may also be considered

a principal of the Proposed Defendant, since the circumstances create a dual agency whereby the Proposed Defendant acts on behalf of both parties.

[66.] The Claimant asserts that the Defendant bears responsibility for the acts or omissions of the Proposed Defendant. This assertion is not entirely clear to the Court. However, it is apparent that both the Defendant and the Claimant may be regarded as principals of the Proposed Defendant, which suggests that joining the Proposed Defendant could facilitate the resolution of the outstanding issues. In view of the triangular relationship among the parties, there remains the possibility that the alleged conduct — namely, the withholding of mortgage documents — may be attributable either to the Proposed Defendant or to the Claimant, rather than just to the Defendant.

[67.] This situation is illuminated by what has been called the "double employment rule," explained by Millett LJ in **Bristol & West Building Society v Mothew** [1998] Ch 1 (CA) at 18–19:

> "In the present case it is clear that, if the defendant had been acting for the society alone, his admitted negligence would not have exposed him to a charge of breach of fiduciary duty. Before us counsel for the society accepted as much, but insisted that the fact that he also acted for the purchasers made all the difference. So it is necessary to ask: "Why did the fact that the defendant was acting for the purchasers as well as for the society convert the defendant's admitted breach of his duty of skill and care into a breach of fiduciary duty?" To answer this question it is necessary to identify the fiduciary obligation of which he is alleged to have been in breach.
>
> It is at this point, in my judgment, that the society's argument runs into difficulty. A fiduciary who acts for two principals with potentially conflicting interests without the informed consent of both is in breach of the obligation of undivided loyalty; he puts himself in a position where his duty to one principal *may* conflict with his duty to the other: see Clark [1998] Ch. 1 at 19 Boyce v. Mouat [1994] 1 A.C. 428 and the cases there cited. This is sometimes described as "the double employment rule." Breach of the rule automatically constitutes a breach of fiduciary duty. But this is not something of which the society can complain. It knew that the defendant was acting for the purchasers when it instructed him. Indeed, that was the very reason why it chose the defendant to act for it. The potential conflict was of the society's own making: see *Finn, Fiduciary Obligations*, p. 254 and Kelly v. Cooper [1993] A.C. 205.....
>
> That, of course, is not the end of the matter. Even if a fiduciary is properly acting for two principals with potentially conflicting interests he must act in good faith in the interests of each and must not act with the intention of furthering the interests of one principal to the prejudice of those of the other: see *Finn*, p. 48. I shall call this "the duty of good faith." But it goes further than this. He must not allow the performance of his obligations to one principal to be influenced by his relationship with the other. He must serve each as faithfully and loyally as if he were his only principal"

[68.] It therefore appears that the Court is best suited to resolve this matter by hearing from all the parties, including the Proposed Defendant.

[69.] It is acknowledged that, in numerous mortgage transactions, an attorney represents both the lending institution and the borrower. When advising the borrower and facilitating the purchase, the attorney acts as the borrower's agent. Conversely, when ensuring that the security is perfected and advising the bank, the attorney serves as the bank's agent. The accurate determination of agency, along with any resultant vicarious liability, is contingent upon the specific function undertaken by the solicitor at the time of the alleged default (see **Bristol v Mothew**). Consequently, it may be contended that the Defendant cannot be held vicariously liable, nor subjected to a non-delegable duty, for actions or omissions of the solicitor occurring subsequent to redemption. Extending **Pawley v Whitecross** beyond the duration of the mortgage would amount to imposing liability absent agency or duty, which is inconsistent with established legal principle. See **Santley v Wilde** [1899] 2 Ch 474, 474–76, particularly Lindley MR's remarks at page 1342:

> "The principle is this: A mortgage is a conveyance of land or an assignment of chattels as a security for payment of a debt or the discharge of some other obligation for which it is given. This is the idea of a mortgage, and the security is redeemable on the payment or discharge of such debt or obligation, any provision to the contrary notwithstanding. That in my opinion is the law..... If the obligation is the payment of a debt, the security is redeemable on the payment of that debt."

[70.] In **Pawley v Whitecross**, joinder was considered in the context of a continuing vicarious liability or non-delegable duty relationship (dentist–practice) during the acts in question. The Court of Appeal determined that joinder of individual dentists was not necessary, as the practice could be sued as principal while that relationship persisted during the acts complained of. In contrast, in this case, it seems that the relationship between the Defendant and the Proposed Defendant terminated upon satisfaction of the mortgage. If this is accurate, there may be no basis for vicarious liability on the part of the Defendant regarding the return of mortgage documents, since the agency relationship between the bank and attorney would have concluded. It appears that, at the time of the acts in question, the only remaining agency was between the Claimant and the Proposed Defendant.

[71.] It seems that, once the mortgage is satisfied, the agency between the Proposed Defendant and the Defendant concludes. The acts alleged by the Claimant occurred following the discharge of the mortgage. The principle established in **Pawley v Whitecross** enables a claimant to pursue a putative principal alone when a vicarious liability or non-delegable duty relationship exists at the time of the acts or omissions in question. However, this principle does not extend beyond the duration of the agency relationship. Within the context of a mortgage, it can be asserted that upon redemption of the debt, both the

mortgagee's proprietary interest and its agency relationship with the attorney are terminated. From that moment onward, the attorney represents only the mortgagor.

[72.] In the present matter, it appears that, following the redemption of the mortgage, the Defendant's interest and agency relationship with the Proposed Defendant ceased. Thereafter, the Proposed Defendant maintained possession of the deeds exclusively for the Claimant. Consequently, it follows that the Defendant may not be regarded as a principal in the sense set out in **Pawley v Whitecross**, which would otherwise have entitled the Claimant to bring an action against the principal rather than the agent.

[73.] A further distinguishing element in this matter is that the Court of Appeal in **Pawley v Whitecross** recognised it was customary within that jurisdiction for claims involving dentists to be brought against the partnership rather than individual practitioners. By contrast, no evidence has been presented—nor is the Court aware—of any established practice in this jurisdiction where banks are sued as principals for an attorney's failure to return mortgage documents in the present scenario as claimed.

[74.] Furthermore, **Pawley v Whitecross** involved an indemnification agreement between the defendant practice and the dentists. In the present proceedings, the Court has not been made aware of any such indemnification agreement between the Defendant and the Proposed Defendant.

[75.] Additionally, in contrast to **Pawley v Whitecross,** it seems that the present matter cannot be appropriately adjudicated without the involvement of the Proposed Defendant. Among the remedies sought by the Claimant is the recovery of the mortgage documents, which both parties acknowledge were held by the Proposed Defendant. The necessity of joining the Proposed Defendant therefore arises.

[76.] Pawley v Whitecross also notes exceptions to its rule, clarifying that it does not affect the Court's power to add defendants in multi-party cases or under precedents like Gurtner v Circuit. Consequently, this case constitutes an exception to the principle established in **Pawley v Whitecross** and may be distinguished accordingly.

[77.] The discretion to join or substitute parties is not to be applied rigidly but must be exercised in accordance with the overriding objective — ensuring that cases are dealt with justly, proportionately, and at reasonable cost. This encompasses the need to ensure that all proper parties are before the Court, to avoid inconsistent judgments, and to prevent a multiplicity of proceedings.

[78.] The Court accepts that the rules and case law empower it to direct that a party be added where it is desirable to do so in order that all issues in the proceedings may be

determined, or where there is an issue between the proposed party and the existing parties which ought to be resolved together. The evidence before me indicates that the issue involves a contract between the Claimant and the Defendant; however, it also demonstrates that the Proposed Defendant is integral to resolving the issues and is in possession of the documents in question. Any relief ordered by this Court will directly affect him.

[79.] The Court has determined that the requirements established in **Molavi v Hibbert and Gurtner v Circuit** and other relevant authorities have been met for adding the Proposed Defendant. The presence of the Proposed Defendant is considered necessary and desirable for resolving the cause of action, as any relief granted by the Court could impact the rights of the Proposed Defendant.

[80.] A substantive issue links the Proposed Defendant to the current proceedings. Including the Proposed Defendant will prevent conflicting decisions in separate cases and allow all matters to be addressed within a single action. Any potential prejudice to the Claimant can be mitigated through the issuance of suitable case management directions. In accordance with the overriding objective and the exercise of judicial discretion, it is deemed appropriate to add Ryan & Co. as a Defendant.

Conflict of Interest

[81.] Prior to concluding this ruling, I find it appropriate to address two matters for the record. Firstly, the Court notes that the parties were not informed at the commencement of the hearing that the Court maintains both a personal bank account and an active mortgage account in good standing with the Defendant in these proceedings. The Court is satisfied that these circumstances did not affect its decision and do not, as a matter of law, constitute grounds for recusal in accordance with the test set out in **Porter v Magill** [2002] 2 AC 357 at [103]:

1. "The question is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased."

[82.] Applying this test, I am confident that no such real possibility arises in this instance. Nonetheless, the Court acknowledges that transparency is essential for maintaining public confidence in the administration of justice, and regrets that this disclosure was not made at an earlier stage.

[83.] Secondly, it is noted that following the delivery of the oral ruling, the Claimant has corresponded with the Court, raising this issue for the first time and referencing an alleged application for recusal on the grounds of conflict of interest. For the avoidance of doubt, the Court confirms that no application for recusal has ever been made by the Claimant as reflected by the record.

Conclusion and Disposition

[84.] For the foregoing reasons, I am not persuaded that the letter relied upon by the Claimant amounts to a clear, unambiguous, and unequivocal admission sufficient to sustain judgment on the whole of the claim. At most, it reflects limited acknowledgements of fact, which fall short of an acceptance and admission of liability.

[85.] Additionally, the Court is of the mindset that the addition of the Proposed Defendant is desirable and necessary to resolve the issues between the parties.

[86.] The Court orders as follows:

i. The Claimant's application for judgment on admissions is therefore dismissed.

ii. The Defendant's application to add Ryan Co. as a 2nd Defendant is allowed.

iii. Costs of the applications are to be costs in the cause.

iv. For the avoidance of any doubt, I also order that the Claimant shall, within 14 days of this Ruling, file and serve an Amended Claim Form and Statement of Claim reflecting the joinder/substitution.

v. The Claimant shall serve the Amended Claim Form and Statement of Claim upon Ryan and Co. in accordance with the CPR.

Dated this 10th day of September 2025

Darron D. Ellis

Justice