

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

2025/COM/adm/FP/00005

IN THE MATTER of an Admiralty Action in Rem against the
Motor Vessel “PHOSPERUS NH”

IN THE MATTER of Rule 59 of the Supreme Court Civil
Procedure Rules, 2022

AND

IN THE MATTER of section 8 of the Supreme Court Act, Chapter
53 of the Statute Law of the Bahamas

AND

IN THE MATTER of sections 189 of the Merchant Shipping Act,
Chapter 268 of the Statute Law of the Bahamas

BETWEEN

CALICO ENERGY DMCC

Claimant

AND

**THE OWNERS, CHARTERERS AND OPERATORS OF THE
MOTOR VESSEL “PHOSPERUS NH”**

Defendant

Before: The Honourable Madam Justice Constance Delancy

Appearances: Kenra Parris-Whittaker for the Claimant

Mark Flowers for the Defendant

Hearing date(s): 2 February 2026

RULING

DELANCY, J

Procedural Background

[1.] The Claimant commenced an action in rem against the owners, charterers and operators of the Motor Vessel Phospherus NH on 20 October, 2025 seeking the following reliefs:

1. A Warrant of Arrest be issued pursuant to Order 59 of the Supreme Court (Civil Procedure) Rules, 2022;
2. An Order that the Motor Vessel “PHOSPERUS NH” be arrested and detained pending the provision of adequate security;
3. Judgment in rem against the Motor Vessel “PHOSPERUS NH” for the full amount due;
4. Damages in the amount of Two Hundred Fifty-eight Thousand Six Hundred dollars and nineteen cents (USD \$ 258,600.19 which includes interest, to date) or such sum as may be proven at trial;
5. Interest, costs, and such further or other relief as this Honourable Court deems just.

[2.] On 20 October 2025 the Claimant filed a Notice of Application to Arrest the vessel, a Praecipe to request a Warrant of Arrest, a Certificate of Urgency and an Affidavit of Tyler Adderley in support of the application. On the same date, the Claimant also filed an Undertaking to indemnify the Admiralty Marshal in respect of all reasonable charges and expenses that may be incurred in consequence of the arrest of the vessel.

[3.] An order filed on 20 October 2025 granted leave to issue a Warrant of Arrest for the vessel and liberty to the Defendant to apply for discharge with 48 hours’ notice to the Claimant.

[4.] The Defendants filed a Notice of Application together with a Certificate of Urgency on 28 October 2025. The Defendants seeks to set aside the Warrant of Arrest and alternatively, that the security be varied on such terms as the Court deems just and the vessel be discharged.

[5.] A Praecipe for Caveat Against the Release of the vessel was filed by Alexiou, Knowles & Co. on behalf of MECK Petroleum DMCC on 30 October 2025.

[6.] On 25 November 2025 the Defendants filed a Defense [*sic*] and Counterclaim denying the claim and counterclaimed seeking the following reliefs:

8. The Defendant counterclaims against Calico DMCC [*sic*] and El Reedy as follows:
 - (a) Damages representing the full extent of the Owners’ direct, consequential, deviation-related, and economic losses arising from Calico’s supply of contaminated, unmerchantable and off-specification bunkers which caused the Vessel’s progressive mechanical failure, deviation, delay, and financial harm.
 - (b) Damages for negligent supply (Calico) and negligent procurement/arrangement (El Reedy), including all operational, mechanical, commercial, charterparty and voyage losses suffered.

- (c) Damages arising from El Reedy's breach of fiduciary obligations, including acting contrary to the Owners' interests, failure to warn, failure to protect the Owners' commercial position, and approving or facilitating the procurement of non-compliant bunkers at inflated prices.
- (d) Restitution of sums charged more than market rates, including overcharges totaling USD 77,335.19, representing the difference between actual invoice pricing and the prevailing S&P Global Platts Mediterranean spot-market benchmarks.
- (e) Recovery of demurrage incurred due to deviation and loss of operational time, including USD 343,000.00 for the 49-day deviation period (12 June 30 July 2025) at the contractual GENCON rate of USD 7,000/day, as well as all further commercial or voyage losses.
- (f) Recovery of all repair expenditures, including the General Average machinery repair estimate of USD 152,000.00, along with any additional general average costs assessed by Chiotelis & Co.
- (g) Damages representing delay-related expenses totaling USD 48,083.30, including superintendent costs, technical and engineering attendances, assessments, and legal/expert fees necessitated solely by the contaminated bunkers.
- (h) Compensation for all additional losses listed in the schedule of damages below, including: (a) agency and port fees, (b) customs and immigration charges, (c) legal retainers and expenses (d) costs associated with the arrest, (e) any continuing or accruing fees pending release of the Vessel and/or cargo and (e) all incidental expenses reasonably incurred.
- (i) Interest pursuant to the Supreme Court Act at such rate and for such period as the Court deems just, with the express denial of any contractual interest claimed by Calico on the basis of illegality, usury, and lack of incorporation.
- (j) Costs of these proceedings, including costs occasioned by the wrongful arrest, the need to challenge the arrest, and all related applications.
- (h) Such further or other relief as this Honourable Court deems just.

[7.] On 27 November 2025 the Claimant filed an Interlocutory Application seeking a Judgment in Default of Defence against the Defendant in the sum of \$258,600.19 plus continuing interest pursuant to Rule 59.21(5) Supreme Court Civil Procedure Rules, 2022 ("CPR") and/or the Courts inherent jurisdiction; the vessel be appraised and sold by the Admiralty Marshal; and costs on an indemnity basis. The application is supported by an Affidavit of Latiyah Johnson filed on 28 November 2025 ("First Johnson Affidavit").

[8.] The Defendants filed a Notice of Application on 1 December 2025 seeking an extension of time to file a Defence and Counterclaim, relief from sanctions, leave to rely on without prejudice communications, Security for costs, stay of proceedings pending provision for security for costs and costs.

[9.] On 5 December 2025, the Claimant filed a Notice of Cross Application (And Opposition to Defendant's Application dated 1st December 2025), supported by the Affidavit of Latiyah

Johnson filed on 9 December 2025 and again on 11 December, 2025 (“Second Johnson Affidavit”), seeking:

1. That the Defendant’s Notice of application filed on 1st December 2025 seeking an extension of time, relief from sanctions, and security for costs be dismissed in its entirety.
2. That the Defence and Counterclaim filed by the Defendant on 25th November 2025 be struck *in limine* pursuant to Rule 26.3(1) on the grounds that:
 - 2.1. It discloses no reasonable ground for defending the claim;
 - 2.2. It is an abuse of the process of the court; and
 - 2.3. It is irregular and voidable.
3. That Judgment in Default of Defence be entered for the Claimant against the Defendant in the sum of \$258,600.19 plus continuing interest pursuant to Rule 59.21(5) Supreme Court Civil Procedure Rules, 2022 (“CPR”).
4. Alternatively, that summary judgment be entered for the Claimant against the Defendant pursuant to Rule 15.2 CPR on the ground that the Defendant has no real prospect of successfully defending the claim or prosecuting the counterclaim.
5. That the Motor Vessel “PHOSPERUS NH” be appraised and sold by the Admiralty Marshal.
6. That the Defendant pay the Claimant’s costs on an indemnity basis.

[10.] Praecipe for Caveats Against the Release of the vessel were filed by ParrisWhittaker on behalf of Elreedy Shipping Company on 9 December 2025; and on behalf of Wells Bunkering Ltd. on 16 December 2025.

[11.] The Defendants filed a Notice of Application for Default Judgement on its Counterclaim 13 January 2026 for the Claimant’s failure to file and serve an Acknowledgement of Service and Defence to the Counterclaim.

[12.] The Second Affidavit of Chaeremon Minnis (“Minnis Affidavit”) which was submitted on the 6 November, 2025 was not in fact filed.

[13.] The Claimants filed an Affidavit of Anastasios (Tasos) Altonuis (“Altonuis Affidavit”) and an Affidavit of Kareem Yehia Elreedy (“El Reedy Affidavit”) on 21 January 2026 in response to information contained in the Defendant’s Defence and Counterclaim filed herein.

[14.] The Defendant filed an Affidavit of Devan Williams (“Williams Affidavit”) sworn 13 January 2026 and submitted on 26 January 2026 in support of:

- (a) the Defendant’s application for default judgment of the counterclaim;
- (b) the Defendant’s application for extension of time and relief from sanctions filed on;
- (c) the Defendant’s application for security for costs; and
- (d) in opposition to the Claimant’s Notice of Cross Application filed 5 December 2025

Issues

[15.] The Court must determine whether:

- (i) to extend the time for the filing of the Defendant's Defence and Counterclaim or the allow for the regularization of the same which was filed out time on 25 November 2025;
- (ii) to allow for the use of without prejudice communications to explain reasons for the delay;
- (iii) to grant default and or summary judgment; and
- (iv) the admissibility of irregular affidavit evidence.

Law and Analysis

[19.] The Claimant brought this action against the Defendant (owners, charterers and operators of the vessel) under Section 8 of the Supreme Court Act ("the SCA") and Part 59 of the CPR.

[20.] The Court's jurisdiction to hear and determine admiralty matters is derived from Section 8 of the SCA and in the instant case the Claimant relies on Section 8(1)(l):

8. (1) The admiralty jurisdiction of the Court shall be to hear and determine any of the following questions or claims...

- (l) **any claim in respect of goods or materials supplied to a ship for its operation or maintenance; ...**

[Emphasis added]

[21.] The mode of the exercise of the Court's admiralty jurisdiction is set out in Section 9 of the SCA provided that the party or subject matter of the action is within the jurisdiction of The Bahamas (as provided in Section 9 (8) and 10 of the SCA). In the instant case the provisions of Section 9(2) and 9(4) are applicable:

(2) In the cases mentioned in paragraphs (a), (b), (c) and (r) of **subsection (1) of section 8 an action in rem may be brought in the Court against the ship**, aircraft or property **in question**.

(4) In the case of **any such claim as is mentioned in paragraphs (d) to (q) of subsection (1) of section 8, where** —

- (a) the **claim arises in connection with a ship**; and
- (b) where **the person who would be liable on the claim in an action in personam was, when the cause of action arose, the owner or charterer of, or in possession or in control of the ship, an action in rem may (whether the claim gives rise to a maritime lien on the ship or not) be brought in the court against** —
 - (i) **that ship, if at the time when the action is brought it is beneficially owned as respects all the shares therein by that person**; or

- (ii) **any other ship which, at the time when the action is brought, is beneficially owned as aforesaid.**

[Emphasis added]

[22.] Part 59 of the CPR in conjunction with Parts 8 and 9 of the CPR sets out the procedural steps required in the commencement and conduct of admiralty actions. Counsel have provided the Court with a plethora of authorities to support their respective applications and while the Court may not have included a particular authority in its ruling they have read and considered.

Preliminary issues on admissibility of Evidence

[23.] Counsel for the Defendant raised the issue of the admissibility of Affidavits filed on behalf of the Claimant in this matter. Counsel submits that the El Reedy Affidavit made in Egypt on 21 January 2026 and the Altonuis Affidavit made in Greece on 21 January 2026 respectively are irregular. Both Affidavits were notarized by a Spanish Notary Public on the same day and do not have an apostille to authenticate the standing of the notary public to notarize an Affidavits in Egypt or Greece.

[24.] The **Hague Convention of 5 October 1961 Abolishing the Requirement of Legislation for Foreign Public Documents** (“the Convention”) provides for public documents (i.e. *the notary public*) issued in a member country (*Greece*) to be used in court proceedings in another member country (*The Bahamas*) to be authenticated by a competent authority in the issuing member country. No apostille accompanied the Altonuis Affidavit which was sworn in Greece to authenticate the standing of the notary public. Further, the El Reedy Affidavit sworn in Egypt was not legalized through an Egyptian embassy or consulate as Egypt is not a member of the Convention.

[25.] The Court may presume that affidavits made outside The Bahamas in accordance with the law of that jurisdiction have been sworn or affirmed in accordance with the procedure and law of that jurisdiction. (*Part 30.5(5) and 30.5(6) CPR*).

[26.] In **Knowles and others v. Superintendent Culmer (Superintendent of Her Majesty's Fox Hill Prison) and others** [2017] 2 BHS J. No. 106 the Court of Appeal examined how presumptions operate, per *Dame Anita Allen, P* stated at para. [94] to [96]:

94. That presumption operates on proof or admission of the basic or primary fact that a person has acted in a public or official capacity. **It is presumed, in the absence of evidence to the contrary, that the person was regularly and properly appointed and that the act was regularly and properly performed, and unless there is evidence that she was not a person** within any of the categories mentioned in section 14(3) of the Act, it is presumed that all circumstances happened, and all conditions were fulfilled which were necessary to give validity to Lystra Blake's certification.

95. **The presumption cannot be rebutted merely by challenging the presumed fact. Evidence must be adduced** (see *Campbell v Wallsend Slipway and Engineering Company Ltd.* [1978] ICR 1015). Merely to say that Lystra Blake's certificate is invalid because Lystra Blake did not say in her certification that she was such an official as mentioned in section 14(3), cannot therefore rebut the presumption.

96. The appellants must show that Lystra Blake was not a person authorized by section 14(3) to certify such an affidavit. **Needless to say, the appellants have not shown that she was not a judge, magistrate, officer of the court in or of the approved state, or an officer of the diplomatic or consular service of that state, and it must be presumed that her certification of Karen Atkinson's affidavit was regularly done.**

[Emphasis added]

[27.] The Defendant has not produced evidence to rebut the fact that the El Reedy Affidavit and the Altonuis Affidavit were not notarized in accordance with the laws and procedure of the respective jurisdictions. The Court finds that the Altonuis Affidavit and El Reedy Affidavit may be presumed to have been sworn in accordance with the law and procedure in their respective jurisdiction. In the circumstances the Court may consider the contents of the affidavits notwithstanding the absence of an apostille for the Altonuis Affidavit or legalization of the El Reedy Affidavit.

[28.] The Williams Affidavit and the Minnis Affidavit which are relied on by the Defendant were both notarized by Counsel for Defendant. Part 30.5(3) of CPR provides that such affidavits may be deemed inadmissible:

An affidavit may not be admitted into evidence if sworn or affirmed before the attorney of the party on whose behalf it is to be used or before any agent, partner, employee or associate of such attorney.

[Emphasis added]

[29.] The Williams Affidavit and the Minnis Affidavit in support of the respective applications are not in compliance with the rules of the Court. In accordance with the provisions of Part 30.5(3) the Court may exercise its discretion and determine whether to admit the said affidavits. The Court is guided by the overriding objective, in particular Part 1.2 CPR to, “*so far as is practicable*” to deal with a case justly and proportionately.

[30.] Counsel for the Defendant conceded that the Minnis Affidavit was not properly filed and opted not to rely on the same. Counsel for the Claimant did not object to the admission of the Williams Affidavit which was sworn by the authorized agent for the owners of the vessel. The Court has the discretion to consider the contents of the Williams Affidavit or sanction the Defendant by excluding the same. The Defendant is not precluded from having the affiant swear the affidavit duly notarized by another notary public and re-file the same. The latter may contribute to a delay in the proceedings and increase in costs which is not in keeping with the overriding objectives. Further the Court may also rely on the examination of the pleadings in the instant case.

Without prejudice communications and Extension of time

[31.] The Defendant seeks an extension of time within which to file its Defence and Counterclaim. The Claimant seeks to strikeout the Defendant's Defence and Counterclaim on the ground that it failed to comply with Part 10.3 of the CPR having not filed and served the same within 28 days of service of the Claim form. Counsel for the Defendant countered that the CPR also under Part 10.3 CPR for it to apply for an extension of time to comply with the provisions of Part 10.3 and the Court's case management powers.

[32.] The current approach to applications for extension of time is guided by the factors that are considered on an application for relief from sanctions as summarized by *Lord Dyson, M R and Vos, LJ* in **Denton and others v TH White Ltd. and another** [2015] All ER 880 at para. [24] (and adopted by *Winder, CJ* in **Andrew Smith and Sophia Smith v First Caribbean International Bank (Bahamas) Limited et al** 2020/CLE/gen/00662)

Guidance

[24] ...A judge should address an application for relief from sanctions in three stages. The **first stage is to identify and assess the seriousness and significance of the "failure to comply with any rule, practice direction or court order"** which engages rule 3.9(1). If the breach is neither serious nor significant, the court is unlikely to need to spend much time on the second and third stages. The **second stage is to consider why the default occurred**. The **third stage is to evaluate "all the circumstances of the case, so as to enable [the court] to deal justly with the application including [factors (a) and (b)]"**.

...

[Emphasis added]

[33.] The Defence and Counterclaim in the instant case was filed some eight days after the time allowed by the CPR. The Defendant submits that the filing of its Defence and Counterclaim eight days after the time allow by the CPR does not constitute an inordinate delay. Further that the Court ought to consider the prejudice to parties should the extension be granted taking into any hardships. Counsel relies on **Derek Sands and others v Finance Corporation of Bahamas** SCCiv App. No.29 of 2008 in which the Court of Appeal determined that eight days' delay was not inordinate.

[34.] Counsel for the Defendant further submits that it ought to be allowed to rely on the without prejudice communications between the parties to explain the reasons for the delay in filing its Defence and Counterclaim. Counsel submits that the prohibition on the admissibility of without prejudice communications is not absolute and relies on the dicta of *Robert Walker, LJ* in **Unilever plc v Procter & Gamble Co** (2000) 1 WLR 2436 at 2444E–2445B:

(3) **Even if there is no concluded compromise, a clear statement which is made by one party to negotiations and on which the other party is intended to act and does in fact act may be admissible as giving rise to an estoppel**. That was the view of *Neuberger J*.

in **Hodgkinson & Corby Ltd... Wards Mobility Services Ltd.** [1997] F.S.R. 178, 191 and his view on that point was not disapproved by this court on appeal.

(4) Apart from any concluded contract or estoppel, one party may be allowed to give evidence of what the other said or wrote in without prejudice negotiations if the exclusion of the evidence would act as a cloak for perjury, blackmail or other "*unambiguous impropriety*" (the expression used by *Hoffmann L.J.* in **Forster v. Friedland** (unreported), 10 November 1992; Court of Appeal (Civil Division) Transcript No. I 052 of 1992) ...

(5) **Evidence of negotiations may be given (for instance, on an application to strike out proceedings for want of prosecution) in order to explain delay** or apparent acquiescence...

[Emphasis added]

[35.] Counsel for the Claimant submits that “*without prejudice*” communications are privileged and inadmissible. Counsel relies on the dictum of *Fitzcharles, J.* in **Win Business Energy Caofeidian Limited v Anadarko Petroleum Corporation and another** [2024] 1 BHS J. No. 134 at paras. [21] to [23] thereof:

21. **Where parties communicate in a genuine effort to settle a dispute, such communications whether oral or written are generally inadmissible in evidence.** In **Rush & Tompkins Ltd v Greater London Council** [1989] 1 AC 1280 at 1299, *Lord Griffiths* opined:

“The rule applies to exclude all negotiations genuinely aimed at settlement whether oral or in writing from being given in evidence...[T]he application of the rule is not dependent upon the use of the phrase ‘without prejudice’ and if it is clear from the surrounding circumstances that the parties were seeking to compromise the action, evidence of the content of those negotiations will, as a general rule, not be admissible at the trial and cannot be used to establish an admission or partial admission”. (Emphasis added).

22. **The general rule rests upon the planks of public policy and agreement amongst the parties.** By public policy parties are given a safe space so to speak to settle their differences without fear of their representations being disclosed or used against them in court proceedings, as long as they do not abuse the privilege. In the English Court of Appeal decision of **Cutts v Head** [1984] Ch 290 at 306, the oft quoted passage of the policy behind the rule was addressed by *Oliver LJ* as follows:

“That the rule rests at least in part, upon public policy is clear from many authorities, and the convenient starting point of the inquiry is the nature of the underlying policy. It is that parties should be encouraged so far as possible to settle their disputes without resort to litigation and should not be discouraged by the knowledge that anything that is said in the course of such negotiations (and that includes, of course, as much the failure to reply to an offer as an actual reply) may be used to their prejudice in the course of the proceedings. They should, as it was expressed by *Clauson J.* in **Scott Paper Co v Drayton Paper Works Ltd** (1927) 44 RPC 151,156, be encouraged fully and frankly to put their cards on the table...The public policy justification, in truth, essentially rests on the desirability of

preventing statements or offers made in the course of negotiations for settlement being brought before the court of trial as admissions on the question of liability.’ **The rule applies to exclude all negotiations genuinely aimed at settlement whether oral or in writing from being given in evidence.**”

23. **This is the general rule which would inform whether or not communications are privileged (prior to any consideration of exceptions).** Counsel for the Claimants also submits that **the purpose of “without prejudice” communications is to provide for an environment where parties can freely negotiate.** Counsel invites the Court to take note of the dictum of *Fox, LJ* in the English Court of Appeal case of **Cutts v Head** [1984] Ch 290 at 313:

First, that the purpose of the rule is to facilitate a free discussion of compromise proposals by protecting the proposals and discussion from disclosure in the proceedings. Second, whilst the ordinary meaning of “without prejudice” is without prejudice to the position of the offeror if his offer is refused, it is not competent to one party to impose such terms on the other in respect of a document which, by its nature, is capable of being used to the disadvantage of that other. The expression must be read as creating a situation of mutuality which enables both sides to take advantage of the “without prejudice” protection. **The juridical basis of that must, I think, in part derive from an implied agreement between the parties and in part from public policy.**

[Emphasis added]

[36.] The Court finds that the in circumstances of the case the without prejudice correspondences between the parties are admissible for the purpose of establishing timelines with reference the reasons for the delay in filing of the Defence and Counterclaim and are not admissible as to any admissions which may be contained therein. Further, the delay in the filing for the Defence and Counterclaim is not inordinate and the filing thereby is deemed to be regularized.

Strike Out

[35.] The Claimant also seeks to strike out the Defence and Counterclaim on the grounds that it discloses no reasonable grounds for defending the claim and constitutes an abuse of process. Further, that (i) it is not a genuine dispute but a contrived narrative introduced long after the relevant events, apparently as a tactic to delay or frustrate the Claimant’s enforcement of its claim; and (ii) it is untenable on the merits, it is lacking in any credible basis and is subject to a contractual time-bar under the applicable law.

[36.] The Court may strike out a statement of case or defence in plain and obvious cases. In the instant case the claim arises out of services under a contract between the parties. The parties invite the Court to examine the terms of the said contract an exercise which ought not to be embarked

upon at the interlocutory stage (see **Wenlock v Moloney** [1965] 2 All ER 871; **Swain v Hillman** [2001] 1 All ER 91 at 92;).

[37.] Where a claim is inarguable the Court is minded to strike the claim. *Winder CJ* in **Rocky Farms Nurseries Limited v Brett Stubbs** 2017/CLE/gen/00535 at para 11 held:

Having considered the matter I am satisfied that this is not a matter of summary consideration. I am not satisfied that the defence is unsustainable having regard to the threshold observed by the Court of Appeal in *West Island Properties Limited*. **The claim advanced must be unsustainable and the remedy of striking out is reserved for the unarguable, exceptional cases which are obviously frivolous and vexatious**, I am not satisfied that this case falls in that category.

[Emphasis added]

[38.] Further, the Court ought to bear in mind the overriding objective when exercising its discretion in an application under the rules particularly when deciding whether to strike out a party's statement of case. In **Walsh v Misseldine** [2001] CPLR 201, CA in the *dictum* at 79 is instructive:

79. Although *Lord Woolf MR* said in **Biguzzi** at p 1934G that earlier authorities are no longer generally of any relevance, the language of some of the judgments in these cases is perhaps reminiscent of the language used in cases decided in the pre-CPR regime, and this is causing difficulties to some practitioners. The ground rules under which courts are now, however, required to operate are clearly set out by *May LJ* in his judgment in **Purdy** (paras 45-46):

"45. Under the Civil Procedure Rules, the court has ample power in an appropriate case to strike out a claim for delay. The power is to be found, if nowhere else, in rule 3.4(2)(c), which provides that the court may strike out a statement of case if it appears to the court that there has been a failure to comply with a rule, practice direction or court order; or in rule 3.1(2)(m), which provides that the court may take any step or make any other order for the purpose of managing the case and furthering the overriding objective; or under the court's inherent jurisdiction, expressly preserved by rule 3.1(1); each of these to be exercised and interpreted in accordance with rule 1.2(a) and (b) to give effect to the overriding objective.

46. The Civil Procedure Rules are a new procedural code with an overriding objective enabling the court to deal with cases justly in accordance with considerations which include those to be found in rule 1.1(2). **One element expressly included in rule 1.1(2) as guiding the court towards dealing with cases justly is that the court should ensure, so far as is practical, that cases are dealt with expeditiously and fairly.** Delay is, and always has been, the enemy of justice. The court has to seek to give effect to the overriding objective when it exercises any powers given to it by the rules. **This applies to applications to strike out a claim.** When the court is considering, in a case to be decided under the Civil Procedure Rules, whether or not it is just in accordance with the overriding

objective to strike out a claim, it is not necessary or appropriate to analyse that question by reference to the rigid and overloaded structure which a large body of decisions under the former rules had constructed..."

[Emphasis added]

[39.] In this instance when examining the pleadings before the Court, there is a question to be tried on the evidence and, therefore an arguable case is before the Court. The Court is not to conduct a perusal of the evidence and thus cannot make a decision on the merits at this time. There is no obvious abuse of process based on the pleadings that the Court can discern.

Default Judgment/ Summary Judgment

[37.] Counsel for the Claimant submits that it is entitled to a judgment in default against the Defendant under Part 59.21 CPR.

[38.] Counsel for the Defendant submits that Part 12 (which provides the procedure for default judgment) and in particular Part 12.4 states that Part 59.21 applies only to personal injury claims arising out of a collision between two ships. Counsel submits the claim is not based on a collision therefore the Claimant cannot invoke the provisions Part 59.21(5).

[39.] The Court is also guided by the provisions of 2.3(iv) of Practice Direction 10 of 2023 “A claimant may not obtain default judgment if the claim is...(iv) an admiralty claim in rem”. This Practice Direction clarifies the categories of claims which are excluded from Part 12 CPR which provides the procedural machinery for default judgments under part 12 of CPR.

[40.] The Defendant submits the the Court does not have jurisdiction to grant a default in these proceedings. The Defendant relies on dicta of the Privy Council in **Lux Locations Ltd v Yida Zhang** [2023] UKPC 31 the Court notes para. 67 thereof:

This is also how historically the matter has been approached. In **Gibbings v Strong** (1884) 26 Ch D 66 a defence was delivered late but before the hearing of a motion for judgment under Order XXIX, rule 10 (quoted at para 53 above). The judge refused to look at the defence and gave judgment for the relief claimed in the statement of claim. The Court of Appeal held that this was a wrong approach. The *Earl of Selborne LC* said, at p 69, that:

“if a defence has been put in, though irregularly, I think the Court would do right in attending to what it contains. If it were found to contain nothing, which, if proved, would be material by way of defence, the Court would disregard it. If, on the other hand, it discloses a substantial ground of defence, the Court will not take the circuitous course of giving a judgment without regard to it, and obliging the defendant to apply ... to have that judgment set aside on terms, but will take steps to have the case properly tried on the merits.”

[Emphasis added]

[41.] The Court finds that these proceedings are excluded from the types of matters in which default judgment are permissible.

[42.] The Court finds that there is a general prohibition on summary judgment for proceedings commenced by fixed date claim (*Part 15.3 (c) CPR*). Admiralty proceedings *in rem* are also excluded from the categories of actions in which the Court may grant summary judgment (*Part 15.3(a) CPR*).

[43.] The Court refers to Practice Direction No. 2 of 2024, which reserve summary proceedings for Non-Contentious fixed date claims that are not brought pursuant to “*Rules 59.32, 60.1, 60.4, 64.2, 63.3, 63.12.*” This current matter is contentious as the Defendants intend to defend the claim brought by the Claimants and therefore, summary proceedings are not applicable in the circumstances.

[44.] The Claimant also submits that summary judgment is an option allowed in these proceedings notwithstanding the prohibition under Part 15. Counsel invited the Court to consider the views expressed by the *Admiralty Registrar Davison* in **Premier Marinas Ltd. v The Owner(s) of M/Y “Double Venus” also known as “Llamedos” The Owner(s) of M/Y “Karma” also known as “Santorini”** [2020] EWHC 2462 (Admlty) at para. [17]:

This indirectly highlights another peculiarity (and arguably a defect) of the rules regarding Admiralty claims, which is that it was not open to me entertain an application for summary judgment or to consider that of my own motion. By virtue of CPR rule 24.3(2)(b), summary judgment is not available in an admiralty claim in rem. This rule appears to have been carried over from the former RSC Order 14 rule 1(2)(c) and the rationale for it is obscure. It seems to me likely that the reason lies in the fact that under the old Rules of the Supreme Court an application for summary judgment was heard in chambers, whereas (given the fact that proceedings *in rem* may affect many interested parties) admiralty claims *in rem* require a public hearing in open court. However, applications for summary judgment have long been public hearings and, if this was the rationale for taking *in rem* claims out of scope, it has fallen away. In common with the discrepancy that has inadvertently arisen between CPR rules 61.9(1) and 12.3(1), this is a matter which may benefit from the attention of the Rules Committee.

[Emphasis added]

[45.] The Court notes that none of the Caveators in the matter have sought leave to intervene in the matter and all have been given an opportunity to hold a watching brief of these proceedings. The Court also notes that while they are allowed to watch the proceedings, they are not allowed to partake in the proceedings at this current juncture.

Disposition

[46.] The Court having heard the arguments of Counsel, read and considered the submissions together with the authorities and for the reasons set forth herein hereby orders as follows:

1. The without prejudice correspondence between the parties are admissible for the purpose of establishing timelines with reference the reasons for the delay in filing of the Defence and Counterclaim;
2. Leave is granted to the Defendant to extend the time for the filing of its Defence and Counterclaim and in keeping with the overriding objective, in particular to save costs in the proceedings, the Defence and Counterclaim filed herein on 25 November, 2025 shall be allowed to remain on the record;
3. The Claimant's application for summary judgment is dismissed;
4. This application was necessary for the Defendant ordinarily costs would go the Claimant however they also unsuccessful on their applications therefore no order as to costs to either party in the circumstances.

Dated 9 April, 2026

[Original signed and sealed]

Constance Delancy
Justice

Addendum

It was brought to the Court's attention by Counsel for the Defendant, with reference to paras. [28]-[30] of this Court's ruling, that the affidavits referenced therein were "notarized" by a Justice of the Peace and not by Counsel for the Defendant. However, the weight attached to this perceived error by the Court in its discussion was minimal and made moot as the Court in its discretion allowed the Williams Affidavit. Therefore, the court finds that it would not be appropriate to amend the said paragraphs under the slip rule.

Dated 16 April, 2026

[Original signed and sealed]

Constance Delancy
Justice