

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

**2023/CLE/gen/FP/00037**

**B E T W E E N**

**PETER SAUNDERS**

Claimant

**AND**

**CONET BAHAMAS LIMITED**

Defendant

**Before:** The Honourable Justice Constance Delancy

**Appearances:** Paul A. Wallace-Whitfield for the Claimant

Edward Marshall, II for the Defendant

**Hearing date(s):** On the papers  
Defendant's submission received (7 October, 2025)  
Claimant did not provide any submissions

**RULING**

**DELANCY, J**

**Brief Background**

[1.] This is the decision of the Court on the Defendant's application for leave to amend its defence in this action.

[2.] On 28 February 2023, the Claimant filed a specially endorsed Writ of Summons seeking the commenced an action against the Defendant seeking damages for wrongful dismissal and the payment of dividends he claims are due and owing to him in his capacity as the holder of 1,600 the Defendant Company's shares from its inception in 2008 to date.

[3.] On 5 May 2023 the Defendant filed a Defence denying the Claimant's claims in their entirety and claiming that parts of the Claimant's Action are statute barred.

[4.] Should the Court grant an order pursuant to its powers it may make that order subject to conditions, per Part 26.1 (3). Those conditions the court may impose are codified in part 26.1(4) as follows:

[5.] On 22 July 2025 the Defendant engaged new Counsel; and on 28 September 2025 filed Notice of Application seeking:

“...(ii) AN ORDER granting the Defendant permission to amend the Defence filed herein on 5 May 2023, in the manner shown in red in the draft Amended Defence exhibited to the Affidavit of Robert Clarke;

(iii) AN ORDER that the costs of and further to the amendments be paid by the Defendant to the Claimant and assessed if not agreed;...”

[6.] The parties agreed that the matter would be determined on the papers and were directed to forward their respective skeleton arguments to the Court. The Court notes that it is receipt of skeleton submissions from Counsel for the Defendant and no skeleton submissions were received from the Counsel for the Claimant.

[7.] The Defendant’s application was supported by the Affidavit of Robert Clarke (“the Clarke Affidavit”), in his capacity as President of the Defendant, filed on 30 September 2025. The Defendant avers that upon review of their file by new Counsel that it was determined that it failed to certain information in its defence. In particular, amending the factual assertions to ensure accuracy with regarding in the Defence regarding the Claimant’s alleged shareholding and former employment with the Defendant. A copy of the proposed amendment is exhibited to the Clarke Affidavit.

[8.] The Court must determine whether to exercise its discretion and grant the amendment as prayed by the Defendant. The Court ought to consider the timing of the application and any prejudice which may be suffered by the Claimant.

## **Law and Analysis**

[9.] Part 20.1(2) and (3) of the Supreme Court Civil Procedure Rules (“the CPR”) which provides that:

(2) The Court may give permission to amend a statement of case **at a case management conference or at any time on an application to the Court.**

(3) When considering an application to amend a statement of case pursuant to paragraph (2), the factors to which the Court must have regard are —

- (a) **how promptly the applicant has applied to the Court after becoming aware that the change was one which he wished to make;**
- (b) **the prejudice to the applicant if the application was refused;**
- (c) **the prejudice to the other parties if the change were permitted;**
- (d) **whether any prejudice to any other party can be compensated by the payment of costs and or interest;**

- (e) whether the trial date or any likely trial date can still be met if the application is granted;
- (f) and the administration of justice.

[Emphasis added]

[10.] Counsel submitted that the Court must consider each of the factors set out on Part 20.1 CPR in turn as stated by *Fraser, Snr. J* (as she then was) in **MS Amlin Corporate Member Limited v Buckeye Bahamas Hub Limited** 2020/COM/adm/00016 at para. [56.] to [59]:

56. The starting point in an amendment application is Rule 20.1 of the CPR. Rule 20.1(1) to (5) of the CPR states:

“20.1 Changes to statement of case.

(1) A statement of case may be amended once, without the Court’s permission, at any time prior to the date fixed by the Court for the first case management conference.

(2) The Court may give permission to amend a statement of case at a case management conference or at any time on an application to the Court.

(3) When considering an application to amend a statement of case pursuant to paragraph (2), the factors to which the Court must have regard are —

- (a) **how promptly the applicant has applied to the Court after becoming aware that the change was one which he wished to make;**
- (b) **the prejudice to the applicant if the application was refused;**
- (c) **the prejudice to the other parties if the change were permitted;**
- (d) **whether any prejudice to any other party can be compensated by the payment of costs and or interest;**
- (e) **whether the trial date or any likely trial date can still be met if the application is granted;** and
- (f) **the administration of justice.**

(4) A statement of case may not be amended without permission under this rule if the change is one to which any of the following applies —

- (a) rule 19.4; or
- (b) rule 20.2.

(5) An amended statement of case must include a certificate of truth under rule 3.8 (emphasis added).”

57. Rule 19.4 of the CPR addresses adding or substituting parties in an action after the relevant limitation period has expired. Accordingly, it is not relevant for the purposes of this ruling. Rule 20.2(1) and (2) of the CPR, however, provides:

“20.2 Changes to statements of case after end of relevant limitation period.

(1) This rule applies to a change in a statement of case after the end of a relevant limitation period.

(2) **The Court may allow an amendment the effect of which will be to add or substitute a new claim but only if the new claim arises out of the same or substantially the same facts as a claim in respect of which the party wishing to change the statement of case has already claimed a remedy in the proceedings** (emphasis added).”

58. Accordingly, in an amendment of statement of case application, the Court must bear in mind the following factors: (a) how promptly the applicant has applied to the Court after becoming aware that the change was one which he wished to make; (b) the prejudice to the applicant if the application was refused; (c) the prejudice to the other parties if the change were permitted; (d) whether any prejudice to any other party can be compensated by the payment of costs and or interest;(e) whether the trial date or any likely trial date can still be met if the application is granted; and (f) the administration of justice.

59. Furthermore, I must consider the impact of the limitation period expiring. I shall address each factor in turn.

[11.] Counsel for the Defendant submitted that the amendments are required to bring clarity to the information contained in the Defence and to bring it into conformity with the claims made by the Claimant in his Statement of Claim. Further that as soon the Defendant became aware of the lack of particulars in its Defence an application was made on its behalf.

[12.] Counsel for the Defendant further submitted that the Claimant would not be prejudiced by the amendment sought as it is consistent with the Claimant’s claims. Further that it is the Defendant who may suffer prejudice if not allow to amend its Defence.

[13.] The Court notes that there is no trial date has been set in the instant case therefore that factor need not be considered in this application.

[14.] The Court in exercising its discretion under Part 20.1 CPR must do so against the background of the overriding objectives as observed by *Fraser, Snr. J* in **MS Amlin Corporate [supra]** at para. [73.]:

The administration of justice requires that fairness to all parties be done. I remind myself of the overriding objective as provided under Rule 1.1 of the CPR. That rule reads as follows:

“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** (emphasis added)."

[15.] In the instant case one of issues to be determined at trial is whether or not the Claimant was a shareholder of the Defendant and if yes, what if anything is owed to the Claimant as result thereof. Counsel submitted that in keeping with the overriding objectives allowing the Defendant to advance its defence against the Claimant's serious claims is fair and would place the parties on equal footing.

### **Disposition**

[16.] The Court hereby exercises its powers pursuant to Rules 20.1(2) and 20.2(2) of the CPR and grant the Defendant leave to amend its Defence as outlined in its draft amended Defence.

[17.] The Court hereby orders as follows:

- (i) The Defendant is granted leave to amend its Defence as outlined in its draft Defence attached to the Clarke Affidavit.
- (ii) The Defendant shall file and serve its amended Defence within 14 days from the date of this ruling.
- (iii) The Claimant is granted leave to file and serve any amended Reply within 21 days from the date of this ruling.
- (iv) The Defendant shall pay the Claimant's costs for this application, to be assessed by a Registrar if not agreed.
- (v) The parties shall forward to the Court agreed convenient dates for a new case management conference for this matter within 28 days of this ruling.

Dated the 26 day of January, 2026

*[Original signed and sealed]*

Constance Delancy  
Justice