

IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

Claim No. 2016/CLE/gen/01218

BETWEEN

- (1) DEBORAH MUNNINGS-DEAN**
- (2) CHEGERA SMITH**
- (3) LETHERA BULLARD**
- (4) WILTON THOMAS**
- (5) VINCENT BROOKS**
- (6) BARBARA MACKEY**
- (7) DIANNE SMITH**
- (8) MICHELLE DEVEAUX**
- (9) ESTHER HANNA**
- (10) SHEKERA ARCHER-STUART**

Claimants

AND

- (1) AMERICAN AIRLINES GROUP INC.**
- (2) AMERICAN AIRLINES, INC.**
- (3) ENVOY AIRLINES, INC.**

Defendants

Before: The Hon. Madam Justice Simone Fitzcharles

Appearances: Ms. Krysta Mason-Smith for the Claimant (Respondent)
Mr. Keith O. Major for the Defendant (Applicant)

RULING

Introduction

1. The application before the Court is brought by American Airlines Group Inc (“AAGI”), the First Defendant, American Airlines, Inc (“AAI”), the Second Defendant, and Envoy Air, Inc. (“Envoy Air”), the Third Defendant, (collectively “the Defendants”), for an Order that the Defendants be removed from this action and that the claim be struck out as against them, amongst other relief (the Strike Out Application). The Strike Out Application is brought on the grounds that:

- (1) the Defendants are not proper parties or necessary parties for the resolution of the action; and/or
- (2) the Statement of Claim offends Order 18 rule 19(a) through (d) of the RSC as it discloses no reasonable cause of action against the Defendants, is scandalous, frivolous and/or vexatious and may prejudice, embarrass or delay the fair trial of this action or is otherwise an abuse of the Court’s process.

2. The Strike Out Application is made in the broader context of a claim by ten (10) claimants (as alleged former employees of AAI), against AAGI, AAI and Envoy Airlines, Inc. The claimants by their action seek damages for wrongful and/or unfair dismissal and compensation due for overtime work and accrued benefits, amongst other claims, which amount to some \$1.5 million plus interest and costs.

3. This brief ruling addresses a preliminary issue which arose at the start of the hearing of the application of AAGI, AAI and Envoy Air. It is whether the **Rules of the Supreme Court, 1978** (the “RSC”) or alternatively, the **Supreme Court Civil Procedure Rules, 2022** (the “CPR”), apply to this application. At the hearing, Counsel for the Claimants, Ms Krysta Mason-Smith, contended that the CPR must apply to this application, while Counsel for the Defendants, Mr Keith Major, submitted that the RSC could be used in support of his arguments even though the CPR applied to the general form of the application.

Procedural Background

4. This action was commenced by a Writ of Summons indorsed with a Statement of Claim filed on 12 August 2016. A Judgment in Default of Appearance was entered by the Claimants on 27 October 2016. However, subsequently on 08 November 2016 an application for Judgment in Default was filed by the Claimants on the basis that neither an appearance nor a defence was filed by the Defendants.

5. The Defendants brought applications to counter those of the Claimants on 9 December 2016, and in a ruling by the Acting Deputy Registrar, Mrs Carol Misiewicz, the Claimants’

application was dismissed, and the Defendants were granted leave to enter an appearance and to defend the action. Resultantly, an appearance was entered for Envoy Air Inc as the Third Defendant.

6. The nomenclature used by the Claimants for the Third Defendant was somewhat different than the name of the entity which entered an appearance, in that the Claimants brought the action against “Envoy Airlines, Inc.”. This difference is currently one of the bases upon which the Defendants, in their amended Strike Out Application, argue that Envoy Air Inc. ought to be “definitively relieved from defending” this action and that the action ought to be struck out. It is asserted that the Defendants, inclusive of Envoy Air Inc., are not proper or necessary parties to this action and, inter alia, the claim discloses no reasonable cause of action against the Defendants.

7. The Strike Out Application came before the Court on 3 November 2022. Also before the Court was a Summons filed by the Claimants on 15 December 2017 to strike out the Strike Out Application. The parties required an adjournment, in part, because there was an issue as to service of documents. The Court gave directions for the hearing of the matter and service of submissions.

8. There was another hearing on 11 May 2023. Prior to that date, on 1 March 2023, the CPR came into effect. This gave rise to the question of conversion of applications then before the Court from being RSC-governed to CPR-governed. During the hearing of 11 May 2023, the Defendants also expressed that they wished to amend the Strike Out Application to adjust the parties applying and the prayers included in the Strike Out Application. The Claimants expressed that they may be required to make adjustments to their application as well. The Court was of the view that the advent of the CPR meant that all applications would be governed by the CPR, as no trial date had been fixed in the matter. An Order was made by which 28 August 2023 was set for the hearing of all applications before the Court, and for the parties to file Notices of Application under the CPR. These would simply be converted versions of the same applications filed before the Court. By the Order of 11 May 2023 the parties were also given directions to exchange submissions.

9. At the hearing, Counsel for the Claimants took the view that the provisions of the CPR govern the application, and further, that in accordance with **CPR 19.2(7)**, the Court may add, remove or substitute a party at the case management conference, which had not yet occurred in this matter. Ms Mason-Smith referred to, amongst other rules, **CPR 8.5** to make the point that a claim, generally, will not fail because a person who should have been a party had not been joined or for the misjoinder of a party who ought not to have been joined.

10. Counsel for the Defendants, Mr Major, pointed out that the application to strike out is made, in part, because the Defendants were not employers of the Claimants. Counsel also stated that this is not a new application before the Court but rather one that was reissued because the CPR came into effect. The Defendants relied upon the RSC although they reissued the application in the form of a Notice of Application under the CPR. Mr Major referred the Court to the Preliminary provisions of the CPR and in particular those rules which speak to the application of the CPR. Counsel also referred to **Practice Direction No. 9 of 2023** which

renders directions in relation to extant interlocutory applications filed before and after the CPR came into effect.

Discussion and Disposition

11. It is the Court's opinion that the CPR governs the application of the Defendants (and, in fact, that of the Claimants). The Preliminary Part of the CPR as to the Application of Rules provides in part:

"2. Application of Rules

"(1) Subject to paragraph (4), these Rules shall –

(a) ...

(b) Not apply to civil proceedings commenced in the Court prior to the date of commencement of these Rules except where –

(i) a trial date has not been fixed for those proceedings; or

(ii) a trial date has been fixed for those proceedings and that trial date has been adjourned."

12. Although this action was filed prior to the commencement of the CPR, no trial date has been fixed. As such, it is clear that after the commencement of the CPR, in accordance with the Preliminary rules at **CPR 2(1)(b)(i)**, the CPR governs all hearings in this action.

13. Additionally, **Practice Direction No. 9 of 2023** provides in part:

"1.1 This practice direction clarifies the application of the [CPR] to proceedings which were commenced prior to the commencement date.

"2.1 The [CPR] apply to proceedings commenced prior to the commencement date where a trial date has not been fixed for those proceedings.

"2.2 Any new interlocutory application which has to be made or any new document which has to be filed, including the Defence, must comply with the [CPR]"...

"3.1 Where the CPR applies to an application which had been filed with the Court prior to the commencement date [of the CPR] but not heard by the Court, the parties will not required to file new applications on the documents already filed with the Court.

"3.2 The Court in managing the hearing of the interlocutory application may permit the parties to file any additional material which may be required for the application to be properly considered where the [CPR] now apply."

14. It is clear that by **Practice Direction No 9 of 2023** the Defendants would not have needed to file a new application. However, in the circumstances of this case, where the Court was made aware in giving directions to the parties (after the CPR came into effect) that the

Defendants required their Strike Out Application to be amended to add a new applicant and new prayers for relief, it was obvious that another filing would have to be done to put the application as amended before the Court. In those circumstances the Court directed, inter alia, that the Defendants file a Notice of Application pursuant to the CPR, thus enabling the Court to consider the application properly under the CPR.

15. The Defendants, in seeking to argue their application under the RSC, wish to apply **Order 15, rule 6(2)(a)** which they perceive as more favourable to their arguments on misjoinder and any attempt on the part of the Claimants to amend the cause as pleaded after the expiration of the limitation period. The Court is satisfied that the CPR governs this application and that **CPR Part 26.3** as to striking out statements of case will apply. Further, **CPR Part 19** provides for the removal, substitution or addition of parties, as well as the protection of the rights of parties in the event it is demonstrated they may suffer prejudice by any such removal, substitution or addition of parties. In relation to this, according to **CPR 19.4**, the Court may only add or substitute a party after a relevant limitation period has passed if the addition or substitution is necessary and the relevant limitation period was current when the proceedings were started. Further, the addition or substitution is only necessary if the Court is satisfied that one of the following applies:

- (1) the claim cannot properly be carried on by or against an existing party unless the new party is added or substituted as a claimant or defendant;
- (2) the interest or liability of the former party has passed to the new party; or
- (3) the new party is to be substituted for a party who was named in the claim form in mistake for the new party.

16. Further, in relation to the question whether any party has an entitlement to a particular set of procedural rules, it is fitting to recollect the following passages from the 19 July 2023 decision of **Andrew Smith and Sophia Smith v First Caribbean International Bank (Bahamas) Limited et. al.** 2020/CLE/gen/00662, in which Winder CJ stated:

“[30.] The general position at law is that, subject to the express terms of the procedural enactment in question, no person has a vested right in any particular course of procedure but only a right to prosecute or defend a suit according to the rules for the conduct of an action in force for the time being: **Yew Bon Tew v Kenderaan Bas Mara [1983] 1 AC 553** per Lord Brightman at page 558.

“[31.] The CPR specifically addresses its own application. Rule 2(1)(b) of the CPR provides that the CPR does not apply to civil proceedings commenced in the Court prior to the commencement of the CPR, except where a trial date has not been fixed for those proceedings or a trial date has been fixed and the trial date has been adjourned...”.

17. Having found that the CPR governs all applications in this action including those currently before the Court, it is appropriate to deal with the applications of the parties at the case management conference as is prompted by **CPR Part 19**. This will include sorting out the issues surrounding the Defendants currently before the Court and discharging any parties who ought not to be in the action. Appropriate orders as to costs in relation to this preliminary hearing and for the extant Strike Out Application will be made at the case management conference.

18. In the circumstances, the Court directs the following:

- (1) that the parties attend the case management conference at 9:00 am on Tuesday 18 November 2025;
- (2) that any evidence upon which the parties intend to rely be filed and served by 30 October 2025; and
- (3) that any submissions which the parties wish to make be reduced to writing, exchanged amongst Counsel and delivered to the Court by 10 November 2025.

Dated 08 October 2025



Simone I. Fitzcharles
Justice