

IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2022/CLE/GEN/01151

B E T W E E N

SHERESE R. COLLIE

Claimant

AND

MARVIN J. BRIDGEWATER

Defendant

Before: **The Honorable Madam Justice Carla Card-Stubbs**

Appearances: Ms. Robyn Lynes for the Claimant

Mr. Osman R. C. Johnson for the Defendant

Hearing date: April 4, 2024

Civil Procedure and Practice- Defendant's Application to strike out Claimant's statement of case - Court's jurisdiction to strike out - Rule 26.3(1) CPR – Rule 26.4 CPR – the Overriding Objective

The Claimant, Sherese R. Collie, seeks damages from the Defendant, Marvin J. Bridgewater, for amounts outstanding on loans that she allegedly made to the Defendant. The Defendant contests the claim, asserting he does not owe the claimed amount and that the amount claimed is excessive. The Defendant's case is that the amount should be offset by amounts owed to him for work and unpaid rent. The Defendant filed a counterclaim for amounts said to be owing to him. The Defendant made an application to strike out the Statement of Claim. The application was made pursuant to Part 26 of the Supreme Court Civil Procedure Rules 2022 and the court's inherent jurisdiction. The Defendant also relied on the Overriding Objective of the CPR.

HELD: The Defendant's application is dismissed in its entirety. Holding that the burden rests with the applicant to satisfy the threshold requirements for each ground relied upon in their application, the court found that there was no basis for a strike out order under any of the grounds under Rule 26.3(1)(a)(b)and(c) or under Rule 26.4.

RULING

CARD-STUBBS, J

INTRODUCTION

- [1.] Before this court is the Defendant's application to strike out the Statement of Claim.
- [2.] For the reasons that follow, that application is dismissed.

BACKGROUND

- [3.] On August 12, 2022, the Claimant (also referred to as Plaintiff) brought an action against the Defendants by filing a specially-endorsed Writ of Summons. Paragraph 1 of the Statement of Claim describes the suit as a claim "against the Defendant to recover the sum of \$55,997.00 which said sum is the balance due and owing to the Plaintiff for sums loaned to the Defendant." The Claimant alleges that, on various occasions, she loaned various amounts to the Defendant, that the Defendant made certain payments and that there is a balance of \$55,997.00 outstanding.
- [4.] The Defendant filed a Memorandum of Appearance and a Notice of Appearance on the October 5, 2022. A Defence was filed on October 21, 2022.
- [5.] The Defence and Counterclaim were filed subsequent to the filing of the Claimant's Reply.
- [6.] The Claimant filed a Reply on November 10, 2022.
- [7.] At a Case Management Conference held on September 6, 2023, the Defendant was given leave to file an Amended Defence and Counterclaim. The Amended Defence and Counterclaim was filed on September 28, 2023.
- [8.] Also on September 28, 2023, the Defendant filed a notice of application to strike out the Statement of Claim.

The Application

[9.] The Defendant’s application filed on September 28, 2023 is made pursuant to Rule 1.1(1) and 1.1(2) (d) and (f), Rule 26.3 1 (a), (b) and (c) and Rule 26.4 of the Supreme Court Civil Procedure Rules, 2022, as amended (‘CPR’) “and in accordance of the overriding objectives of the CPR and/or in the exercise of the inherent jurisdiction and/or Barrell jurisdiction of the Court.”

[10.] The grounds of the application are discernible from the order sought by the application, which is articulated as:

- (a) An Order pursuant to Rules 26.3 (a), (b) and (c) and 26.4 of the CPR that the Claimant's statement of case be struck out on the grounds that the statement of case and/or part to be struck out does not disclose any reasonable grounds for bringing the claim; in the alternative, that the statement of case and/or 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:
- (b) Additionally and/or alternatively, an Order pursuant to Rule 1, with specific reference to 1.1(1) and 1.1(2) (d) and (f) of the CPR that the Plaintiff's action be dismissed pursuant to the overriding objectives of the Supreme Court Civil Procedure Rules 2022.

[11.] In support of the Application, the Defendant relied on an affidavit sworn by the Defendant, Marvin Bridgewater, filed on September 28, 2023.

[12.] At the hearing of the application, the Defendant did not pursue relief under the *Re Barrell* jurisdiction. Indeed, that jurisdiction appears irrelevant in the present circumstances. Therefore, this ruling will not address same.

ISSUE

[13.] The issue to be determined in this instance is whether this a fit and appropriate case to strike out the Statement of Claim.

Submissions of the Parties

Defendant's Submissions

[14.] The thrust of the Defendant's submissions is that there is "an egregious attempt to mislead the Court as to the material facts in the matter, including a willful misrepresentation by the Defendant as to the amount to which the Claimant is entitled."

[15.] The Defendant argues that the Claimant has misrepresented the value of her claim and that the remaining balance to be claimed by the Claimant should be significantly less than the amount sought. The Defendant claims the Claimant has willfully misled the Court regarding the claim's value. The Defendant contends that The Claimant's claim is considered an abuse of the Court's process due to misrepresentation.

[16.] The Defendant argues that the "Statement of Claim does not include a true and complete account of the facts and/or the evidence in a manner which complicates the identification of material facts and/or issues" and that the claim lacks reasonable grounds and is frivolous, vexatious and scandalous.

[17.] The Defendant asserts that the Claimant's claim has no real chance of success because "the Claimant's claim exceeds the actual amount owed, which is approximately \$37,000.00." The Defendant argues that the claim is not supported by evidence and should be dismissed.

Claimant's Submissions

[18.] The Claimant argues that the Defendant's application is premature and seeks to undermine the Court's role in adjudicating the matter based on evidence. The Claimant submits that the overriding objective of these rules is to enable the court to deal with cases justly and a proportionate cost.

[19.] The Claimant counters that the Statement of Claim clearly outlines the loans and agreements made, and that the Defendant's assertions lack factual basis and corroborating evidence.

THE COURT'S ANALYSIS AND DETERMINATION

[20.] The application is brought pursuant to Rule 26.3(1) and Rule 26.4 and the inherent jurisdiction of the court.

Jurisdiction to strike out

[21.] The Court may strike out a statement of case under **Rule 26.3 CPR . Rule 26.3(1)** 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.

[22.] Notably, Rule 26.3 CPR is “in addition to any other power under these Rules”.

[23.] The Defendant also makes his application pursuant **Rule 26.4 CPR**. That rule provides:

26. 4 Court's general power to strike out statement of case.

- (1) If a party has failed to comply with any of these rules or any Court order in respect of which no sanction for non-compliance has been imposed, any other party may apply to the Court for an “unless order”.
- (2) Such an application may be made without notice but must be supported by evidence on affidavit which —
 - (a) contains a certificate that the other party is in default;
 - (b) identifies the rule or order which has not been complied with; and
 - (c) states the nature of the breach.

- (3) The judge or registrar may —
 - (a) grant the application;
 - (b) direct that an appointment be fixed to consider the application and that the applicant give to all parties notice of the date, time and place for such appointment; or
 - (a) seek the views of the other party.
- (4) If an appointment is fixed the applicant must give seven days' notice of the date, time and place of the appointment to all parties.
- (5) An “unless order” must identify the breach and require the party in default to remedy the default by a specified date.
- (6) The general rule is that the respondent should be ordered to pay the assessed costs of such an application.
- (7) If the defaulting party fails to comply with the terms of any “unless order” made by the Court, that party’s statement of case shall be struck out subject to an order under rule 26.8.

[24.] The Defendant prays in aid the overriding objective of the CPR. **Part 1** of the CPR 2022 provides in part –

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.

Rule 26.4 CPR

[25.] Rule 26.4 provides for the Court's general power to strike out a statement of case as a case management power in particular circumstances. The guidance notes to Rule 26.4 CPR as appear in the Supreme Court Civil Procedure Rules, 2022, Practice Guide January 2024, are helpful in this regard and read in part:

A court may make an unless order to enforce compliance with a rule or order on pain of a penalty. The unless order in this case must identify the breach and require the party in default to remedy the default by a specified date. If a party fails to comply with an 'unless order' under Part 26.4, there is an automatic striking out of the statement of case and an automatic sanction (judgment against it) unless relief from sanctions under Part 26. 8 is obtained.

[26.] In the matter before me, there are no identified breaches of the rules or of an order that would warrant the imposition of sanctions at this juncture. Therefore, there is no basis for this court to invoke its jurisdiction under the relevant rule. Rule 26.4 is inapplicable in these circumstances.

Rule 26.3(1)(a)(b) and (c) CPR

[27.] Rule 26.3(1)(a), (b) and (c) of the CPR sets out several grounds upon which the court may exercise its jurisdiction to strike out a statement of case. The burden rests with the applicant to satisfy the threshold requirements for each ground relied upon in their application. The guidance notes to Part 26.3(1) as appear in the Supreme Court Civil Procedure Rules, 2022, Practice Guide January 2024 are helpful in this regard. The notes make reference to several cases which confirm the practice and procedure in this area. I will rely on some of those cases in this ruling. Two such cases are *John W. Russell (in his capacity as Administrator of the Estate of William Russell) v Bahamas Agricultural and Industrial Corporation* [2019/CLE/gen/00093] and *Citco Global Custody NV v Y2K Finance Inc HCVAP* [2008/022].

[28.] The principles in relation to applications to strike out statements of case are well settled. Striking out, as a remedy, is reserved for plain and obvious cases since the striking out of a statement of case is a summary procedure with the result that a party is prevented from testing the merits of his case. It is a draconian remedy and if other measures, such as amendments or request for better particulars, are appropriate, then such remedies are to be utilized. Such an approach conforms with the overriding objective of the CPR which is to deal with cases justly and at proportionate cost.

[29.] If a case is plain and obvious and there is no possible way that a party can succeed - as in a case where the Statement of Claim discloses no cause of action known to law – then it is efficient to dispose of the case at an early stage. However, if substantial factual and legal investigation is required, or if a preliminary trial would be necessary in order to determine the application, then striking out is inappropriate and it is just and fair to allow the merits of the issues to be determined fully at trial.

Rule 26.3(1)(a)

[30.] Under **Rule 26.3(1)(a)**, the Court may strike out a statement of case or part of a statement of case if it appears to the Court that there has been a failure to comply with a rule, practice direction, order or direction given by the Court in the proceedings. Under this ground, the applicant must (1) identify a failure to comply with a rule, practice direction, order or direction given by the Court in the proceedings and (2) indicate why striking out is an appropriate sanction for the particular infraction.

[31.] I note that Counsel for the Defendant did not pursue the ground under Rule 26.3(1)(a). There is no written submission that advanced the position of a failure to comply “with a rule, practice direction, order or direction given by the Court in the proceedings.” No rule, practice direction, order or direction given by the Court in the proceedings” was identified.

[32.] Counsel did submit, relying on **Fielden v Christie Miller et al [2015] EWHC 752 (Ch)** that the Claimant’s Writ of Summons and Statement of Claim do not “set out an accurate or honestly represented and specifically pleaded cause of action as against the Defendant. Furthermore, the content of the Statement of Claim does not include a true and complete account of the facts and/or the evidence in a manner which complicates the identification of material facts and/or issues”.

[33.] **Fielden v Christie Miller** concerns a trust and succession dispute. In determining an application to amend pleadings, the judgment of the court addressed the need for clear,

well-founded pleadings in trust disputes in accordance with the relevant rules and practice guidance. In this matter, there is no practice direction, order or direction being relied upon by the Defendant. In any event, there is nothing before me to show or to persuade this Court that the Statement of Claim has been pleaded in such “a manner which complicates the identification of material facts and/or issues”. I will address the matter of whether there is an “accurate” or “true and complete account of the facts” below.

[34.] This ground is not established in the Defendant’s application. Accordingly, I find that the Defendant’s application fails on this ground.

Rule 26.3(1) (b) CPR

1. **Rule 26.3(1)(b)** CPR provides for striking out on the ground that the statement of case or the part to be struck out does not disclose any reasonable ground for bringing or defending a claim. On my review of the cases in the Supreme Court Civil Procedure Rules, 2022, Practice Guide January 2024, it is apparent that there are relevant principles that ought to govern a court in exercising its discretion under Rule 26.3(1)(b). I am prepared to adopt the articulation of these principles as outlined by this Court in **Dr Christina E. Darville v Lois East** [2023/CLE/gen/00137], specifically at paragraphs 35 to 36, as follows:

[35.] **Rule 26.3(1)(b)** CPR provides for striking out on the ground that the statement of case or the part to be struck out does not disclose any reasonable ground for bringing or defending a claim. On my review of the cases in the Supreme Court Civil Procedure Rules, 2022, Practice Guide January 2024, it seems to me that the following extracted principles are relevant principles that ought to govern a court in exercising its discretion under Rule 26.3(1)(b):

- A. Rule 26.3(1)(b) requires that the statement of case must disclose *on its face*, a ground or cause of action known in law, for otherwise it is defective and doomed to fail.
- B. Examples of when striking out a Statement of Claim is appropriate under Rule 26.3(1)(b) include instances such as:
 - (i) The pleaded cause of action is not supported in the allegations or is not otherwise viable or justiciable. In such a case, the pleaded case (claim) is misconceived or, upon the facts or matters pleaded, is bound to fail as a matter of law. For example, where a claim sets out no facts indicating what the claim is about or if it is incoherent and makes no sense,

or if the facts it states, even if true, do not disclose a legally recognisable claim against the Defendant.

- (ii) The pleaded case is unwinnable on the merits. “No reasonable grounds for bringing the claim” allows for a court to, on considering the statement of case, find that even if the allegations are proven, a party cannot succeed at trial.
- C. Under CPR 26.3(1)(b) the statement of case must disclose *on its face*, a ground or cause of action known in law. The Statement of Claim should be read on its face, assuming all the allegations it contains are true, and without resort to a review of contradicting evidence.
- D. If the application to strike out is complex and requires extended argument and fact-finding, then the case is not appropriate for striking out and such matters are to be resolved at trial. A statement of case is not suitable for striking out if it raises a serious live issue of fact which can only be properly determined by hearing oral evidence.

[36.] This court must determine by a review of the pleading whether it discloses a legally recognisable claim against the defendant, whether the pleaded facts support the allegation and whether the claim is misconceived or bound to fail. On a summary strike out application as to whether the statement of case discloses a reasonable ground for bringing an action, the court makes that determination considering the pleadings *ex facie* and, on the basis that the allegations can be proven. In other words, a court is to consider that the facts as alleged in the statement of case are true.

[35.] In this case, the Defendant sought to rely on several cases in support of his application, including **Ronex Properties Ltd v John Laing Construction Ltd and others (Clarke, Nicholls & Marcel (a firm), third parties) [1982] 3 All ER 961** and **Hubbuck & Sons v Wilkinson, Heywood and Clark [1899] 1 QB 86**.

[36.] In **Ronex Properties Ltd v John Laing Construction Ltd and others (Clarke, Nicholls & Marcel (a firm), third parties) [1982] 3 All ER 961**, one of the issues on appeal to the Court of Appeal was the judge’s refusal of a strike out application. The case involved negligence and breach of contract in the design and construction of a building. The application to strike out the claim had been brought on the ground, inter alia, that it disclosed no cause of action because it was statute-barred. The Court of Appeal had to consider whether a statement of case may be struck out as disclosing no reasonable cause of action because the defendant may have had a limitation defence. The appellate court

unanimously dismissed the appeal. The court observed that a right of action is not barred by the statute of limitation, merely the remedy.

[37.] The Court of Appeal's judgment in **Hubbuck & Sons v Wilkinson, Heywood and Clark** [1899] 1 QB 86, concerned an appeal, from an order to strike out a Statement of Claim on the ground that it disclosed no reasonable cause of action. The suit was pleaded as a libel matter. Master of the Rolls, Lord Justice Linsey opined at page 86:

The second and more summary procedure is only appropriate to cases which are plain and obvious, so that any master or judge can say at once that the Statement of Claim as it stands is insufficient, even if proved, to entitle the plaintiff to what he asks. The use of the expression "reasonable cause of action" in rule 4 shews that the summary procedure there introduced is only intended to be had recourse to in plain and obvious cases. ...

[38.] In considering the allegations made in the pleadings to found the Claimant's case, Lindley M.R. held:

Such a statement, even if untrue and the cause of loss to the plaintiffs, is not a cause of action. Moreover, an allegation that the statement was made maliciously is not enough to convert what is prima facie a lawful into a prima facie unlawful statement.

[39.] In **Citco Global Custody NV v Y2K Finance Inc HCVAP 2008/022**, one of the cases cited in the Supreme Court Civil Procedure Rules, 2022, Practice Guide January 2024, the Court of Appeal of the Virgin Islands allowed an appeal where the lower court considered "whether the Claimant had a real prospect of success" in determining a strike out application. In that case, the appellate court distinguished the nature of the two jurisdictions and the exercise of the discretions. The appellate court emphasized that *the statement of case is to be considered on its face and that the judge should assume that the facts alleged in the statement of case are true*. Rule 26.3(1)(b) of that jurisdiction is in the same terms as exists in the local CPR.

[40.] Justice of Appeal Edwards delivered the judgment of the court and opined at paragraphs 13 to 14:

The Principles Governing CPR 26.3 (1)(b) Applications to Strike Out a Claim

[13] On hearing an application made pursuant to CPR 26.3(1)(b) the trial judge should assume that the facts alleged in the statement of case are true. "Despite this general approach, however, care should be taken to distinguish between primary facts and conclusions or inferences from those facts. Such conclusions or inferences may require to be subjected

to closer scrutiny.”

[14] Among the governing principles stated in **Blackstone’s Civil Practice 2009** the following circumstances are identified as providing reasons for not striking out a statement of case: where the argument involves a substantial point of law which does not admit of a plain and obvious answer; or the law is in a state of development, or where the strength of the case may not be clear because it has not been fully investigated. It is also well settled that the jurisdiction to strike out is to be used sparingly since the exercise of the jurisdiction deprives a party of its right to a fair trial, and its ability to strengthen its case through the process of disclosure and other court procedures such as requests for information; and the examination and cross-examination of witnesses often change the complexion of a case. Also, before using CPR 26.3(1) to dispose of ‘side issues’, care should be taken to ensure that a party is not deprived of the right to trial on issues essential to its case. Finally, in deciding whether to strike out, the judge should consider the effect of the order on any parallel proceedings and the power of the court in every application must be exercised in accordance with the overriding objective of dealing with cases justly.

[41.] The learned Justice of Appeal Edwards distinguished the applicable test on an application for summary judgment and concluded that such a test was not an option to be considered on a strike-out application. He concluded at paragraph 19:

[19] Looking at the application that was before the learned judge, this was not an application for summary judgment. It was obviously an application under CPR 26.3(1)(b) though it did not expressly say so. Consequently, *the learned judge would be obliged to assume that the facts alleged in the amended statement of claim were true*, and she would not be entitled to make use of the powers contained in CPR 15.2 in the absence of any application for summary judgment before her. The summary judgment test - whether the claimants had any real prospect of succeeding on the claim - was not an option in considering the respondent’s application to strike out the amended Statement of Claim.

[Emphasis supplied]

[42.] As a starting point, I will consider whether the statement of case discloses on its face, a ground or cause of action known in law. I will also consider, assuming that the allegations are true and can be proven, whether the pleaded facts support the allegation and whether the claim is misconceived or bound to fail i.e. whether there are reasonable grounds for the party to bring the claim.

[43.] The filed Statement of Claim is pleaded, in part, thus:

1. The Plaintiff’s claim is against the Defendant to recover the sum of \$55,997.00 which said sum is the balance due and owing to the Plaintiff for sums loaned to the Defendant.

...

6. It was agreed between the parties that the Defendant would pay [t]he sum of \$600.00 per month when he became gainfully employed to liquidate the debts. He began working sometime in November 2016 but made no payments until January 31st, 2019. In total the Defendant paid the sum of \$23,933.00 toward the balances owed.
7. The Plaintiff has made every effort to recover the outstanding sums from the Defendant, but he has refused to pay the debt as agreed and continues to make minimal sporadic payment according to his preference.
8. By virtue of the actions of the Defendant the Plaintiff has suffered loss.

AND the Plaintiff claims:

- (i) The sum of Fifty-five Thousand Nine Hundred and Ninety- seven dollars and seventy-seven cents (\$55,997.00);
- (ii) Interest ;
- (iii) Cost; and
- (iv) Such other relief the Court thinks just in the circumstances.

[43.] Paragraphs 2 to 5 of the Statement of Claim plead the nature of the alleged loans.

[44.] By his affidavit in support of the application to strike out, the Defendant contends that he and the Claimant were in a relationship and that they both did acts for each other. He avers that a particular sum of money was a gift. However, he also avers at paragraphs 7 to 8:

7. THAT, with respect to funds given to me by the Plaintiff, I can confirm that I faced legal issues during our relationship for which I received funds from the Plaintiff to assist. At the time my legal issues first arose, I had \$20,000.00 of personal funds with which to pay any potential fines from the Court. I acknowledge receiving the sum of Sixty-Five Thousand Dollars (\$65,000.00) from Sherese Collie, however of this sum she told me that \$5,000.00 was provided as a gift from her to help me pay my fines.
8. THAT, I repaid the sum of \$2,000.00 approximately two (2) months after I received the funds, in addition to payments of One Thousand Five Hundred Dollars (\$1,500.00) and One thousand Two Hundred Dollars (\$1,200.00) respectively which came from funds that I won from Chances numbers house and other payments made by me periodically which equated to an overall sum of approximately Twenty Six Thousand Six Hundred and Thirty Three Dollars (\$26,633.00). Due to the fact that we were in a committed and loving

relationship, I decided not to make any notes or records of the payments I made but I must stress the fact that *my overall debt to the Plaintiff* cannot be in excess of Thirty Three Thousand Three Hundred and Sixty Seven Dollars (\$33,367.00).

[Emphasis supplied]

[45.] In this case, the Defendant submits that “the cause of action in the present matter has not been honestly pleaded and the matters “distinctly alleged” are factually untrue... ..it must be stressed to the Supreme Court that the Plaintiff has sought to intentionally misrepresent the actual value of its claim, by way of it seeking damages in the sum of Fifty Five Thousand Nine Hundred and Ninety Seven Dollars (\$55,997.00), when by any interpretation of the facts and evidence before the Court, it was only entitled to claim the sum of approximately Thirty Seven Thousand Dollars (\$37,000.00) from the Defendant.”

[46.] The Defendant further submits that the Claimant’s case has no real prospect and that in such case it should be struck out at an early stage of the proceedings so as to save expenses. The Defendant contends:

The Defendant submits that if this Honorable Court agrees with their contention and the Plaintiff’s admission that it has collected the sum of approximately Twenty Seven Thousand Dollars (\$27,000.00) from the Defendant, then it must rightly follow that the Plaintiff’s action seeking damages in the sum of Fifty Five Thousand Nine Hundred and Ninety Seven Dollars (\$55,997.00) has no real prospect of success in light of their own pleadings under the Writ of Summons, the content of their Affidavits and evidence in support and the fact that what they claim, taken at its highest, is not supported by the evidence upon which this action is based. An Order to dismiss the Plaintiffs Writ of Summons and Statement of Claim must rightly follow on this basis.

[47.] I find that the Defendant’s case is misconceived. This is not an application for summary judgment. Nor is this Court to undertake an investigation of the pleaded allegations. What this Court must consider is whether the Statement of Claim discloses a cause of action known to law and whether there is a reasonable ground for bringing the claim.

[48.] Discernible from the Statement of Claim is that (1) the Claimant alleges that she loaned the Defendant money, (2) the Defendant repaid some of the money and (3) the Defendant has an amount outstanding on the loan. Discernible is an alleged contract that

was allegedly breached resulting in alleged loss. A breach of contract is a cause of action known in law. The Claimant has pleaded facts that support the allegation of a loan and has pleaded facts which support the allegation of part payment and owed funds. The Claimant pleads that there is an obligation by way of a loan on the part of the Defendant, a breach of that duty and a loss as a result of that breach. Assuming that the Claimant can prove the facts alleged, there is a reasonable ground for bringing the claim.

[49.] The Defendant's argument that the amount pleaded is incorrect is irrelevant to the determination as to whether there is a cause of action known in law. By the Defendant's evidence on affidavit, he has made payments and there is a dispute as to the amount owing. The Defendant's evidence is that "I decided not to make any notes or records of the payments I made but I must stress the fact that *my overall debt to the Plaintiff* cannot be in excess of Thirty-Three Thousand Three Hundred and Sixty-Seven Dollars (\$33,367.00)." To my mind, this confirms that there is some understanding between the parties that the Defendant is in debt to the Claimant pursuant to a loan/loans made. This also serves to convince this Court that there is a reasonable ground for bringing the claim.

[50.] The test is not whether the Claimant has a real prospect of success but whether there is a reasonable ground for bringing the claim. Nor is the test whether the figures pleaded are factually correct. It is inherent in the nature of disputes submitted to the court that parties may not agree as to what the facts are. The resolution of conflicting allegations is done by testing of the evidence laid. Such investigation of the facts, as suggested by the Defendant, is inappropriate on a strike out application. Further, in this case, such an investigation would be premature.

[51.] In this case, the pleading is that there is some form of debt. The Defendant does not challenge that in his affidavit evidence in support of the application to strike out. The Defendant's evidence appears to show that the parties disagree on the amount of the debt. The disagreement between the Claimant and the Defendant is a fit and appropriate matter for trial and is not to be determined by way of a strike out application.

[52.] I find that there is a pleaded cause of action known to law and a reasonable ground for bringing the claim. I hold that the Defendant fails on his application under this ground.

Rule 26.3(1) (c)

[53.] **Under Rule 26.3(1)(c)**, the Court may strike out a statement of case or part thereof on the grounds that it is frivolous, vexatious, scandalous, an abuse of process, or likely to obstruct the just disposal of proceedings. I consider that the test for striking out

under this ground is a two-stage test: (1) whether the relevant ground is made out and (2) whether striking out is a proportionate and appropriate response, taking into account the overriding objective and the circumstances of the case, including whether a fair trial remains possible.

[54.] In **John W. Russell (in his capacity as Administrator of the Estate of William Russell) v Bahamas Agricultural and Industrial Corporation** [2019/CLE/gen/00093], another of the cases cited in the Supreme Court Civil Procedure Rules, 2022, Practice Guide January 2024, the learned judge, Hanna-Adderley, J, considered the nature of the words “scandalous”, “frivolous” and “vexatious”. In that case, the learned trial judge opined at paragraphs 23 to 24:

23. Allegations in a pleading are scandalous if they impute dishonesty, bad faith or other misconduct against another party or anyone else and they are immaterial or irrelevant. Whether a pleading is frivolous or vexatious depends "on all the circumstances of the case; the categories are not closed and the considerations of public policy and the interest of justice may be very material." **See Ashmore v British Coal Corp [1990] 2 QB. 338.** Having carefully considered the Statement of Claim I have concluded that there is nothing contained in it which supports the Defendant's contention that the Statement of Claim is scandalous, frivolous or vexatious.
24. The Defendant contends in its Summons that this action by the Plaintiff is an abuse of the process of the Court. This ground confers upon the Court in express terms powers which the Court has hitherto exercised under its inherent jurisdiction where there appears to be an abuse of the process of the Court. This term connotes that the process 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, in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation (**Commentary at 18/19/18 on page 352 of the Supreme Court Practice 1, 1999 Castro v Murrery (1875) 10 Ex. 213**). Having determined that the Statement of Claim discloses a reasonable cause of action, that it is not scandalous, frivolous or vexatious I have concluded that the action is not an abuse of the process of the Court.

[54.] In the present case, the Defendant submits that there is an abuse of process and that the Claimant's actions constitute an abuse of the Court's process. The Defendant urges the Court to dismiss the Claimant's claim to uphold the integrity of the judicial process, arguing that allowing the claim to proceed would waste Court resources and set a poor precedent.

[55.] In relation to the Claimant's conduct, the Defendant submits:

The Plaintiff's action and her conduct, both prior to and in the pursuance of the said action, are in and of themselves a clear Abuse of the Court's process and procedure in line with Magrath and the above cited decision and can only rightly be considered by this Court in light of the following aggravating factors, which include (i) Misrepresentation to the Supreme Court as it concerns the amount of damages to which the Plaintiff was entitled; (ii) Misrepresentation to the Supreme Court as it concerns the fraudulent inclusion of a prayer for damages in the sum of \$55,997.00 and in circumstances where the Plaintiff was aware that he was only entitled to approximately \$37,000.00; (iii) Misleading and/or untrue statements and/or misrepresentations to the Supreme Court by way of the Affidavit of Sherise R. Collie, filed herein on October 17th 2023.

[56.] The Defendant argues that the Claimant's claim is unreasonable and is to be considered frivolous or vexatious. The Defendant also submits that any party misleading the court may be deemed to have engaged in scandalous, frivolous, or vexatious conduct. In this case, the Defendant asserts that the Claimant's actions involve misleading statements and pleadings.

[57.] The Defendant further argues that the Claimant's actions are intended to prevent a fair trial.

[58.] Upon analysis, it is evident that the Defendant's submissions can be summarised as asserting that the Claimant is not entitled to the amount claimed and that the factual allegations are not true. On this basis, the Defendant argues that there are misrepresentations constituting an abuse of process, that the Claim is unreasonable, frivolous, and vexatious, and further asserts that the pleadings are neither honest nor accurate, thereby hindering the fair resolution of the proceedings. I conclude that these arguments are unfounded. Acceptance of the Defendant's position by the court would require acceptance of the Defendant's factual account; however, accepting this version without a factual inquiry would contravene the overriding objective to adjudicate cases justly and at proportionate cost.

[59.] While the pleading may be considered “vexing” by the responding party, it does not reach the standard of frivolous, vexatious or scandalous. While the Defendant may contest the Claimant’s calculations, this Court cannot determine that matter in favour of the Defendant at this stage, nor can it characterize the allegations in the pleading as a “misrepresentation” constituting an abuse of process or as a statement of case likely to impede the fair resolution of the proceedings.

[60.] Without repeating the definitions captured in *John W. Russell (in his capacity as Administrator of the Estate of William Russell) v Bahamas Agricultural and Industrial Corporation 2019/CLE/gen/00093*, I determine that no relevant ground has been demonstrated under Rule 26.3(1)(c) CPR that would warrant this Court's consideration of exercising its discretion to strike out the statement of case.

CONCLUSION

[61.] For the foregoing reasons, the Defendant’s Application to strike out the Statement of Claim is dismissed in its entirety.

COSTS

[62.] Taking into account the provisions of Part 71, CPR and specifically Rule 71.6, I see no justification to deviate from the general principle that the unsuccessful party is responsible for the successful party’s costs. Accordingly, in this case, the Defendant is ordered to pay the Claimant’s costs, to be assessed if not agreed.

[63.] I direct the parties to lodge with the court written submissions on the quantum of costs payable, in the event that the parties are unable to agree on a sum. The written submissions should not exceed 2 pages and should be lodged with the court within 21 days of the date of this ruling.

ORDER

[64.] The ORDER and directions of this Court are as follows.

- (i) The Defendant's Application to strike out the Statement of Claim is dismissed.
- (ii) Costs of the Application is awarded to the Claimant to be assessed, if not agreed.

Dated the 27th day of February, 2026

A handwritten signature in black ink, appearing to read 'Carla D. Card-Stubbs', with a stylized flourish at the end.

Carla D. Card-Stubbs, J

Justice