

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

2024/CLE/gen/FP/00214

IN THE MATTER OF Shoreline Subdivision Homeowners' Association Limited a Company Limited by Shares pursuant to the Companies Act, Ch. 308 of the Statute Law of The Commonwealth of The Bahamas

AND IN THE MATTER of a Declaration of Rights, Obligations, Protective Covenants, Conditions, Stipulations and Restrictions for Shoreline Residential Community

B E T W E E N

BERNARD GOODMAN

Claimant

AND

SHORELINE SUBDIVISION HOMEOWNERS' ASSOCIATION LIMITED

First Defendant

AND

VICTOR SKINNER

Second Defendant

Before: The Honourable Madam Justice Constance Delancy

Appearances: Osman Johnson for the Claimant

Paul Wallace-Whitfield for the Defendants

Hearing date(s): 28 October 2025

RULING

DELANCY, J

[1.] This is the Court's ruling on the Defendants' application to strike out the Claimant's claim.

Background

[2.] The Claimant commenced an action against the Defendants via a Standard Claim Form filed on 22 November 2024 seeking various reliefs:

Damages for breach of Declaration; Damages for Trespass, Aggravated and Exemplary damages for harassment, an Order directing the First and/or Second Defendants to comply with the explicit requirements under the Declaration; interest pursuant to the Civil Procedure (Award of Interest) Act, 1992 at the statutory rate of 5% from October 2022 to present.

[3.] The Defendants filed a Defence and Counterclaim on 20 December 2024 denying the allegations and counterclaimed:

1. The sum of \$6,740.87 in outstanding fines for No.76 Shoreline Residential Community;
2. The sum of \$2,857.69 in outstanding fines for No.60 Shoreline Residential Community;
3. Damages;
4. Interest;
5. Costs
6. Further or other relief.

[4.] The Claimant filed a request for Case Management on 21 January 2025 and scheduled to be heard on 19 May, 2025.

[5.] The Claimant also filed various applications filed between 29 April, 2025 and 12 May, 2025 seeking to depose several individuals.

[6.] The Claimant amended his Standard Claim filed on 5 May 2025. The Claimant also filed Notice of Application for specific disclosure and supported by Affidavit of Nakia Mitchell filed 12 May 2025

[7.] Defendants filed a Notice of Application on 12 May 2025 supported by a number of previous filings in the matter. The Defendants seek the several orders (of which only prayers *a.* and *b.* are being addressed in this ruling):

1. The First and Second Defendants make application pursuant to the provisions of Part 26.3 CPR, Part 24 CPR and the Court's inherent jurisdiction for:
 - a. An Order **Striking Out the Claimant's Statement of Case filed the 22nd day of November, A.D., 2024** ALTERNATIVELY [*sic*] an **Order Striking Out the Claimant's Amended Statement of Case** (characterized as The First and Second Claimant's Amended Statement of Claim) **filed the 5th day of May, A.D., 2025**;
 - b. **A Declaration that the Claimant's Statement of Case is null, void and of no or no legal effect whatever.**

- c. An Order denying and dismissing the Claimant's Application for the Second Defendant Victor Skinner to give Security for Costs in the sum of \$100,000.00.
 - d. An Order denying and dismissing the Claimant's respective Applications to have Henry Butcher, Marie Pritchard, Jean Frantho, Aldert van Nieuwkoop, and Jeff Coburn deposed before a Justice of the Supreme Court.
2. The Grounds of the Application are:
- a. That the Claimant's has failed to comply with a Rule, viz., Part **19.3(3) CPR** by adding a second Claimant without having first filed the written Consent of the Second Claimant to be added as a Claimant, as required by the said Rule ("**A person may be added as a Claimant unless that person's written Consent is filed [sic] with the Court Office**");
 - b. The Claimant has failed to comply with Part 8.24 CPR when filing his Claim Form ("**The Claimant must file any written evidence on which he intends to rely then he filed his Form**");
 - c. That the Statement of Case is frivolous, vexatious and an abuse of the process of the Court, and is likely to obstruct the just disposal of the proceedings: ALTERNATIVELY [sic] That the amended Statement of Case is frivolous, vexatious and an abuse of the process of the Court, and is likely to obstruct the just disposal of the proceedings as it is not in keeping with the Overriding Objective;

Law and Analysis

[8.] The Court has considered the submissions and skeleton arguments and annexed cases presented by the parties. There is no dispute that the Court has the discretion the power to strike out a statement of case or any part thereof. Further, the Court also has the power to strike out under its inherent jurisdiction.

[9.] Part 26.3(1) of the CPR provides:

- (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;** or
 - (d) **the statement of case or the part to be struck out is prolix or does not comply with the requirements of Part 8** or 10.

[Emphasis added]

[10.] The provisions of Part 26.3 are cumulative and the Court's discretion ought to be exercised in accordance with the overriding objectives. Further, Court also has the discretion to

strike out pleadings for abuse of process under its inherent jurisdiction. The Court ought not to engage in a mini trial but determine whether to strike out a statement of case or part thereof on a perusal of the pleadings.

[11.] The Court, in exercising its discretion under any rule, must be guided by the overriding objective to “*deal with cases justly and at proportionate cost*” (*Part 1.1(1) CPR*). The Court, dealing justly, so far as is practicable includes:

- (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. (*Part 1.1(2) CPR*).

[12.] The Court, being guided by the overriding objectives, must also consider whether the breach has caused real prejudice or jeopardized a fair trial, and whether a lesser sanction would suffice. In **Biguzzi v Rank Leisure Plc 1 WLR 1926** Lord Woolf *M.R.* observed that a Judge has broad powers to strike out a statement of case under the Court’s case management powers in Part 3.4 of the English CPR (*comparable to the Part 26.3 CPR*) at para. H p.1932 and paras. A-B p.1933:

- “(2) The court may strike out a statement of case if it appears to the court-
 - (a) that a statement of case discloses no reasonable grounds for bringing or defending the claim;
 - (b) that the statement of case is an abuse of the court's process....”

and, most importantly:

- “(c) **that there has been a failure to comply with a rule, practice direction or court order.**”

Under Part 3.4(c) **a judge has an unqualified discretion to strike out a case such as this where there has been a failure to comply with a rule. The fact that a judge has that power does not mean that in applying the overriding objectives the initial approach will be to strike out the statement of case.** The advantage of the CPR over the previous rules is that the court’s powers are much broader than they were. **In many cases there will be alternatives which enable a case to be dealt with justly without taking the draconian step of striking the case out**

[Emphasis added]

Failure to comply with a rule or practice direction

[13.] Parties may amend their statement of case once without leave of the Court at any time prior to the “*date fixed by the Court*” for the first case management. (*Part 20.1(a) of CPR*).

[14.] The Claimant filed an application for case management on 21 January 2025 and subsequently filed an amended statement of case on 5 May 2025. The date fixed by the Court for the first case management was 19 May 2025; therefore, the Claimant was within the time frame for amending without permission in the circumstances.

[15.] Counsel for the Defendants submits that the Claimant failed to file a consent of the seconded named Claimant in the amended statement of claim in contravention of Part 19.3(3) of the CPR. Counsel for the Defendants relies on the case of the **Wayne Esannon v Dora Waithe** ANUHCV 2009/0273, Eastern Caribbean Supreme Court case, to support its argument that the provisions of Part 19.3(3) are strict.

[16.] Part 19.3 provides that a party or a person who wishes to become a party to proceedings must apply to the Court for leave and such application must be supported by an affidavit. A person may not be added or substituted as a claimant in action unless that person’s written consent has been filed with the Court office (*Part 19.3(3) CPR*).

[17.] Counsel for the Defendants submits that the Court’s inherent jurisdiction cannot be used to circumvent the CPR or practice direction where a rule or practice direction is clear. Counsel relies on **Texan Management Limited and others v Pacific Electric Wire & Cable Co. Ltd.** and others 2009 UKPC per *Lord Collins* at para. 57:

But the modern tendency is to treat the inherent jurisdiction as inapplicable where it is inconsistent with the CPR, on the basis that it would be wrong to exercise the inherent jurisdiction to adopt a different approach and arrive at a different outcome from that which would result from an application of the rules: *Raja v Van Hoogstraten* (No 9) [2008] EWCA Civ 1444, [2009] 1 WLR 1143. That decision concerned the court’s power under the inherent jurisdiction to set aside an order made without notice *ex debito justitiae*. **It was held that although the inherent jurisdiction may supplement rules of court, it cannot be used to lay down procedure which is contrary to or inconsistent with them, and therefore where the subject matter of an application is governed by the CPR it should be dealt with in accordance with them and not by exercising the court’s inherent jurisdiction.**

[Emphasis added]

[18.] Counsel for the Claimant argues that as the party whom he wishes to add as a claimant has signed the statement of truth that is sufficient to prove consent of that party. Further, that the Court has the power to cure such procedural missteps under its case management powers.

[19.] The Court considered the dicta of *Picken, J* and *Dingemans, LJ* in **Adam Rawet and others v Daimler AG and others** [2022] EWHC 235 (QB) at paras. [57] and [63] which dealt the issue of applicability of Part 19 at pre-service stage but nonetheless examined the requirement of consent under Part 19.4(4) of the English CPR comparable to Part 19.3(3) CPR:

[57]...On this issue, however, I agree with what *Mann J* had to say in G4S at [114], namely **that CPR 19.4(4) and Practice Direction 19A require that a separate document be filed for the purpose of expressing consent. That document must, furthermore, be filed before the addition which takes effect through the amendment which is sought be effected. The amending document itself (here, the claim form) cannot achieve that function. It follows that I agree with Mann J that a solicitor signing a claim form cannot count as a consent under CPR 19.4(4).**

[63] **I also agree that CPR 19.4(4) applies only to amendments made after service of the claim form.** However, I wanted to add that, as *Picken J* has pointed out, **a claim form is verified by a statement of truth. There is, as a matter of practice, an important obligation, on the part of the person who signs the statement of truth, to ensure that the claimant added to the claim form has given informed consent to be added to the claim form, and that the name of the added claimant is accurately set out.**

[Emphasis added]

[20.] The Court finds that the written consent to add a party a claimant to the action as required under Part 19.3(3) CPR is a prerequisite to filing of any amendment adding that person as a claimant. Further, that any amendment adding a claimant is not valid unless and until the consent has been filed with the Court office.

[21.] Counsel for the Defendants submits that the Claimant failed to provide the evidence he seeks to rely upon to support his claim in contravention of Part 8.24 of the CPR. Part 8.24 CPR of the *Section II – Alternative Procedure for Claims – Originating Form of Part 8* which deals specifically with actions commenced by an Originating Application. Section II of Part 8 sets out the procedure to be followed when an action is commenced by originating application. The present proceedings were commenced by Standard Claim form therefore the provisions of 8.24 do not apply in this instance.

[22.] Part 8.7 CPR states that a Claimant has a duty to set out the following in a statement of case:

- (1) The claimant must include in the claim form or in the statement of claim a statement of all the facts on which the claimant relies.
- (2) The statement must be as short as practicable.
- (3) The claim form or the statement of claim must identify any document which the claimant considers to be necessary to his or her case.
- (4) If the claimant seeks recovery of any property, the claimant's estimate of the value of that property must be stated.
- (5) The statement of claim must include a statement of truth in accordance with rule 3.8.

[23.] Counsel for the Defendants argues that the Claimant must front load his case, which is to set out the factual matrix of his claim so that the Defendant is made aware of the case he must defend. Further, facts not laid out in the statement of case or reliefs not claimed therein cannot be relied upon at trial unless permitted by the Court or with the consent of the other party.

[24.] Counsel for the Claimant submits that the Claimant has complied with the provisions of Part 8.7 CPR and set out all the factual background and the reliefs being sought by the Claimant. Counsel relies on the dictum of *Leggatt, J.* in **Tchenquiz v Grant Thornton UK LLP** [2015] EWHC 405 at para. [1]:

Statements of case must be concise. They must plead only material facts, meaning those necessary for the purpose of formulating a cause of action or defence, and not background facts or evidence. Still less should they contain arguments, reasons or rhetoric. These basic rules were developed long ago and have stood the test of time because they serve the vital purpose of identifying the matters which each party will need to prove by evidence at trial

[Emphasis added]

[25.] Counsel for the Defendants also submits that the Claimant failed to provide medical evidence referenced in his statement of claim to with respect to assessment carried out by Canadian physician support the claim of “physical injuries” or “personal injuries”. Further, no application was made for an extension of time in which to do so.

[26.] A Claimant is required to attach medical evidence he wishes to rely on to the statement of case when there is a claim for personal injuries (*Part 8.9 (3) CPR*). A Claimant may apply to the Court for permission serve a claim form without the medical evidence and an extension of time in which to do so as he is not restricted from calling further medical evidence at the trial of the claim (*Part 8.9 (4) CPR*).

[27.] The Claimant’s Counsel submits that the Claimant’s failure to annexed evidence of the alleged personal injury is not an incurable defect and the Court has the power to cure the same.

Statement of Claim is prolix and verbose

[28.] The Defendant also submits that the Claimant’s statement of claim is prolix and verbose and does not comply with requirements of Part 8.6 and 8.7 of the CPR. The Claimant has a duty to set out the factual matrix of his case however he must be as “*short as practicable*”.

[29.] Counsel for the Claimant argues that the Claimant is seeking several reliefs in his statement of claim and that the facts pleaded therein though lengthy are necessary in the circumstances.

[30.] **In Davy V. Garrett** (1877) 7 Ch. D. 473 "prolix" was defined as "...too lengthy statement of necessary facts, or to the statement of facts unnecessary to be stated". The Court notes that Counsel for the Defendants did not identify which parts or section of the statement of claim were prolix but rather argues that entire statement of claim is prolix.

[31.] Upon review of the statement of claim the Court finds it to be convoluted and contains facts which may be borne out in witness statements. The Court must determine whether the entire statement of case ought to be struck out or parts of the same pare out by allowing the Claimant to further amend the statement of case. The Court nonetheless notes that while verbose it does not warrant the draconian step of striking out the entirety of the statement of case. Neither, is the Court in a position to go through unidentified sections of the statement of case to identify what it may think is prolix or not without prompt.

No reasonable grounds for bringing the claim

[32.] Counsel for the Defendant submits that the Claimant's statement of case and amendment thereto does not disclose any reasonable grounds for bringing the claim. Counsel for the Claimant argues that the threshold for striking out a statement of case or defence for not disclosing any reasonable grounds is high. Further, that the Court's power to strike out is a "summary procedure is only appropriate to cases which are plain and obvious" (see **Hubbuck & Sons, Limited v Wilkinson Heywood & Clark Limited**).

[33.] Counsel for the Claimant argues that if the Court upon perusal of the statement of case determines that there is "some chance of success" it ought not grant an order for strike out. Counsel relies on the dictum of Lord Pearson in **Drummond-Jackson v British Medical Association** (1970) 1 All ER 1094 who cited *Salmon, LJ* in **Nagle v Feilden** [1966] 2 Q.B. 633 page 696:

Salmon L.J. said at p. 651: 'It is well settled that a statement of claim should not be struck out and the Plaintiff driven from the judgment seat unless the case is unarguable.'...Thirdly, an application for the statement of claim to be struck out under this Rule is made at a very early stage of the action when there is only the statement of claim without any other pleadings and without any evidence at all. The Plaintiff should not be driven from the judgment seat at this very early stage unless it is quite plain that his alleged cause of action has no chance of success.

[Emphasis added]

[34.] The Court is also guided by the Court of Appeal case of **Sandy Port Homeowners Association Limited v R. Nathaniel Bain** SCCivApp & CAIS No. 289 of 2014, *Crane-Scott, JA*, delivering the decision for the panel, observed at para. [18] "the mere fact that the case is weak, and not likely to succeed, is no ground for striking it out. See **Wenlock v. Moloney** [1965] 2 All ER 871". The Court finds that there is some prospect of success and there are issues which ought to be determined at trial.

Frivolous, vexatious, scandalous, an abuse of the process /obstruction

[35.] Counsel for the Defendants submits that the Claimant's statement of claim is vexatious, scandalous, an abuse of the process of the Court or or is likely to obstruct the just disposal of the proceedings (*Part 26.3(1)(c)*).

[36.] Counsel for the Claimant submits that the Defendants have not present reasons or grounds to substantiate this submission. Counsel invites the Court to consider a passage from the learned authors Ogden's on Civil Court Action, Practice and Procedures at page 210:

It connotes that **the powers of the court must be used bona fide and properly and must not be abused. The court will prevent the improper use of its machinery and will not allow it to be used as a means of vexatious and 'oppressive behavior of in the process of litigation'**.

[Emphasis added]

[37.] Counsel for the Claimant also argues that even in instances where the Court found that the pleadings were "*substantially fraudulent*" the statement of case was not struck. In **(Deportation: Application to Strike Out)** (2014) UKSIAC SC at para. [15] *Irwin, J.* cited the dictum in **Summers v Fairclough Homes Ltd.** (2012) 1WLR 2004:

The Supreme Court has recently considered abuse of process in **Summers v Fairclough Homes Ltd** [2012] 1 WLR 2004. In that case the Claimant made an exaggerated claim at the trial on quantum. **The judge accepted there was exaggeration and that much of the claim as presented was "substantially fraudulent", but by virtue of authority, he was unable to strike the claim out in its entirety, and was bound to award compensation for the injury and loss which he found to be genuine.** The Court of Appeal sustained the judge. The **Supreme Court held that, both within the court's inherent jurisdiction and pursuant to CPR r.3.4(2), the court had power to strike out a statement of case, on the grounds of abuse of process, at any stage of proceedings including after trial, but that the power would be "exercised at the end of a trial only in very exceptional circumstances where the court was satisfied that the party's abuse of process was such that he had thereby forfeited he right to have his claim determined"**.

[Emphasis added]

[38.] Part 26.3(1) covers a wide variety of conduct which may include fraudulent conduct, attempting to re-litigate an action or issues previously disposed by the Court, and actions the Court ought not to allow to proceed on the basis of unfairness. The Defendants have not demonstrated that the Claimant's statement of case frivolous, vexatious, scandalous, an abuse of the process of the Court or likely to obstruct the just disposal of the proceedings.

[39.] However, the Court finds that it would be an abuse of the process of the Court to allow the amendment of the Statement of Case should the Second Claimant be struck/not added as much of the amendment only has a nexus to that Second Claimant.

[40.] The Court having reviewed the pleadings and considered the submissions and authorities laid over by Counsel hereby orders:

- (1) The Defendants' application to strike out the Claimant statement of claim filed herein on 12 May, 2025 is dismissed;
- (2) The Defendants' application to strike out the Claimant's amended statement of claim is allowed, struck out for failure to comply with Part 19.3(3) CPR.
- (3) No order as to costs.

Dated the 26 day of March 2026

[Original Signed and Sealed]

Constance Delancy
Justice