

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
COMMON LAW AND EQUITY DIVISION
2020/CLE/GEN/FP/00904

BETWEEN

PINNACLE INVESTMENT CONSTRUCTION COMPANY LIMITED
Claimant

AND

LAKEVIEW MANOR CONDOMINIUM
Defendant

Before: The Honourable Justice Camille Darville Gomez

Appearances: Mr. Philip McKenzie, KC and Lenthala Culmer for the Claimant
Ms. Constance McDonald, KC for the Defendant

Hearing Date: 15 October, 2025

Strike-out application – Contractual party – whether proper defendant - Condominium management – section 13 of the Law of Property and Conveyancing (Condominium) Act –once declaration of condominium recorded defendant became juristic person -Admissions in pleadings – bound by pleadings

RULING

DARVILLE GOMEZ, J

- [1.] The Claimant brought this action for moneys due and owing pursuant to a construction contract against a condominium association.
- [2.] The Claimant brought this action by Writ of Summons filed on September 15, 2020 for the following reliefs:
1. The sum of \$265,109.17 representing the balance due and owing under the contract.

2. The sum of \$261,561.89 for loss of profit.
3. Damages.
4. Interest.
5. Costs; and
6. Such other relief as the Court deems just.

[3.] The Defendants have denied the claim and counterclaimed for:

1. A declaration that the amount of \$66,680.61 was overpaid by the Defendant to the Plaintiff;
2. Restitution of the amount of \$66,680.61.
3. Interest pursuant to section 3 of the Civil Procedure (Award of Interest) Act 1992.
4. Costs.
5. Further to other relief as the Court deems just.

[4.] The pleadings had long been closed, and the matter had been listed for trial on several occasions. However, the Defendant's former attorneys applied to withdraw, citing persistent difficulties in obtaining instructions. I granted that application.

[5.] The Defendant's new attorney brought this application to strike out the action and costs.

The Application

[6.] By Notice of Application filed on 28th August 2025 the Defendants sought the following reliefs:

1. The Defendant Lakeview Manor Condominium makes application under Part 11 and 26 (3) (1) (b) of the Supreme Court Civil Procedure Rules 2022 for an Order that the Claimant's Writ of Summons and Statement of Claim herein be struck out.
2. The ground of this Application is that the statement of Claim does not disclose any reasonable ground for bringing an action against the Defendant because the Defendant never signed or was a party to any contract with the Claimant.
3. An Order that the Claimant pay the Defendant's costs of this Action including the cost of and occasioned by this Application to be taxed if not agreed.
4. An Order that further proceedings be stayed until the hearing of this Application.

5. The Affidavits of Dennis Bain, the Secretary of the Defendant and Andre Patrick Colebrooke a Director and Gladys Ash Manager of Property Services and filed herewith will be used at the hearing of this Application.

[7.] It was supported by Affidavits of Dennis Bain, Andre Patrick-Colebrooke and Gladys Ash filed on 28th August 2025 which collectively established that Rambler Investments Ltd, under the direction of Kathleen Brackett, was at all material times the entity managing the Defendant, Lakeview Manor Condominium, collecting maintenance fees, and controlling insurance proceeds.

[8.] I summarise their evidence under sub-headings as follows:

Management & Financial Control

[9.] Mr. Colebrook and Mr. Bain both confirmed that unit owners consistently paid their maintenance fees to Rambler Investments Ltd (“Rambler”) rather than to the Defendant itself, underscoring that Rambler was the operative entity managing the condominium. Mrs. Ash corroborated this by confirming that until 2023 all accounts were held in Rambler’s name, with Lakeview Manor Condominium only establishing its own bank accounts after Kathleen Brackett’s departure. Mr. Bain’s exhibits further demonstrated Rambler’s shifting representations of its role, including correspondence to insurers in which Rambler described itself as trading as Lakeview Manor Condominium Association, and later communications in which it purported to disclaim ownership and management responsibilities.

Insurance & Renovations Post-Hurricane Dorian

[10.] Mr. Colebrook recalled that the insurance proceeds exceeding \$1.5 million were paid to Rambler, which then engaged the Claimant to carry out renovations. Mr. Bain and Mrs. Ash both recounted meetings convened by Kathleen Brackett with unit owners and the Claimant, during which delays and expenses were challenged. Mrs. Ash provided detailed notes of an Emergency Meeting held on 18 February, 2020 that the Claimant walked off the job mid-project, halting cement and electrical works and leaving the property in disarray. Subsequent repairs were completed by other contractors or by unit owners themselves, using insurance funds distributed by Kathleen Brackett.

Breakdown of Relations with the Claimant

[11.] Mr. Bain described the Claimant’s angry departure from a meeting after Mrs. Brackett questioned delays and expenses, after which no representative of the Claimant was seen again. Mrs. Ash corroborated this account, noting that the Claimant abandoned the site and was not heard from until the commencement of these proceedings. Mr. Colebrook similarly emphasised that the Defendant itself had no direct dealings with the Claimant, and that Rambler Investments Ltd was the contracting party throughout.

Departure of Rambler / Kathleen Brackett

- [12.] Mr. Bain and Mrs. Ash both confirmed that after Kathleen Brackett sold her last condominium unit she severed all ties with the Defendant and that no records or statements were ever provided by Rambler's treasurer or staff regarding the handling of insurance proceeds or the renovations, leaving the Defendant without clarity on those matters. It was only thereafter that Lakeview Manor Condominium began operating its own accounts independently, marking the point at which the Defendant assumed direct financial control separate from Rambler Investments Ltd.
- [13.] The evidence of the three witness when considered together show a consistent and compelling narrative: the Defendant neither contracted with the Claimant, nor received maintenance fees, nor exercised control over the insurance proceeds. All financial and contractual dealings were conducted through Rambler Investments Ltd, which acted as the management company under the direction of Kathleen Brackett. The Claimant's engagement arose solely from Rambler's arrangements, and when the works were abandoned, it was Rambler and the individual unit owners who undertook completion of the repairs.
- [14.] Therefore, they were all in agreement that responsibility for the works and the handling of funds rested with Rambler Investments Ltd, not with the Defendant itself. Therefore, for these reasons the Claimant's cause of action, if any, lies against Rambler Investments Ltd rather than the Defendant, Lakeview Manor Condominium and should be struck out pursuant to Part 26(3)(1)(b) of the Supreme Court Civil Procedure Rules, 2023 (the "CPR").
- [15.] The Claimant opposed the said application and Michael Edwards in his affidavit in support had this to say:
2. I make this Affidavit in Response to the Defendant's Notice of Application filed herein on the 28th August 2025 for an Order that the Claimant's Writ of Summons and Statement of Claim be struck out on the grounds that the Statement of Claim does not disclose any reasonable ground for bringing this against the Defendant; and in response to the Affidavits of Dennis Bain, Andre Patrick-Colebrooke and Gladys Ash also filed 28th August 2025.
 3. The Defendant purports that it never signed or was a party to any contract with the Claimant.
 4. At all material times throughout the duration of the contract, I (on behalf of the Claimant) conducted Business with the Defendant through its representative Mrs. Kathy Brackett (in her capacity as President). All correspondence as it relates to the contract was under the name and styling of the Defendant, Lakeview Manor

Condominium. At no point and time, during any stage of the contract inclusive of the pre-contractual negotiations did I deal with Rambler Investments Ltd. It is now produced and shown to me marked as ME- 4 Copies of correspondence related to the contract.

5. After the breakdown of the contractual relationship between the Claimant and Defendant and prior to the initiation of this action, the Claimant's Attorneys would have conducted a search to ascertain the proper party to be named in the said action. I am advised that by virtue of a Declaration of Condominium dated 7th April, 1971, lodged for recording in the Registrar's General Office on the 19 August, 1971, particularly clauses 12 and 15 which states:

12. ".....shall ipso facto be a member of the **Body Corporate** which from the date this Declaration is recorded in the said Registry of Records shall have the style title of LAKEVIEW MANOR CONDOMINIUM and which shall be changed with the operation of the property by the virtue of Section 13 of the Act."

15. The Board of Directors of the Body Corporate may from time to time enter into a contract for the regular maintenance and the proper management of the condominium

It was determined that the named Defendant was the proper party to the action. It is now shown and produced by me marked as a copy of the Declaration of Condominium.

6. Once the court proceedings were initiated the Defendant, acknowledged that they entered into a contract with the Claimant and accepted that they were the proper party to the action.
7. On the 15th March 2021, the Defendant (1st Defendant at that time), filed a Defence jointly with the then named 2nd Defendant, Kathy Brackett and a Counterclaim in which it admits to entering into an agreement with the Claimant and made payments to the Claimant, specifically paragraphs 5, 7, and 10 states as follows:

5. As to paragraph 4 of the Statement of Claim, it is admitted that in or around October 2019 the 1st Defendant entered into an oral agreement with the Plaintiff to carry out certain renovations to Lakeview Manor situate at Lot 3. Block KN, Bahamia North, Freeport Grand Bahama, ("the Agreement").

7. *As to paragraph 6 of the Statement of Claim, the 1st Defendant admits that the Plaintiff commenced the refurbishment and renovation works on or about the 9th October 2019 and that it paid to the Plaintiff an initial sum of \$365,520.12 which represented a mobilization payment for the scope of work agreed.*

10 *Paragraph 9 of the Statement of Claim is denied and the Plaintiff is put to strict proof of the assertions made therein. The 1st Defendant avers that by virtue of an independent quantity surveyor/estimator review of the final payment request of the Plaintiff it was discovered that the work actually performed by the Plaintiff under the Agreement was valued at \$450,039.51.*

8. Further, by way of its counterclaim, the Defendant accepted that it entered in to an agreement with the Claimant. Paragraph 2 of the Counterclaim states:

By an oral Agreement made between the Plaintiff and the 1st Defendant in or about October 2019, the Plaintiff was to carry out certain renovation work to Lakeview Manor. The contractual scope of that work was limited to some of the common areas of Lakeview Manor, including only, the electrical, windows and doors, office area, microbial cleaning, and drying, masonry work, pump room, laundry room, electrical room, walkway tiling and other miscellaneous.

9. The only issues in dispute were:
- i. the scope of the works to be completed;
 - ii. who repudiated the contract; and
 - iii. the balance of funds owing on the contract (if any).
10. Moreover, the Defendant was represented by Counsel from the inception of this matter. The Defendant (then 1st Defendant) was represented by the same counsel for the previous 2nd Defendant prior to the court acceding to the 2nd Defendant's Application to be removed as a party to this action.
11. On the 1st March 2021, a Summons was filed by the previous 2nd Defendant for an Order that the Claimant's claim against the 2nd Defendant be struck out.
12. In support of the said Application, an Affidavit filed on 15th March, 2021 sworn by Kathleen Bracket, it was stated at paragraph 4 and 6 as follows:

"...As a result, on or about the 2nd October 2019, in my capacity as an officer and director of the 1st Defendant, I met, discussed and negotiated with Michael Edwards, the principal of the Plaintiff, for the Plaintiff to conduct repairs to parts of the 1st Defendant's premises which had been damaged by Hurricane Dorian".

“...As the Plaintiff has stated, at all material times I represented the First Defendant and never presented myself as an individual acting or engaging on behalf of myself personally. Any agreement entered into was done so for and on behalf of the First Defendant..... ”

13. At no time did the Defendant assert that Rambler Investment Ltd., either in their pleadings or during the hearing of the former 2nd Defendant's Application, was the contracting party. The Defendant offered no objection to the assertion that the 2nd Defendant was acting on its behalf and that the Defendant was the contracting party and thus the only proper party to the action.
14. At all times, both Kathy Brackett (former 2nd Defendant) and the Defendant were represented by the same counsel.
15. In the premises, the Claimant seeks an order dismissing the Defendant's Application that the Claim be struck out and an order for the cost of defending this Application to be awarded to the Claimant.

Issue

- [16.] The Defendant in its Notice of Application has referred to a singular ground for bringing the application, viz., the Statement of Claim does not disclose any reasonable ground for bringing an action against the Defendant because the Defendant never signed or was a party to any contract with the Claimant.
- [17.] Therefore, the central issue for determination is whether the Defendant or Rambler Investments Ltd was the proper contracting party, and whether the action should proceed against the Defendant.
- [18.] Both parties helpfully filed submissions.

Law, Discussion and Analysis

Jurisdiction

- [19.] The Court has been asked to strike out the writ of summons and statement of claim pursuant to Part 26(3)(1)(b) of the Civil Procedure Rules, which confer upon the Court the power to strike out a pleading on the ground that it discloses no reasonable cause of action for bringing or defending the claim.
- [20.] The jurisdiction to strike out is well established but must be exercised sparingly. As Lord Hope observed in **Three Rivers District Council v Bank of England (No. 3)** [2001] UKHL 16, striking out is a “draconian step” and should only be taken where it is plain and obvious that the claim cannot succeed. Likewise, in **Swain v Hillman** [2001] 1 All ER 91, Lord Woolf MR emphasized that summary disposal is reserved for cases that are “hopeless or bound to fail.”

[21.] This principle has been consistently applied in Bahamian cases, where the Supreme Court in **Samuel Bevans v Attorney General (2022/PUB/jrv/00009)**, reiterated that strike-out powers must be exercised cautiously and only where a claim is clearly unsustainable. Similarly, in **Axcel Investments Ltd v Colina Mortgage Corp Ltd SCCiv App. No. 152 of 2024**, the Court of Appeal emphasized that the discretion to strike out under Order 18 rule 19 of the Rules of the Supreme Court and rule 26 of the CPR is exceptional, and the Court must be satisfied that the pleading discloses no reasonable cause of action before depriving a party of its right to trial.

Whether the Defendant is the proper party

[22.] The Defendant's application to strike out rests on the assertion that it was never a party to any contract with the Claimant.

[23.] That contention cannot be sustained.

[24.] First, by virtue of section 13 of the Law of Property and Conveyancing (Condominium) Act, once a declaration of condominium is recorded, a body corporate comes into existence in the name and style of the condominium, charged with the operation of the property. The Declaration of Condominium for Lakeview Manor was recorded in 1971, thereby creating the Defendant as a juristic person capable of contracting and bearing responsibility for the management of the condominium.

Parties bound by their pleadings

[25.] Secondly, the Defendant is bound by its own pleadings. It is a settled principle of law that parties are confined to their pleadings unless they are formally amended. This Court in **Oliyanka Lockhart and Osbourne Lockhart v First Caribbean Bank (Bahamas) Limited 2018/CLE/GEN/01420** cited the case of **Phillips v Phillips (1878) 4 QBD 127** which established that parties are bound by their pleadings. The pleadings define the issues for determination, and it is neither open to a party to depart from them nor to invite the court to adjudicate on matters not properly raised. Further, this principle has been consistently applied in subsequent authorities including in **Jacobs v Chalcott Crescent (Management) Company Limited [2024] EWHC 257 (Ch)**, the High Court reaffirmed that parties cannot advance arguments or evidence outside the scope of their pleaded case. The court emphasized that to do so risks ambushing the other party and undermines the orderly conduct of litigation.

[26.] Applying that principle here, the Defendant's Defence and Counterclaim filed in March 2021 expressly admitted entering into an oral agreement with the Claimant in October 2019, acknowledged making a mobilization payment of \$365,520.12, and described the scope of works to be undertaken. The Defendant further advanced a counterclaim premised on the existence of

that agreement. These admissions are unequivocal and cannot now be disavowed. The Defendant cannot resile from its own acknowledgment of contractual relations with the Claimant.

[27.] Thirdly, Mrs. Brackett, then President of the Defendant, confirmed in her affidavit filed on 15 March, 2021 that she acted at all material times on behalf of the Defendant in negotiating and entering the agreement with the Claimant. At no stage did the Defendant assert that Rambler Investments Ltd was the contracting party. On the contrary, both Mrs. Brackett and the Defendant were represented by the same counsel, and the Defendant offered no objection to the assertion that Brackett acted on its behalf.

Conclusion and Order

[28.] In these circumstances, the claim cannot be said to be hopeless or bound to fail. The statutory framework, the continuous existence of the Defendant as a juristic person, and the Defendant's own admissions in pleadings all establish that the Defendant was the contracting party. The issues in dispute concern the scope of works, repudiation, and the balance of funds owing, not the identity of the contracting party.

[29.] For these reasons, the Court finds that the Defendant's application to strike out the Claimant's writ and statement of claim is without merit. The Defendant's application is dismissed. The Claimant is awarded the costs of defending this application, to be assessed on the papers if not otherwise agreed.

[30.] In light of this ruling, the matter shall now proceed to case management for further directions as to the conduct of this action.

Dated the 9th day of March, 2026

A handwritten signature in black ink, appearing to read 'Camille Darville-Gomez', written in a cursive style.

Camille Darville-Gomez
Justice