

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

2021/CLE/gen/FP/00063

B E T W E E N

SONIA DEAN

Claimant

AND

RAYMOND MEADOWS, JR.

First Defendant

AND

FLAMINGO AIR COMPANY LIMITED

Second Defendant

Before: The Honourable Justice Constance Delancy

Appearances: Constance McDonald, KC for the Claimant

No appearance by the Defendants

Hearing date(s): 8 July, 2025 and 17 July 2025

RULING

DELANCY, J.

[1.] This is the Court's brief ruling on the Claimant's application seeking leave to extend time in which to file and serve a claim form.

Brief Background

[2.] The Claimant brought a claim against the Defendants by way of Generally Endorsed Writ of Summons filed on 10 June 2021. The Claimant is seeking damages for personal injuries as a result of an alleged incident on 25 May 2019 involving the Claimant and First Defendant employed by the Second Defendant.

[3.] The Defendants filed a Memorandum and Notice of Appearance on 14 July, 2021.

[4.] The Claimant did not file a Statement of Claim.

[5.] The Claimant filed a Standard Claim Form on 23 August 2024 annexing the evidence which intends to rely on to prove her claim. The Claimant served the Standard Claim Form and Forms for Acknowledgment of Service and Defence on the First Defendant on 3 October 2024 (*see Affidavit of Service of M. Meronard filed 1 November 2024*).

[6.] The Claimant also filed a Notice of Application seeking “*an extension of time to file and serve a claim form notwithstanding that the time limited by the Supreme Court Civil Procedure Rule has expired*”. The grounds of the application being “*that after the service of the Writ of Summons on the Defendants the Defendants counsel indicated that his client was prepared to settle. The Defendants counsel is now deceased and before his death stated that he longer represented the Defendants.*”

Issue

[7.] The Court must determine whether to exercise its discretion and grant the Claimant leave to extend the period within which to file and serve a Statement of Claim.

Claimant’s evidence

[8.] The Claimant filed an Affidavit on 23 August 2024 in support of this application avers that the Defendants’ counsel, Mr. Carlson Shurland, now deceased, indicated that his clients were prepared to settle and they had not agreed on the issue of quantum nor did Defendants or counsel state the same in writing. Further, that prior to his demise Mr. Shurland stated that he ceased to represent the Defendants. The Claimant also stated that her Counsel wrote to the Second Defendant on 17 April 2024 enclosing a copy of the Writ of Summons and gave notice of her intention to proceed with the matter.

Law and Discussion

[9.] The Generally Endorsed Writ was filed on 10 June, 2021 prior to the implementation of the CPR and at the time of its filing would have been governed by the now repealed Rules of the Supreme Court. The Defendants entered an appearance on 14 July 2021. Order 18 r.1 of the RSC provided that:

Unless the Court gives leave to the contrary or a statement of claim is indorsed on the writ, **the plaintiff must serve a statement of claim on the defendant or, if there are two or more defendants, on each defendant, and must do so either when the writ, or notice of the writ, is served on that defendant or at any time after service of the writ or notice but before the expiration of 14 days after that defendant enters an appearance.** [Emphasis added]

[10.] The Court’s general power to grant an extension of time is found in Part 26.1 (2)(k) of the CPR (which is the exact wording of the previous 31A, r. 18(2)(b) of the RSC) which provides:

(2) Except where these rules provide otherwise, the Court may —

- (k) extend or shorten the time for compliance with any rule, practice direction, order or direction of the Court even if the application for an extension is made after the time for compliance has passed.

[11.] Under the CPR an action is commenced by filing a claim form along with a statement of claim or an affidavit or other document (*Part 8.1(2)(a),(b) and(c) CPR*). A claim form may be issued without a statement of claim or affidavit or other document only if the claim form includes all the information required by Parts 8.6, 8.7, 8.8 and 8.9 of the CPR or if the Court grants permission (*Part 8.2(1) CPR*). The Court may grant permission to issue and serve a claim form without a statement of claim, affidavit or other document in cases of emergency provided the nature and circumstances of the emergency is set out in a certificate (*Part 8.2(2) CPR*).

[12.] The Claimant did not file a statement of claim within the 14 days' period after the Defendants entered an appearance as was provided under the RSC. The Claimant now seeks the Court's permission to extend the time for the filing and serving of a claim form. It appears that the Claimant has confused a statement of claim with a claim form (which is document to commence new proceedings and not a statement of claim which is supporting document as is intended by the CPR).

[14.] The Rules provide that the Court in exercising its discretion, Part 1.2 of the CPR, 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.

[15.] Although the Rules are to be "*liberally construed to give effect to the overriding objective*" it does not mean that the Rules are to be used to circumvent or misapply specific and existing rules in the CPR. In the case of **Treasure Island Co. v Audubon Holdings Ltd.** [2004] Court of Appeal, ECS (British Virgin Islands), Civ App No.22 of 2003, *Saunders, JA* at para. 24 states that:

..... it must not be assumed that a litigant can intentionally flout the rules and then ask the Court's mercy by invoking the overriding objective.... **the overriding objective does not in or of itself empower the Court to do anything or grant to the Court any discretion.** It is a statement of the principle to which the **Court must seek to give effect when it interprets any provision or when it exercises any discretion specifically granted by the rules. Any discretion exercised by the Court must be found not in the overriding objective but in the specific provision itself...** [Emphasis added]

[17.] In the case of **Tarquin Kelly and others v Commissioner of Police** 2016/CLE/gen/00581 *Klein, J.* listed the factors which the Court ought to consider when exercising its discretion on an application for extension of time: "(i) *the length of the delay*; (ii)

whether any good reasons are provided for the delay; and (iii) any prejudice that might be caused to the other side.”

[13.] In **Tarquin Kelly and others v Commissioner of Police (supra)** at para.42 *Klein, J.* stated:

In **Birkett v. James** (supra), the Court defined “inordinate delay” as being “materially longer than the time usually regarded by the profession and Courts as an acceptable period”. In my judgment, **a delay of over two years in serving a statement of claim (even in draft form) is inordinate delay. In coming to this conclusion, I am aware that there have been cases where the delay has been in excess of two years (see Michael Wilson, supra, 2-3 years, and Reef Construction Ltd., supra, over four years) and the court nevertheless exercised its discretion to extend time. But in all of those cases, the court either found that there was an acceptable explanation for the delay, or that there was no prejudice asserted or caused to the defendant by the extension of time. Neither holds true here.** [Emphasis added]

[14.] The Claimant’s Counsel conceded that although the Generally Endorsed Writ was served and acknowledged by the Defendants, by the entering of an appearance, no statement of claim was filed in the action. Further, the Claimant did not file any further pleadings until the filing of a “Standard Claim Form” on 23 August 2024 some 3 years after Defendants’ appearance.

[15.] The Claimant’s explanation for her failure to file a statement of claim since June 2021 in the absence of any evidence of the same amounts to a bare assertion. She also states in her affidavit that Mr. Shurland never responded to or confirmed any settlement on behalf of the Defendants. Further, Claimant avers that prior to his demise Mr. Shurland indicated that he no longer represented the Defendants.

Disposition

[16.] Having considered all the circumstances of the case, the Court hereby refuses to exercise its discretion to extend time for filing and service of the statement of claim.

Dated the 11 day of September, 2025

[Original Signed and Sealed]

Constance Delancy
Justice