

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity

1998/CLE/gen/00627

BETWEEN

FLORIDA EMPLOYERS' SAFETY ASSOCIATION SELF INSURERS FUND (In Receivership)

(by its Receiver the State of Florida, ex realtor, The Department of Insurance of The State of Florida)

Claimant

AND

DAVID SANZ

First Defendant

AND

GULF ATLANTIS MANAGEMENT GROUP, INC.

Second Defendant

AND

DELTEC BANK & TRUST LIMITED

Third Defendant

Before: Assistant Registrar Adrienne Bellot (Acting)

Appearances: Gabrielle Rahming with Kaelan McCartney and Shammah Johnson for the Third Defendant

Hearing Date: 5th March, 2026

RULING

Practice and procedure – Application to Strike out – Civil Procedure Rules Rule 26.3(1)(a) – Civil Procedure Rule 26.3(1)(b) – Civil Procedure Rules Rule 26.3(1)(c) – Inherent jurisdiction of the Supreme Court to strike out proceedings – Inordinate and inexcusable delay – Striking out by

reason that the Claimant failed to comply with a rule, practice, direction, order or direction given by the Court – Striking out by reason that statement of case does not disclose any reasonable ground for bringing or defending a claim – Striking out for abuse of process

In 1998, the Claimant, after commencing an action by Generally Indorsed Writ of Summons for tracing related to criminal proceedings that were at that time pending against the First Defendant, obtained an ex parte interim injunction, freezing the assets of the First Defendant held by Deltec Bank & Trust to the order of the First and/or Second Defendant. The Claimant took no other steps to advance the claim. The Third Defendant then filed an application to strike out the Writ on the following grounds: (i) inordinate and inexcusable delay on the part of the Claimant, (ii) the Writ of Summons does not disclose a reasonable cause of action (iii) the proceedings have amounted to an abuse of the court's process; and (iv) non-compliance with the Civil Procedure Rules.

HELD: Acceding to the Third Defendant's application to strike out the Claimant's claim on the basis of Rules 26.3(1)(b) and 26.3(1)(c) of the Civil Procedure Rules and under the inherent jurisdiction of the Court by reason of inordinate and inexcusable delay, but declining to strike out based on failure to comply with a rule under (a) of Rule 26.3(1).

Introduction

1. Pursuant to Rule 26.3(1) (a), (b) and (c) of the Supreme Court Civil Procedure Rules ("the CPR") and/or the inherent jurisdiction of the Court, Deltec Bank & Trust ("Deltec") seeks an order for dismissal of the proceedings on the following grounds:
 - a. There has been inordinate and inexcusable delay in proceeding with this action;
 - b. The action does not disclose a reasonable cause of action;
 - c. The Claimant's conduct in these proceedings amount to an abuse of the court's process; and
 - d. The action does not comply with the CPR.
2. Deltec also seeks an assessment of its costs for this application.
3. The application, filed 15th October, 2025 relies on the evidence contained in the Affidavit of Rochelle Rolle filed 1 July, 2020 and the Affidavit of Knijah Knowles filed 30th December, 2024.
4. The Claimant's attorney of record was served with the application, but did not oppose it nor did its Counsel appear at the hearing. That notwithstanding, as *"striking out is often*

described as a draconian step, as it usually means that either the whole or part of the party's case is at an end"¹, the Court is required to assess the application cautiously.

Background facts and Procedural history

5. The genesis of these proceedings stretches twenty-seven (27) years in the past yet few steps have been taken. By Generally Indorsed Writ of Summons filed 24th June, 1998, the Claimant sought the following relief:

“ENDORSEMENT

The Plaintiff's claim is against the First, Second and Third Defendants for:

- (i) a Declaration as to the Plaintiff's ownership of and entitlement to funds held by the Third Defendant to the order of the First and/or Second Defendants;
- (ii) a tracing Order directing the First, Second and Third Defendants to disclose and account for all monies now or formerly held on said Account or on any other Account in the name if the First and/or Second Defendants or otherwise received by the Third Defendant to the order of the First and/or Second Defendants or for his or its benefit or subject to his or its instructions for disposition;
- (iii) to the extent of such disposition as aforesaid, an Order that such monies be traced to whomsoever or to whomsoever's order they may have been paid out or be held and upon being so discovered an Order that such monies be paid with interest to the Plaintiff;
- (iv) as against the First and Second Defendants, damages for conversion;
- (v) an Injunction restraining payment, save to the Plaintiff, of any sums standing to the credit of any Account or otherwise held by the Third Defendant to the order of the First and/or Defendants;
- (vi) a Declaration that the First, Second and/or Third Defendants dare constructive trustees of any and all monies held on the said Account or no any other Account in the name of the First and/or Second Defendants held by the Third Defendant;
- (vii) interest;
- (viii) costs
- (ix) further or other relief.”

6. Without thereafter filing a Statement of Claim particularising the claim, the Claimant filed an ex-parte application for an injunction restraining the Defendants from dealing with funds held to the order of the First and Second Defendants up to the sum of

¹ B.E. Holdings Limited v Piao Lianji [2014/CLE/gen/01472] at paragraph 7.

US\$3,500,000.00 pending final judgment. The evidence on which the Claimant relied to support its ex-parte injunction application was the need to secure assets held by the First and/or Second Defendants with Deltec pending U.S. criminal proceedings against the First Defendant in the state of Florida.

7. By Order dated 1st July, 1998, the Honourable Mr. Justice Joseph Strachan granted the injunction without notice to the Defendants, effectively freezing the assets of the First and/or Second Defendant. The Order further required Deltec to file an Affidavit detailing the assets held by the First and/or Second Defendants.
8. By Affidavit filed 8th July, 1998, Deltec complied with the order of Strachan J, disclosing the details of the said account.
9. No further steps were taken in the action for twenty-two (22) years despite correspondence from Deltec exhibiting certified copies of the non-guilty verdicts in connection with the criminal charges against the First Defendant until Graham Thompson on behalf of Deltec filed a Notice of Intention to Proceed on 29th May, 2020 and a strike out application filed on 1st July, 2020.
10. This was followed by the application of Callendars & Co. for leave to withdraw as Attorneys for the Claimant on 9th July, 2020, the evidence in support of which was that the firm was unable to obtain definitive instructions from its client, as the Receiver Claimant had been discharged in the U.S. proceedings.
11. None of the 2020 applications were set down for hearing. Deltec then filed an application on 30th December, 2024 for an order: (i) to dismiss the claim against Deltec on the ground of abuse of process; and (ii) to substitute its name in place of "Ferrier Lullin Bank & Trust Bahamas Ltd.", the initial named Third Defendant whose portfolio, interest and liability were sold to Deltec. Assistant Registrar Mr. Johnathan Deal ordered the substitution of the Third Defendant but made no order as to the application for dismissal against Deltec on the basis that other relief would be sought.
12. With a view to striking out the substantive action together with the extant injunction ancillary thereto, Deltec filed this application, asserting that the action should be struck out pursuant to (i) the inherent jurisdiction of the Court on the ground that there has been inordinate and inexcusable delay on the part of the Claimant, (ii) Rule 26.3(1)(a) of the CPR on the ground that the Claimant failed to comply with a rule of the CPR, (iii) 26.3(1)(b) on the ground that the Writ of Summons does not disclose a reasonable cause

of action; and (iv) 26.33(1)(c) on the ground that the proceedings have amounted to an abuse of the court's process

Court's power to strike out

13. Rule 26.3 gives the Court jurisdiction to strike out a statement of case. The Rule provides:

"26.3 Sanctions – striking out statement of case.

- (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;
 - (b) the statement of case or the part to be struck out does not disclose any reasonable ground for bringing or defending a claim;
 - (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"

14. Apart from Rule 26.3 of the CPR, the Court has a discretion to strike out a statement of case under its inherent jurisdiction where there has been (a) an inordinate and inexcusable delay and (b) such delay gives rise to a substantial risk that it is not possible to have a fair trial of the issues in the action or is such as is likely to cause or to have caused serious prejudice to the defendants. (**Birkett v James [1978] AC 297**).

15. In **Major Consulting Limited v CIBC Trust Company (Bahamas) [2014] 2 BHS J No. 19**, regarding the Defendant's strike out application on the basis of want of prosecution and inordinate and inexcusable delay, Winder J (as he then was) emphasised the importance of demonstrating that the delay gives rise to a substantial risk that it is not possible to have a fair trial or a likelihood that the delay will cause or has caused serious prejudice to the defendant. The delay is not itself sufficient for the action to be struck out for inordinate and inexcusable delay under the Court's inherent jurisdiction:

"On the question of inordinate and inexcusable delay, the state of the law also requires the defendant to demonstrate that the delay will give rise to a substantial risk that it is not possible to have a fair trial or that such delay is likely to cause, or to have caused serious prejudice to the defendant."

16. Similarly, in **Icebird Limited v Alicia Winegardner [2009] UKPC 24**, a Bahamian case before the Privy Council, the Board held that on a striking out application on the ground of inordinate and inexcusable delay, the Applicant must meet the requirements set down in **Birkett v James**: (i) inordinate delay (ii) inexcusable delay and (iii) delay giving rise to a

substantial risk that there could not be a fair trial. According to Lord Scott of Foscote, who delivered the decision of the Board in **Icebird**, at paragraph 8:

8. **Birkett v James [1978] AC 297** remains, in their Lordships' opinion, the leading authority for the approach to be taken to an application to strike-out an action for want of prosecution. The House of Lords endorsed the principles set out in the then current Supreme Court Practice, namely, that the power to strike-out should be exercised only where the court was satisfied –

"... either (1) that the default has been intentional and contumelious e.g. disobedience to a peremptory order of the court or conduct amounting to an abuse of the court, or (2)(a) that there has been inordinate and inexcusable delay on the part of the plaintiff or his lawyers, and (b) that such delay will give rise to a substantial risk that it is not possible to have a fair trial of the issues in the action or is such as is likely to cause or to have caused serious prejudice to the defendants either as between themselves and the plaintiff or between them and a third party"(per Lord Diplock at 318).

The privy council also stated: "the present case is not one where there has been any contumelious default. It is a case where there has certainly been inordinate and inexcusable delay on the part of the appellant or its lawyers. But what else? There is no evidence of any serious prejudice to the respondent caused by the delay. Is this a case where the delay has given rise to a substantial risk that a fair trial will not be possible?"

Discussion and analysis

Inordinate and inexcusable delay

17. As it relates to the usefulness of striking out authorities decided under the Rules of the Supreme Court Order 18 Rule 19, they are still somewhat useful. In **Andrew Smith and Sophia Smith v First Caribbean International Bank (Bahamas) Limited and Insurance Management (Bahamas) Limited 2020/CLE/gen/00662**, authorities that predate the CPR should be used cautiously. Pre-CPR authorities may continue to be persuasive in appropriate circumstances such as where the new rule under the CPR follows the same form and appears to have the same underlying intention as the old rule governing the subject matter. The fact that the case was initially governed by the old rules is relevant when making procedural decisions.
18. Learned Counsel Ms. Rahming submitted on behalf of Deltec that the Claimant's failure to take any steps to advance the matter from 1998 until 2020 (22 years) when Deltec filed its application to dismiss the action, amounts to an inordinate and inexcusable delay.

19. According to Ms. Rahming, the delay has given rise to a substantial risk that a fair trial is not possible and the passage of time is likely to cause prejudice to the defendants in defending the claim.
20. I agree that the delay is inordinate and inexcusable and at this point, a fair trial is unlikely. At the very least, the defendants would be prejudiced in defending the claim due to the inordinate delay. There are likely to be serious issues securing witnesses and documentary evidence as a result of the passage of time. This risk is compounded by the Third Defendant bank having been the subject of multiple mergers. As at today's date, the action was filed 27 years ago.
21. Accordingly, the Court, under its inherent jurisdiction, accedes to the striking out application on the ground that that the Claimant is guilty of inordinate and inexcusable delay and that there is a substantial risk that there could not be a fair trial.

Rule 26.3(1)(c) - Abuse of the court's process

22. Rule 26.3(1)(c) gives the Court power to strike out a claim on the ground that it is frivolous, vexatious, scandalous, an abuse of the process of the Court or is likely to obstruct the just disposal of the proceedings. The Court's jurisdiction to strike out on this ground under the CPR exists alongside the inherent power of the Court to strike out for misuse of its procedure. In **Major Consulting** [supra], Winder J) (as he then was) noted that inactivity *could* be evidence of abuse of the court's process. **Icebird Ltd.** makes it clear that while delays, without more, do not *necessarily* constitute an abuse of process, they may be evidence of abuse of process. In that case the Privy Council held that:

"Dismissals for abuse of process are occasions where a party to proceedings have used the process of the court in a way significantly different from its ordinary or proper use. This may be held to be abuse of the court's process, and an aggrieved party may make an application to dismiss the matter for abuse of process. In *Grovit v Doctor* [1997] 1 WLR 640, the House of Lords held that the courts were entitled, under the inherent jurisdiction to prevent abuse of process, to strike out/stay proceedings if the inactivity of the claimant amounted to an abuse of process even if the facts of a case did not fall within the principles of *Birkett v James*. It was held that the continuation of proceedings when a claimant had no intention of bringing a case to trial could, in appropriate cases, amount to an abuse of process and as such an application could be made to strike out the claim and dismiss the action. The inactivity of a claimant could be the evidence relied upon to establish the abuse of process".

23. In a Supreme Court Ruling on a striking out application in **Rose Island Beach and Harbour Club Limited and ano. v Rose Island Beach and Harbour Club Developments Limited and ano. 2019/CLE/gen/00276**, Charles J (as she then was) gave reasoning for her conclusion that the delay did not amount to abuse of process. In making the determination as to whether a delay amounted to abuse of process, Her Ladyship considered whether the Claimants lost interest in the proceedings.
24. In **Keith v Benka [2023] EWCA Civ 821** the first instance court struck out the claim on the basis that the Claimant inordinately and inexcusably delayed in prosecuting the claim. On appeal, the Court of Appeal had to determine whether the delay was an abuse of the court's process. There was delay by the Court which was held to be of considerable weight in determining the question of abuse of process. This consideration was strong enough to outweigh the delay having caused prejudice to the defendant and the claim being considered stale.
25. In the instant case, the Claimant's ex parte injunction application was heard urgently. The Claimant then simply abandoned the claim after obtaining the injunction. Further, the fact that no Statement of Claim was ever filed strongly suggests that once the injunction was obtained, there was never any intention to advance the claim. It seems that the Writ of Summons was filed to procedurally comply with the old rule that injunctions could only be obtained where they were ancillary to a substantive cause of action – see **Siskina (owners of cargo lately laden on board) and others v Distos Compania Naviera SA ("The Siskina") [1979] AC 210** disapproved in **Convoy Collateral Ltd. v Broad Idea International Ltd. and Cho Kwai Chee [2021] UKPC 24** and **The Public Institution for Social Security v Fahad Maziad Rajaan Al-Rajaan 2020/CLE/gen/00976**.
26. Taken together, the Claimant's twenty-two (22) years of general inactivity (its activity only coming about upon Deltec's filing in 2020) and the Claimant's failure to file a Statement of Claim in particular illustrates the Claimant's intention to abandon the claim and renders the action an abuse of the Court's process. I accede to Deltec's application on that ground.

Rule 26.3(1)(b) – No reasonable ground for bringing or defending the claim

27. Counsel contends that the Court is required to determine this ground by reviewing the Writ of Summons and assessing whether it discloses a legally recognisable claim against the Defendants, whether the pleaded facts support the allegations and whether the claim is misconceived or bound to fail. She correctly relies on **John W. Russell (in his capacity as Administrator of the Estate of William Russell) v Bahamas Agricultural and Industrial Corporation 2019/CLE/gen/00093** in support of her contention that in

determining the application, the Court ought to consider the relevant pleadings *ex facie*, without any consideration of the evidence and assuming all the allegations it contains are true.

28. **Partco Group Ltd. V Wragg [2002] EWCA Civ 594** sets out the test for striking out under the English provision equivalent to Rule 26.3(1)(b) of the Bahamian CPR. The court decided that the test is whether the case is unwinnable on the merits in that the case (i) refers to a claim which is misconceived or (ii) on the facts or matters pleaded is bound to fail as a matter of law.
29. Learned Counsel Ms. Rahming urged the Court to conclude that there is no reasonable ground for bringing the claim since the Writ of Summons is a bare endorsement with no Statement of Claim to set out facts and/or allegations to set out or support any claims.
30. I agree that in the absence of a Statement of Claim, the Writ of Summons merely intimates some irregularity as it relates to the funds of the First and/or Second Defendants but does not allege any facts that either Defendants can accept or deny. A Principal reason for striking out the action under Rule 26.3(1)(b) is that no Statement of Claim was ever filed. Because of this, the case is unwinnable and bound to fail. There is no claim for the defendants to defend. The instant application falls squarely within the circumstance set out by the Eastern Caribbean Supreme Court in **Ian Peters v Roger George Spencer HCVAP 2009/016** to justify striking out for disclosing no reasonable cause of action, that is, that the claim sets out no facts indicating what the claim is about. Accordingly, the action is struck out for disclosing no cause of action

Rule 26.33(1)(a) – Failure to comply with CPR

31. Under this rule, the Court may strike out an action where there has been a failure to comply with a rule, practice direction, order or direction given by the Court in the proceedings. Counsel contends that although the Claimant is not guilty of non-compliance with a practice direction, order or direction of the Court, it has failed to comply with Part 1, the Overriding Objective of the CPR and in particular, it has failed to comply with 1.1(2)(d), that is, it has failed to ensure “that [the case] is dealt with expeditiously and fairly”. As such, Ms. Rahming urged the Court to consider this overriding objective as a rule that was breached by the Claimant due to its significant inactivity.
32. Counsel offered no authority to support her submission that the overriding objective is a “rule” that can be breached for the purpose of Rule 26.3(1)(a), and I am inclined to disagree with this position.

33. The Overriding Objective is described as “*a statement of the overall purpose of the civil justice system*” by Stuart Sime in *A Practical Approach to Civil Procedure*, 21st ed pg 32, The Practice Guide describes it as the philosophy that underpins the CPR. The overriding objective is normally referred to within the context of interpreting a rule so as to give effect to the overall objective. In **Walsh v Missaldine ([2000] EWCA Civ 61)**, in considering an application to strike out by reason of delay in advancing the claim, the Court emphasised that the decision should be made with regard to the overriding objective.
34. My considered opinion is that Part 1 of the CPR is not a rule that can be breached per se without reference to a specific rule. Rather, it sets out the overarching objective, which the Court may consider when applying the rules, but it is not itself a rule to which Rule 26.33(1)(a) can apply.
35. Accordingly, the Court declines the application to strike out the action pursuant to Rule 26.3(1)(a) for failure to comply with a rule.

Costs

36. Pursuant to the CPR 2022, costs follow the event unless otherwise ordered by the Court. There being no reason to depart from this principle, it is hereby ordered that the Claimant to pay the Third Defendant’s costs of this application in the amount of \$8,000.00.

Dated this 23rd day of March, 2026



Adrienne Bellot
Assistant Registrar (Acting)