

Commonwealth of The Bahamas
In the Supreme Court
Common Law and Equity Division
Claim No. 2024/CLE/gen/00094

B E T W E E N

SHERIF ASSAL

Claimant

AND

KING & Co.
(A Law Firm)

Defendant

Before: Her Ladyship The Honourable Madam Justice Cheryl Bazard KC
Appearances: Raynard S. Rigby KC and Weniska Rolle for the Defendant/Applicant
Mr. Edward J. Marshall II and Samuel R. Brown for the
Claimant/Respondent
Hearing Date: 1st October 2025

RULING

Civil Procedure – Joinder of third party – Rules 18.6 and 18.7 and Rule 19 of the Supreme Court Civil Procedure Rules 2022 (“CPR”) – Whether the Defendant should be granted leave to join additional parties to the action for the purpose of seeking indemnity and/or contribution.

Held: It is common ground that the Court's power under the Civil Procedure Rules ("CPR") to add a claimant/defendant to an action is broad and permission is not required from the parties. This is an application, by the Defendant pursuant to Rule 18.6 and 18.7 of the CPR for the joinder of Steven Harrington, Eric Kim, Exumar LLC and/or Exuma Elizabeth Ltd (**together "the proposed additional parties"**) as defendants for the purpose of indemnity and contribution is granted.

BAZARD, J:

[1.] This ruling concerns a procedural application by King & Co., the Defendant (**"the Defendant/Applicant"**), against Sheriff Assal, the Claimant (**"the Claimant/Respondent"**). The application arises from a Notice of Application filed on 16 July 2025.

[2.] By its Notice of Application, the Defendant/Applicant seeks the following reliefs:

- i. An order pursuant to Rules 18.6 and 18.7 of the Supreme Court Civil Procedure Rules, 2022 ("CPR") for leave to join Steven Harrington, Eric Kim, Exumar LLC and/or Exuma Elizabeth Ltd. as additional parties to these proceedings, and to seek from them a full indemnity and/or contribution in respect of the Claimant's claim for the sum of US \$2,000,000.00; and
- ii. An order pursuant to Rule 24 of the CPR that the Claimant provide security for costs in the sum of \$300,000.00, on the grounds that the Claimant is ordinarily resident outside the jurisdiction and has no known assets within The Bahamas to satisfy any adverse costs award.

Background

[3.] It is useful to provide the background of the substantive action in order to put the application in context. The substantive action arises from a dispute concerning the Claimant/Respondent's transfer of USD\$2,000,000.00 to the Defendant/Applicant in June 2021. The Claimant/Respondent alleges that the transfer was made in anticipation of acquiring a beneficial interest in Exumar LLC, a Florida entity associated with the ownership of land on Elizabeth Island, Exuma, held through Exuma Elizabeth Ltd. The Defendant/Applicant denies liability and maintains it acted solely on the instructions of its client, Steven Harrington, and that Exumar LLC is legally owned by Steven Harrington and Eric Kim. It further denies involvement in an investment arrangement between the Claimant/Respondent and Messrs. Harrington and Kim maintaining that it understood the funds were required to facilitate an urgent, time sensitive property closing.

[4.] The Defendant/Applicant submits that the joinder of the proposed additional parties is necessary for the proper and just determination of the issues in dispute. It argues that the Claimant/Respondent's claim for the recovery of the US\$2,000,000.00 cannot be fairly adjudicated in the absence of those who allegedly arranged the transaction, benefited from the property acquisition, and can speak to the central facts concerning the use of the funds.

[5.] The Claimant/Respondent opposes the Defendant/Applicant's application to join the proposed additional parties to these proceedings but avers that insofar as the Rules permit, it does

not oppose the joinder of Messrs. Harrington and Kim only as third parties for the limited purpose of enabling the Applicant to pursue contribution and/or indemnity against them.

[6.] The Applicant relies on the Affidavits of Paul King and Shade Munroe each filed on 5 March 2024 and the Affidavit of Weniska Rolle filed on 23 September 2025. The Affidavit of Weniska Rolle exhibits a draft Third Party Claim Form that encapsulates the Defendant/Applicant's pleaded position in the following paragraphs:-

“3. The Defendant received the sum of USD\$385, 074 (in two separate amounts USD \$50,037 and USD\$335,037 both on 4 June 2019) from Steven P. Harrington and USD \$1,000,000 on 26 May 2021 from The Exuma Fund LLC towards the agreed purchase price.

4. On or about 8 June 2021 the Defendant was informed by Eric Kim that it will receive the sum of USDS\$2,000,000.00 (in two separate amounts USD\$1,500,000 and USD\$500,000) from the Claimant to complete aforesaid land purchase for a time of the essence closing that same day.

5. The wire instruction received by the Defendant from the Claimant’s bank had the following designation/notation: “*Elizabeth Island Closing*”. That led the Defendant to reasonably believe that the said sum was for the closing as indicated by Steven Harrington.

6. The Defendant paid the balance of the purchase price which included the said sum of USD\$2,000,000 to Higgs & Johnson, the seller’s Attorneys, and the sale of the property by Exuma Elizabeth Ltd. was completed on 8 June 2021.”

Issues

[7.] The issues to be determined by the Court are as follows:

- 1. Whether the Court, pursuant to Rules 18.6 and 18.7, or on its own motion, should join Steven Harrington, Eric Kim, Exumar LLC and Exuma Elizabeth Ltd as additional parties to these proceedings; and**
- 2. Whether the Defendant should be permitted leave to join additional parties to the action for the purpose of seeking indemnity and/or contribution.**

The Law

[8.] The Court's jurisdiction to permit the joinder of an additional party by way of contribution or indemnity is governed by **Rules 18.6 and 18.7 of the Supreme Court Civil Procedure Rules, 2022 (CPR 2022)**.

[9.] **Rule 18.6 and 18.7 of CPR 2022** provides:

“18.6 Defendant’s additional claim for contribution or indemnity form another party.

(1) A defendant who has filed an acknowledgement of service or a defence may make an additional claim for contribution or indemnity against a person who is already a party to the proceedings by –

- (a) filing a notice in Form G12 containing a statement of the nature and grounds of his additional claim; and
- (b) serving the notice on that party.

(2) A defendant may file and serve a notice under this rule –

- (a) without the court's permission, if he files and serves it
 - (i) with his defence; or
 - (ii) if his additional claim for contribution or indemnity is against a party added to the claim later, within twenty-eight days after that party files his defence; or
- (b) at any other time with the court's permission.”

18.7 (1) This rule applies to any additional claim except –

- (a) a counterclaim only against an existing party; and
- (b) a claim for contribution or indemnity made in accordance with rule 18.6.

(2) An additional claim is made when Form G12 is filed in the court office.

(3) A defendant may make an additional claim –

- (a) without the court's permission if the additional claim is issued before or at the same time as he files his defence;
- (b) at any other time with the court's permission.

(4) Particulars of an additional claim must be contained in or served with the additional claim.

(5) An application for permission to make an additional claim may be made without notice, unless the Court directs otherwise.”

[10.] The addition of a party for the purpose of an indemnity or contribution claim is governed by **Rule 18**, with reference to the criteria in **Rule 19 of the CPR 2022**. The process depends on whether the proposed additional claim is against an existing party or a non-party. The court may add a new party to the proceedings without an application. The factors to be considered are set out in **Rule 19.2(4) of CPR of 2022**.

[11.] **Rule 19.2(4) of CPR 2022** provides:

“(4) The Court may add a new party to the proceedings without an application, 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 which 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.”

[12.] The Court is also guided by the overriding objectives set out in **Rule 1.1 of the CPR 2022**, namely, to deal with cases justly and at proportionate cost.

1.1“(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.”

[13.] In addition, Rule 26.1 of CPR 2022 confers wide case management powers on the Court, including the power to make any order necessary to further the overriding objective and ensure the efficient and fair resolution of disputes. It provides:

26.1 “(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 –

- (a) adjourn or bring forward a hearing to a specific date;
- (b) consolidate proceedings;
- (c) deal with a matter without the attendance of any of the parties;
- (d) decide the order in which issues are to be tried;
- (e) direct a separate trial of any issues;
- (f) direct that any evidence be given in written form;
- (g) direct that notice of any proceedings or application be given to any person
- (h) direct that part of any proceedings, such as a counterclaim or additional third party claim, be dealt with as separate proceedings;
- (i) dismiss or give judgement on a claim after a decision on a preliminary issue;...

(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, with the aim of helping the parties settle the case. (Emphasis Added)

[14.] I have considered the Bahamian authorities, particularly **The Bahamas Union of Teachers v The Attorney General of the Commonwealth of The Bahamas [2023] BHS J. No. 65** which recognizes that the Court has wide discretion to permit amendments and joinder where doing so does not cause injustice that cannot be compensated in costs. Cards-Stubbs J articulated the following regarding joinder at paragraph 52:

“The jurisdiction to allow the joinder of causes of actions and of parties serves to meet the interest of justice in supervising the resolution of disputes. If several filed disputes may better

be resolved together, a joinder of actions is envisaged. One of the purposes of joinder of parties, is to ensure that there is not a multiplicity of actions. If there are persons with legitimate claims and a substantial interest in the outcome of the litigation, they ought not to be ignored when they present themselves to the Court. The test at this stage is not whether their claim (or defence) will be upheld. It is sufficient, as in this case, if the resolution of the dispute will impact some legal entitlement that they espouse. Taking a practical approach, it makes sense for them to be brought into the dispute so that they are heard, and, as importantly, it makes sense so that they are immediately bound by the outcome of the dispute. This may mean too that they could be specifically subject to any relief obtained by the Claimant as well as they may be the specific beneficiaries of any restraint imposed upon the Claimant. These results will forestall the launching of further actions to cover the same or similar grounds or questions.”

(Emphasis Added)

[15.] Similarly, in **Darnelle Osbourne v The Honourable Thomas Desmond Bannister (in his capacity as the Minister of Public Works and the Minister charged with the responsibility for the Boards of BPL and BEC) and another** [2020] 1 BHS J. No.2, the Court affirmed that it had broad discretion to permit amendments to pleadings, including adding new parties, and that every application must be assessed on its own specific facts. At paragraph 11, Charles J (as she then was) stated the following:

“In the case of **McPhee v Nesbitt and another** (2014) CLE/gen/01654 (unreported), this Court stated at para. 20:

“The court has a very wide discretion as to whether to make the order. As with amendments generally it is likely that the application will be granted if it does not cause injustice to the other which cannot be compensated in costs.”

[16.] The persuasive English authority of **Pawley v Whitecross Dental Care Ltd** [2021] EWCA Civ 1827 discussed the Court's approach. It held that it was common ground that **CPR 19** confers power to join and add a defendant, and that it is wrong to exercise that power in ordinary damages cases by forcing a claimant to sue additional defendants against their wishes. Stuart-Smith LJ at paragraphs 30 and 31 stated:

“The issue...is not whether a power exists under the Rules but whether it is wrong to exercise it in circumstances such as the present...I would therefore prefer to say that it is wrong in principle in such case for the court to exercise the power to join a party as a defendant and to require the claimant to pursue a claim against the newly joined party where the claimant opposes the joinder.”

[17.] The Court in **Pawley** discussed the conventional route under Part 20 which is designed for a defendant who contests liability yet wishes to involve another for indemnity or contribution. Stuart-Smith LJ opined at paragraphs 15 and 42:

“Part 20 is the relevant route where a defendant suggests that, although they contest liability, they are or should be entitled to an indemnity or contribution from someone else....

42 If a defendant wishes to involve an additional party in a case such as the present, the conventional route...is to join them by Part 20 proceedings, particularly if they have an interest...in securing an indemnity or a contribution.”

Defendant/Applicant's Submission

[18.] Counsel for the Defendant/Applicant submits that the Court has broad discretion under Rule 18.6, 18.7, 19.2 and 26.1 of CPR 2022 to permit additional claims and join parties where necessary to resolve all issues justly and efficiently. The Defendant/Applicant contends that Steven Harrington, Eric Kim, Exumar LLC and Exuma Elizabeth Ltd are necessary and proper parties, as the Claimant/Respondent's case concerns an alleged investment arrangement with Harrington and Kim relating to Exumar LLC and the Elizabeth Island acquisition, rather than a contractual arrangement with the Defendant/Applicant.

[19.] The Defendant/Applicant invites the Court to exercise its discretion and permit the joinder of the additional parties to further the overriding objectives thereby ensuring a fair, efficient and complete adjudication of all issues.

Claimant/Respondent's Submission

[20.] Counsel for the Claimant/Respondent submits that the application is procedurally flawed as CPR 18.6 applies only to existing parties and CPR 18.7 expressly excludes contribution or indemnity claims brought under CPR 18.6. Counsel argues that since Steven Harrington and Eric Kim are not parties to the proceedings and no separate application has been made under CPR 19 to add them, the Defendant/Applicant cannot invoke CPR 18.6/18.7 to seek their joinder. The Claimant/Applicant further argues that the CPR 19 test is not met, as joinder is intended to resolve existing disputes, not to secure evidence, and the Defendant/Applicant's case for joinder is essentially evidentiary.

[21.] The Claimant/Respondent's counsel requests the application be dismissed, or alternatively, that Harrington and Kim be added only as third parties for the limited purpose of a contribution or indemnity claim.

Discussion and Analysis

[22.] The substantive application arises from the breakdown of an alleged investment transaction. In my judgment, the evidence discloses circumstances which satisfies the criteria in **CPR 19.2(4)**. The dispute arises from a single transaction involving the transfer of funds, the acquisition of property, and the alleged entitlement to a beneficial interest, such that it is desirable for all connected issues to be resolved within the same proceedings.

[23.] I do not see the decision in **Pawley v Whitecross Dental Care (supra)** as preventing the current course of action. This case is not an "*ordinary damages claim*" where the claimant is forced to seek primary liability from an unwilling defendant. Instead, it involves a transactional dispute based on claims of authority, agency, receiving funds beneficially, and entitlement to indemnity or contribution. Therefore, including parties involved in and benefiting from the transaction promotes justice and aligns with standard procedures for resolving indemnity and contribution issues within one proceeding.

[24.] The legal principles outlined are straightforward: the Court has considerable powers to add a third party as a claimant or defendant when they are directly impacted. In the **Darnelle Osborne** case, Charles J. (as she then was) agreed with the plaintiffs' argument, noting that the request was made early, the proposed changes would not harm the defendants, and that the inclusion was necessary to settle all issues related to corporate governance and the alleged wrongful termination of the plaintiffs from their boards. The court concluded that BEC and BPL were clearly essential defendants and should have been joined from the outset, and there was no evidence of any prejudice that could not be remedied through costs.

[25.] Having regard to the circumstances, I am satisfied that the requirements under **CPR 19.2(4)(a) and (b)** are met. Messrs. Harrington and Kim are essential parties to the transaction and can assist the Court in determining the critical issues, including the authorization of the transfer, the capacity in which the Defendant/Applicant acted, and the ultimate beneficiary of the funds. Their inclusion will enable the Court to resolve all issues arising from a single, common transaction and avoid the risk of fragmented or duplicate proceedings.

[26.] While the Defendant/Applicant invoked CPR 18.6 in support of its application, I accept the Claimant/Respondent's submission that the procedural route under that rule was not strictly engaged, as the proposed additional parties were not already parties to the proceedings. However, that procedural irregularity is not determinative. The Court's jurisdiction to add parties does not depend exclusively on CPR 18.6 and arises independently under CPR 19.2(4), whether on application or on the Court's own motion. Where, as here, the criteria in CPR 19.2(4)(a) and (b) are satisfied and no irretrievable prejudice is shown, the Court may exercise its case management powers under CPR 26.1 to further the overriding objective of achieving a just, efficient, and proportionate resolution of the dispute.

[27.] I have also considered the issue of prejudice, in light of the overriding objective in **CPR 1.1** and I am satisfied that the joinder of the proposed parties at this stage will not cause unfair prejudice to the Claimant/Respondent, the existing Defendant, or the proposed new parties. No material prejudice has been demonstrated that cannot be adequately addressed through case management directions or costs.

[28.] The Claimant/Respondent argued that Messrs. Harrington and Kim could be summoned by subpoena instead of being formally included as parties. In assessing whether including Harrington and Kim merely as third parties would satisfy the overriding objective, I determined it would not. Such limited joinder would require the Court to decide key factual and proprietary issues relating to the substantive claim without these parties being directly involved as defendants, risking the need for separate proceedings and re-litigation of the same issues, including additional indemnity or contribution claims by the Claimant/Respondent. This would lead to fragmentation, contradicting CPR 1.1, and would not make effective use of judicial time. I do not agree that this approach is adequate; it would leave unresolved related issues of indemnity, contribution, and authorization, possibly resulting in further litigation and inconsistent outcomes. To ensure justice and judicial efficiency, these issues should be fully addressed in a single proceeding.

[29.] I therefore exercise my discretion pursuant to **CPR 19.2(4)** to add Steven Harrington, Eric Kim, Exumar LLC, and Exuma Elizabeth Ltd. as additional defendants to these proceedings. Further, pursuant to **CPR 26.1** and the overriding objective, I direct that the Claimant file and serve an Amended Statement of Claim reflecting the joinder of the proposed parties, to be effected within twenty-eight days of the date of this Ruling.

[30.] The issue of security for costs, though raised in the Notice of Application, was not fleshed out by either party, and as such, no ruling is made on it.

[31.] I hereby make the following orders:

1. Pursuant to **CPR 19.2(4)(a) and (b)** and **CPR 26.1**, leave is granted for the joinder of the Steven Harrington, Eric Kim, Exumar LLC, and Exuma Elizabeth Ltd as Defendants to these proceedings for the purpose of determining all matters arising out of the transaction in dispute;
2. The Claimant shall file and serve an Amended Statement of Claim within 28 days of the date of this ruling.

Dated the 13th day of February, A.D., 2026



Justice Cheryl Bazard KC