

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law & Equity Division
2020/CLE/gen/FP/00121

B E T W E E N

BAHAMIAN FRUTEE DELITE COMPANY

Claimant

AND

EQUINOR SOUTH RIDING POINT LLC

Defendant

Appearances: Ms. Ntshonda Tynes with Mrs. Tanisha Tynes-Cambridge on behalf of
The Claimant.

Mr. Dwayne Fernander, with Ms. Lavette Kemp, on behalf of the
Defendant

Hearing Date: 7th October 2025

DECISION

FORBES, J

[1.] This is the Court's decision on the Applications made by the Claimant and Defendant on 6 October, 2025 and the Application made by the Claimant on 28 October, 2025.

BACKGROUND

[2.] The Claimant filed a Specially Endorsed Writ of Summons on the 26th October 2020, in which the Claimant alleged it was the tenant and occupier of 85.35 acres of land situated on the northern side of the main road at South Riding Point, East Grand Bahama, on which was a 20-acre quarry that harvested limestone ("**the Land**"). The Defendant was the owner, tenant, and occupier of neighboring land on the southern side of the main road at South Riding Point, where it operated a petroleum storage and transshipment facility.

[3.] The Claimant alleged that as a result of a category 5 hurricane, Dorian, which struck Grand Bahama on 1 September 2019, a sufficiently large quantity of oil escaped the Defendant's property and injured the Claimant's property, caused by the negligence and nuisance of the Defendants, their servants, or agents.

[4.] The particulars of the Claimant's action alleged that the storage of a large quantity of oil during the hurricane season would likely have caused injury and damage due to strong winds and heavy rains, further, that the Defendant failed to employ adequate measures to secure the petroleum stored at its facilities to prevent its escape in the event of strong winds and heavy rainfalls.

[5.] The Claimant, alternatively, alleged that the petroleum constituted a nuisance that was caused and permitted by the Defendant. That this negligence and nuisance resulted in loss and special damages totaling Twenty Four Million Two hundred and forty four Thousand one hundred and three dollars and seventy five cents. (\$24,244,103.75), general damages and interest.

[6.] Defendant filed its Defence on the 27th November 2020. The Defendant asserts that the Claimant was not the lessee of the Land, as the Claimant's previous lease had expired and not been renewed. The Defendant admits to being a tenant of the Land, occupying it under a lease dated the 21st October 2009.

[7.] The Defendant stated that on the 24th of August 2019, Tropical Storm Dorian was upgraded to a category one, and that between the 24th of August and the 31st of August, the storm strengthened; however, its path was unpredictable. As of the 1st September 2019, the storm upgraded to a category five and made landfall on the Island of Abaco, and on the 2nd September 2019, made landfall on the Island of Grand Bahama in the vicinity of South Riding Point. Further, the Storm was stationary over South Riding Point for approximately fifteen hours. The damage in the wake of the storm was catastrophic, and significant quantities of petroleum were released from the storage tanks, resulting in the surrounding properties being inundated with petroleum. Further, considerable resources were required to remediate the damage. That the Defendant puts the Claimant to strict proof regarding its claim that it had legal rights to the property, as well as their claims of negligence. The Defendant also asserts that the hurricane and its impact were an “act of God.”

[8.] The parties appeared at multiple case management conferences between October 2021 and April 2024, at which counsel for the parties made specific indications. Those indications were later abandoned, and both Defence and Claimant’s Counsel were in breach of the orders. However, in March, 2023, the Court acceded to the Defendant’s application.

[9.] On 31 May, 2024, the Court gave directions in the proceedings, and a Trial date was set for 17th September 2025, with the date for compliance with the directions set for 14 June, 2024.

[10.] On 21 June, 2024, the Defendants filed a further extension of time for the application, which the Claimants did not oppose, and the Court granted the extension.

[11.] The Parties were scheduled to return to Court on the 25th July 2025; Unfortunately, Lead Counsel for the Claimant passed away, and the matter was further adjourned. To the 15th September 2025, and the Trial date was then vacated, and the Court set the date of 3rd October 2025 for case management.

The Applications

[12.] On the 6 October, 2025 the Claimant filed an application for the extension of time to file three additional witness statements, a bundle of documents and reliefs from sanctions pursuant Part 26.1(2)(k) and Part 26.8 or, in the alternative, 26.9 of the Supreme Court Civil Procedure Rules, 2022 (“CPR”) and/or to the inherent jurisdiction of the Court. The Application was supported by Trevonia Blatch, filed on the same day.

[13.] The grounds of the application, in brief, are that the previous counsel passed away; that documentary evidence has become available; that counsel who has now assumed carriage of the matter began reviewing the file and will need to prepare and file a bundle of documents and further witness statements, and that it would be reasonable and just that the Claimant be granted the relief sought.

[14.] Further on the 6 October, 2025, the Defendant filed a Notice of Application pursuant to Rule 26.3(1)(a) and 26.3(1)(c) seeking an Order striking out the Claimant’s claim for failure to comply with a direction order or the statement of case or the part be struck due to it being frivolous, vexatious, and an abuse of process, or in the alternative prohibit the Claimant from filing any further documents pursuant to 26.2, and/or impose sanctions including but not limited to refusing the grant of further extension of time/prohibiting the Claimant and Costs. The Affidavit of Princess Saunders supported the Application.

[15.] The salient grounds of the application are summarized as follows:

- a. That on 5 November, 2021, the Parties appeared before the Court for a case management conference and directions (“the Directions”) were given;
- b. That on 18 August, 2023 Parties appeared for a mention date at which the Defendant stated that no financial documents were provided in support of the claim for review;
- c. That on 12 April, 2024, the Court made an order for the compliance with the Case Management Order on or before 30 May, 2024 (“the Order”);
- d. On 29 May, 2024, after the Claimants failed to comply with the Order, the Defendants made an application for specific disclosure pursuant to Part 28.5 of the CPR and/or the inherent jurisdiction of the Court.

e. On 31 May, 2024, the Parties appeared before the Court

[16.] On 28 October, 2025, the Claimant further filed a Notice of Application pursuant to Part 26.1 (2)(v) and Part 26.9 (3) of the CPR. The Claimant sought an extension of time to comply with the case management directions and leave to amend its application filed on 6 October 2025. The Second Affidavit of Trevonia Blatch supports the application filed on 28 October, 2025.

[17.] The grounds of this application are as follows:

- a. That Counsel took carriage of the matter sometime in the latter half of September;
- b. That upon review of the file, it became apparent that the file was incomplete;
- c. That the Counsel omitted the request for an extension of time to file a Supplemental List of Documents in its 6 October 2025 Notice of Application;

[18.] The Court notes that the parties appeared before the Court on 7 October 2025. At the hearing, the Court gave timelines for the exchange of submissions between the parties and the Court.

[19.] The Court notes that Counsel for the Claimant, without leave, filed a “Supplemental List of Documents” on 10 November, 2025. The Court will address this further below in the ruling.

LAW

[20.] The relevant sections of Part 26 of the CPR, which read as follows:

- (1) The list of powers in this rule is in addition to any powers given to the Court by any other rule, practice directions, or any enactment.
- (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;...

(v) take any other step, give any other direction, or make any other order for the purpose of managing the case and furthering the overriding objective, including hearing an Early Neutral Evaluation, or directing that such a hearing take place before a Court-appointed neutral third party, to help the parties settle the case.

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

- (4) The conditions which the Court may impose include —
- (a) requiring a party to give an undertaking;
 - (b) requiring a party to give security;
 - (c) requiring a party to pay all or part of the costs of the proceedings;
 - (d) requiring the payment of money into Court or as the Court may direct; and
 - (e) that a party permit entry to property owned or occupied by that party to another party or someone acting on behalf of another party.

[22.] The Defendant made an application to strike the statement of case for non-compliance with the Court's Case Management Order. Part 26.3 (1)(of the CPR states:

- (1) In addition to any other power under these Rules, the Court may strike out a statement of case or part of a statement of case if it appears to the Court that —
- (a) there has been a failure to comply with a rule, practice direction, order, or direction given by the Court in the proceedings; ...
 - (c) The statement of case or the part to be struck out is frivolous, vexatious, scandalous, an abuse of the process of the Court, or is likely to obstruct the just disposal of the proceedings;

[23.] Further, Part 26. 8 states:

- (1) On an application for relief from any sanction imposed for a failure to comply with any rule, practice direction or Court order, the Court will consider all the circumstances of the case, to enable it to deal justly with the application, including the need —
 - (a) for litigation to be conducted efficiently and at proportionate cost; and
 - (b) to enforce compliance with rules, practice directions, and orders.
- (2) An application for relief must be supported by evidence.
- (3) The Court may not order the respondent to pay the applicant's costs in relation to any application for relief unless exceptional circumstances are shown.

[24.] Part 26.9 (3) states the following:

- (3) If there has been an error of procedure or failure to comply with a rule, practice direction, court order, or direction, the Court may make an order to put matters right.

[25.] Counsel for the Claimant and the Defendant have both provided very detailed and comprehensive submissions in support of the respective applications, and the Court has reviewed and given due consideration to the submissions made.

ANALYSIS AND DISCUSSION

The Amendment Application

[26.] The Court notes that the Applications are competing; however, the Court will commence with the Claimant's Application to amend the 6 October 2025 application. The Court is guided by the general principle of amendments as set out in the case of **Steward v North Metropolitan Tramways Company** (1886) 16 QBD 556 at page 558, which states:

“The rule of conduct of the Court in such a case is that, however negligent or careless may have been the first omission, and however late the proposed amendment, the amendment should be allowed, if it can be made without injustice to the other side. There is no injustice if costs can compensate the other side: but, if the amendment will put them into such a position that they must be injured, it ought not to be made.”

[27.] Therefore, the consideration of this Court is whether there is an injustice to the Defendant if the amendment is made. The application created is seeking to 'add' in an extension of time application to the 6 October 2025. It is the Court's view that the grounds that the Defendant may use to oppose an extension of time require the same information and case law that is currently put before the Court. Damages are an appropriate remedy, and the Defendant, in the Court's view, would not put them in a position of prejudice outside of costs.

Relief from Sanctions/ Leave to File Further Documents

[28.] The Claimants sought relief from sanctions. The Court notes that in the last case management conference before the demise of the Claimant's lead counsel, Lead Counsel asserted that he was prepared for trial based on the documents filed. All the usual case management documents are before the Court. However, the Claimants are seeking an extension of time to file further documents. Therefore, the relief is necessary.

[29.] The Court agrees with Claimant's Counsel that the test for relief from sanctions and extension of time is a three-stage test. According to the case of **Denton v TH White Ltd** [2014] 1 WLR 3926, the Court must consider the following:

- a. The seriousness of the breach;
- b. The reason for the default; and
- c. All the circumstances in the case.

[30.] The breach in question concerns the 'out of time' filing of witness statements and documentary evidence for the trial of the matter. The Court sees this breach as significant. Further, the Court is sympathetic to the reason given by Counsel; however, the Court notes that there was an active second chair in the matter who ought to have been prepared for the trial and abreast of all trial matters.

[31.] The Court refers to **Clarke v Coachman** (1855) 20 L. Jo. 318. The case concerned a negligence action. The firm's attorney, Mr. Coachman, took on a case and transferred it to a partner, Thurston, who was not familiar with the facts. The Claimant lost the matter and sued Coachman. The principle in this case, though focused on actual/professional negligence, is clear: the client is the client of the firm, and where the Counsel is not sufficiently acquainted with the facts of the case, the firm itself is liable. The Court recognizes the need for Counsel to be adequately acquainted with the facts; however, as previously mentioned, there was an active second chair in this matter. Therefore, the alleged reason for the breach is unmeritorious.

[32.] Finally, in all circumstances of the case, the Court acknowledges that the Defendant has been in breach of the Case Management orders and sought extension of time and relief applications. However, none of these applications moved the trial date set by the Court. Based on these applications, not only were the trial dates vacated, but the extension was also granted; the matter would then be returned to case management.

[33.] For the reasons above, the Court denies the Claimants' application for an extension of time.

Strike Out Application/Alternative Relief

[34.] The Court finds it prejudicial to allow the Claimant's application to file further trial documents, be it an additional list of papers or further witness statements. Neither the documents, an outline of the witnesses' information, nor their purported evidence is before the Court for consideration of the evidence sought. When addressing its mind to Part 26.3 of the CPR, there is a failure to abide by an order given by this Court. However, the Court, in considering all the circumstances, finds that though the trial date had to be vacated, there is a triable issue and a case, supported by evidence, to be tried by the Court. The Court does not think it is reasonable to strike out the case of the Claimant.

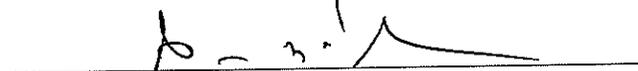
[35.] The Court notes that on 10 November, 2025, the Claimant filed a Supplemental List of Documents without the leave of the Court. This document is struck. Parties are barred from filing any further Court Documents.

DISPOSITION

[36.] The Court, for the aforementioned reasons:

- a. Accedes to the Claimant's application for amendment of the 6 October 2025 application;
- b. Denies the leave for the Extension of Time Application and the Relief From Sanctions;
- c. Strikes the erroneously filed "Supplemental List of Documents" filed on 10 November, 2025;
- d. Accedes to the Defendants' application for sanctions by barring the Claimant from filing any other documents in this matter; and
- e. Grants the costs of this application to the Defendant. Cost to be taxed if not agreed.
- f. Matter to be set for Case Management.

Dated this 9th day of February, A.D.2026



The Honorable Justice Andrew Forbes