

**COMMONWEALTH OF THE BAHAMAS**  
**IN THE SUPREME COURT**  
**Common Law and Equity**  
**2025/CLE/gen/00124**

**BETWEEN**

**LENO CORPORATE SERVICES LIMITED**

**Claimant**

**AND**

**PPP INVESTMENTS & CONSTRUCTION CO. LTD.**

**First Defendant**

**AND**

**MINISTRY OF FINANCE**

**Second Defendant**

**AND**

**OFFICE OF THE ATTORNEY GENERAL**

**Third Defendant**

**Before: Assistant Registrar Adrienne Bellot (Acting)**

**Appearances: Devard Francis for the Claimant**

**Alecia Bowe for the First Defendant**

**Kayla Green-Smith with Ian Winder Jr., Adele Mangra and  
Nevado Frazer for the Second and Third Defendants**

**Heard on written submissions**

**RULING**

**Practice and procedure – Whether the Fixed Date Claim is contentious – Practice  
Direction No. 2 of 2024 on Non-contentious Fixed Date Claims - Practice Direction 8  
of 2023 on the Allocation of the work between Judges and Registrars – Application  
to remove Defendants as parties to the proceedings – Rule 19.2 of the CPR**

The instant breach of contract claim relates to a Public-Private Partnership Agreement between the First Defendant of the one part and the Second and Third Defendants of the other part for the construction and financing of a government complex, and the financial agreement between the Claimant and the First Defendant for the financing thereof. The Claimant alleges default under the financial bond agreement with the First Defendant. The First Defendant filed a Defence admitting many of the Claimant's assertions save for the sums due and owing. The Second and Third Defendants also filed a Defence, admitting its Public-Private Partnership Agreement with the First Defendant, but asserting that under the doctrine of privity of contract, they cannot be sued under the financial agreement to which they were not parties or under the Private-Partnership Agreement to which the Claimant was not party.

The Second and Third Defendants filed a Notice of Application seeking to be removed as defendants to these proceedings pursuant to the Court's jurisdiction to remove parties under Rule 19.2 of the Supreme Court Civil Procedure Rules.

As the Defendants have filed Defences in this matter, a preliminary issue arises regarding the jurisdiction of Registrars to hear contentious Fixed Date Claims.

This Court's reasons for adjourning the Fixed Date Claim for hearing before a Judge are set out below.

## **Introduction**

1. There are now two (2) extant applications before the Court:
  - a. An application filed 12<sup>th</sup> June, 2025 by the Second and Third Defendants to be removed as defendants in this action; and
  - b. An application by the First Defendant filed 2<sup>nd</sup> April, 2026 (after all Parties had filed submissions and response submissions) seeking leave to amend its Defence and to file a claim against the Second and Third Defendants for contribution and or full indemnity in respect of any Judgment or Order entered against the First Defendant ("**the indemnity application**").

## **Background facts**

1. The Claimant ("**Leno**") filed a Fixed Date Claim Form on 14<sup>th</sup> February, 2025. On 20<sup>th</sup> February, 2025, Leno filed an Amended Fixed Date Claim Form with a Statement of Claim asserting as against the First Defendant ("**PPP Ltd.**") breach of the financial bond agreement entered between the two (2) parties on 12<sup>th</sup> February,

2018. As against the Second and Third Defendants (collectively referred to herein as “**the Ministry of Finance**” or “**MOF**”), the Statement of Claim alleges that the MOF was responsible for paying rent to PPP Ltd. but alleged breach of such obligation by reason of PPP Ltd’s failure to make timely payments.

2. PPP Ltd. filed its Defence on 4<sup>th</sup> April, 2025, admitting to the majority of the assertions made in the Statement of Claim but disputing the sums owing to Leno.
3. On 9<sup>th</sup> May, 2025, MOF filed its Defence disputing that it had any contractual relationship with Leno. On 12<sup>th</sup> June, 2025 MOF filed a Notice of Application supported by the Affidavit of Ronique Carey filed even date seeking to be removed as defendants from these proceedings pursuant to Rule 19.2 of the CPR (“**the removal application**”).
4. The parties filed submissions on the removal application, most of which were arguments related to the existence or lack thereof of a contractual relationship or privity of contract as between Leno and MOF.

## **Submissions**

5. As the action seeks the recovery of money lent and the enforcement of agreements relating to money lent, it is considered a money-lending action, which was properly commenced by Fixed Date Claim (see Rule 8.1(6)(b) of the CPR). The procedure for Fixed Date Claims pursuant to Rule 27.2 is that the Court treats the first hearing as the trial of the claim unless it is defended. In this regard, Practice Direction No. 2 of 2024 on Fixed Date Claims clarifies the scope of a Registrar’s jurisdiction to hear Fixed Date Claims:

### **“2. First Hearing of a Fixed Date Claim**

**2.1 The first hearing of a Fixed Date Claim shall be returnable before a Registrar unless the matter is known to be Contentious.**

**2.2 If on the first hearing of the Fixed Date Claim a Registrar determines that the matter is being proceeded as a Contentious Fixed Date Claim, the matter shall be adjourned to the next convenient date to be case managed by a Judge.”**

### **3.Non-Contentious Fixed Date Claims**

**3.1 “Non-Contentious” means a Fixed Date Claim where:**

- (1) a Defendant was served with a Fixed Date Claim Form in compliance with Parts 5 (or 7, as the case may be) and 8 of the Rules**

**and no Defence or Affidavit has been filed by the Defendant in relation to the matter.**

**(2) a Defendant admits the Claim or any part thereof; or**

**(3) the Claim is not brought pursuant to Rules 59.32, 60.1, 60.4, 64.2, 63.3, 63.12.”**

6. Mrs. Green-Smith submitted that although the proceedings are technically considered contentious pursuant to Practice Direction No. 2 of 2024 by virtue of MOF and PPP Ltd. having filed Defences, the nature of the contention should be considered before adjourning the claim to be heard by a Judge.
7. According to Mrs. Green-Smith, the Fixed Date Claim has become contentious due to the *nature* of MOF’s Defence, that is, that there is no privity of contract between Leno and MOF. Accordingly, MOF seeks removal from the proceedings on that basis. Notwithstanding the contentious nature of the claim, says Mrs. Green-Smith, this Court has the jurisdiction to determine the removal application since applications for the removal of parties can be heard by Registrars pursuant to Practice Direction No. 8 of 2023 on Allocation of work between Judges and Registrars.
8. In support of its privity of contract argument, MOF submitted that Leno’s claim is for breach of the financial bond agreement between Leno and PPP Ltd. Since MOF is not party to this contract or any other contract with Leno directly, Leno cannot sue MOF on the financial bond agreement.
9. In response thereto, Mrs. Bowe and Mr. Francis contended that the doctrine of privity of contract is no longer applied inflexibly. MOF participated in the performance of the financial bond agreement which was part of the overarching Public Private Partnership between MOF and PPP Ltd. The claim on the financial bond agreement arose due to MOF’s failure to pay PPP Ltd., which then caused PPP Ltd. to default on its obligations to Leno. They assert that MOF is directly and substantially involved in the operation of the contractual structure (the financial bond agreement) that underpins the Public Private Partnership, which was made under the mechanisms provided in the financial bond agreement.
10. In particular, Mrs. Bowe asserts that MOF made direct payment to Leno which she regards as clear evidence of contractual performance and demonstrates acceptance of the obligations arising under the financial bond agreement, including unmistakable intention to satisfy the outstanding debt.

## Analysis

11. PPP Ltd. admitted to nearly all of the assertions contained in Leno's Fixed Date Claim, only disputing the amounts owed, while the nature of MOF's Defence is that it has no contractual obligation to Leno. Nevertheless, I am not convinced by MOF that the Fixed Date Claim was not rendered contentious by the mere filing of the Defences.
12. In my considered opinion, the nature of MOF's Defence (i.e. disputing the existence of a contractual relationship with Leno) does not make these proceedings any less contentious. Rather, the submissions of the parties have made the Fixed Date Claim even more contentious.
13. The privity of contract issue is itself contentious because it raises an issue which goes to the heart of the Claim, which must be argued and then determined by the Court. Put differently, the substantive claim and the removal application are now somewhat inseparable since determining the removal application would involve considerations that are now in dispute as it relates to the substantive claim.
14. I would add that the removal application and the submissions relating thereto highlight the failure of the parties to properly set out their cases in pleadings. Leno's Statement of Claim was noticeably vague. Many facts came out for the first time in the parties' submissions. The importance of precise pleadings for identifying the issues and the extent of the dispute(s) was emphasised by Charles J (as she then was) in **Ornal Gilbert v Nassau Flight Services BS 2022 SC 132**:

**“[38] It is therefore necessary for me to say something on pleadings. The purpose of pleadings in civil cases is to identify the issue or issues that will arise at trial. This is in order to avoid the opposing parties and the court taken by surprise. The pleadings must be precise and disclose a cause or causes of action. Evidence need not be pleaded because that will come from the affidavits and cross-examination thereon or by oral evidence.**

**[39] In Bahamas Ferries Limited v Charlene Rahming SCCivApp No. 122 of 2018, our Court of Appeal held that the starting point must always be the pleadings. At paras. 29-33 and 37-39 of the judgment, Sir Michael Barnett JA (as he then was) stated:**

...

...

**38. In Nada Faddail Al Medenni vs Mars UK Limited [2005] EWCA Civ 1041 Dyson LJ giving the decision of the English Court of Appeal said:**

**“It is fundamental to our adversarial system of justice that the parties should clearly identify the issue that arise in the litigation, so that each party has the opportunity of responding to the points made by each other.**

....

**“In McPhilemy vs Times Newspapers Ltd. [1999] 3 All ER 775 Lord Woolf MR observed at 792-793:**

**“Pleadings are still required to mark out the parameters of the case that is being advanced by each party.”**

15. The relevant facts in connection with the contractual framework are not set out in Leno’s Statement of Claim and but for PPP Ltd’s application to amend its Defence to link MOF to the claim, the removal application may have succeeded. However, the issues raised by MOF regarding the pleadings apparently prompted PPP Ltd. to make an application for leave to amend its Defence and make a claim against MOF. In view of that application to amend and for indemnity, it would not be appropriate for me to grant the removal application.

## **Conclusion**

16. I agree that Registrars have jurisdiction to hear applications for removal of parties. However, in this case the hearing of the removal application presupposes that the Fixed Date Claim is non-contentious. Having concluded that the Claim is contentious, the Fixed Date Claim is adjourned to be heard by a Judge. The application of PPP Ltd. to amend its Defence and for indemnity as against MOF is therefore also adjourned to be heard by the Judge.

17. No order is made as to costs.

Dated this 10<sup>th</sup> day of April, 2026

Adrienne Bellot  
Assistant Registrar (Acting)