

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law & Equity Division
2020/CLE/gen/FP/00121

B E T W E E N

BAHAMIAN FRUTEE DELITE COMPANY

Claimant

AND

EQUINOR SOUTH RIDING POINT LLC

Defendant

Appearances: Ms. Ntshonda Tynes with Mrs. Tanisha Tynes-Cambridge on behalf of
the Claimant.

Mr. Dwayne Fernander, with Ms. Lavette Kemp, on behalf of the
Defendant

Hearing Date: **The matter was decided on the papers**

RULING

FORBES, J

[1.] This is the Court's decision with reference to the Claimant's application for Leave to Appeal filed on 16 February, 2026. Supported by the Affidavits of Cyril Minnis made on 16 February 2026 and 9 March 2026, respectively.

BACKGROUND

[2.] The Application before the Court concerns the Court's decision delivered orally on 5 February 2026 and published on 23 February, 2026. The Court's disposition is replicated below:

[36.] The Court, for the aforementioned reasons:

- a. Accedes to the Claimant's application for amendment of the 6 October 2025 application;
- b. Denies the leave for the Extension of Time Application and the Relief From Sanctions;
- c. Strikes the erroneously filed "Supplemental List of Documents" filed on 10 November, 2025;
- d. Accedes to the Defendants' application for sanctions by barring the Claimant from filing any other documents in this matter; and
- e. Grants the costs of this application to the Defendant. Cost to be taxed if not agreed.
- f. Matter to be set for Case Management.

[3.] The grounds of appeal are:

1. The written reasons for the learned Judge's Decision have not yet been given despite the learned Judge having orally pronounced his Decision on Thursday, the 5th February, 2026;
2. It is in the interest of Justice that the Claimant be provided with the written reasons for the learned Judge's Decision to determine whether the decision was rational.

[4.] The Court further notes that a Draft Notice of Appeal Motion was annexed to the Affidavit of Cyril Minnis made on 9 March, 2026; however, the Notice before the Court has not been amended.

EVIDENCE

[5.] The Affidavit of Cyril Minnis, made 16 February 2026, states, in brief:

- a. That at a hearing on 7 October, 2025, the Court determined that the cross-applications would be heard on the papers;
- b. That at the hearing on 5 February 2026, Counsel for the Claimant orally sought leave to appeal the Court's ruling;
- c. That as of 16 February 2026, the judgment had not been published;
- d. That he is advised that it is necessary to see the written reasons for the learned Judge's Decision to determine the rationality of the Decision.

[6.] Further, the Affidavit of Cyril Minnis made on 9 March 2026 states, in brief:

- a. That the Decision having been published/delivered on the 23 or 24 February, 2026, the days for filing an amended grounds of appeal would expire on the 9 or 10 March, 2026; and
- b. That the Claimant seeks to rely on the revised grounds of appeal as contained in the draft Notice of Appeal Motion.

SUBMISSIONS

[7.] Counsel for the Claimant filed submissions on 10 March, 2026. In brief, Counsel for the Claimant submits:

- a. The test to be applied by the Court on an application for leave to appeal is whether the appeal has a realistic prospect of success (see **Koed Smith v Coalition to Protect Clifton Bay** SCCiv App No. 20 of 2017)
- b. That the proposed appeal raises arguable questions concerning procedural fairness, the scope of case management powers, and the orderly conduct of the proceedings.
- c. That the appeal raises arguable questions regarding the proper use of discretion;
- d. The strike out raises a procedural question in circumstances where the order was made in the course of an extension application;
- e. The trial date has been vacated, and no new date has been fixed.
- f. The orders are interlocutory in nature, and affect pretrial case management and evidence available at trial;
- g. That the Claimant sought to file additional witness statements, bundles, and supplemental lists of documents based on ‘new’ documents that became available;
- h. That the Court had not properly considered the circumstances, including the death of lead counsel, the replacement of counsel, and the prior applications made by the Defendant;
- i. That there was no prejudice to the Defendant by filing the material evidence.
- j. The Court struck the supplemental list on its own motion without separately warning the Claimant that such an order was being considered;
- k. That the order preventing further filings affects the parties to presenting evidence at trial;
- l. 1.1. That granting leave will not prejudice the Defendant;
- m. That the trial date was vacated following the death of lead counsel, and no new date had been fixed.

[8.] Counsel for the Defendant submits:

- a. That the Claimant must rely on the grounds of the Notice of Application filed on 16 February 2026, as the Application has not been amended;
- b. That the Claimant was not precluded from filing any Amended Notice in the time since the publication of the decision;
- c. That the Court’s oral pronouncement began at paras 26 and concluded at paras 36 and that the grounds were identifiable;
- d. That the law is settled with leave to appeal (see **Koed Smith v Coalition to Protect Clifton Bay; Smith v Cosworth Casting Processes Limited** [1997] 4 All ER 840.)
- e. That the test is not satisfied by showing that an applicant is dissatisfied with a discretionary procedural ruling or ‘recasting a fact-specific exercise of case management discretion as a question of “fairness” or “proportionality”’;
- f. That based on the grounds relied upon in the application, the Claimants have no realistic prospect of success;

- g. That where a decision is rooted in the discretion of a judge the appellate court will not interfere with a decision of a lower court unless the decision is plainly wrong, there would be a miscarriage of justice or irrelevant matters were taken into account or relevant factors were ignored (see **Junkanoo Estates Ltd Yuri Stacostenko Irina Tsareva Starostenko and UBS (Bahamas) Ltd. (in Voluntary Liquidation** [2017] UKPC 8; and **Old Fort Bay Property Owners Association Limited v Old Fort Bay Company Limited** [2022] 1 BHS J. No. 10)
- h. That the appeal does not identify an error of law, misdirection on principle, or failure to consider relevant matters.
- i. That about extension of time applications, the test is established in the case of **Denton v TH White Ltd.** [2014] WLR 3926, and that the Court considered and applied this test;
- j. That the Court did consider the death of lead counsel, but applied the case of **Clarke supra** further, that it was not considered in isolation;
- k. That the Court made reference to the Defendant's failures to comply with the case management orders, but noted that the extension applications did not affect the trial dates;
- l. 1.1. That disclosure is not automatic, and the Court controls disclosure in its case management role (see **Juraj Vaevel v Gordon Wayne Herman** [2017] 2 BHS J No.48);
- m. That the Defendant would suffer prejudice if additional documents were permitted, as the Defendant would be required to meet evolving witness statements beyond the time table fixed by the court; and
- n. There is no compelling reason for, nor any public interest reason for, appellate intervention.

LAW

[9.] Firstly, the requirement for leave to appeal only applies to interlocutory orders. Section 11(f) of the Court of Appeal Act states:

"11. No appeal shall lie ...,

(f) without the leave of the Supreme Court or of the court from any interlocutory order or interlocutory judgment made or given by a Justice of the Supreme Court, except

(i) where the liberty of the subject or the custody of infants is in question;

(ii) where an injunction or the appointment of a receiver is granted or refused;

(iii) in the case of a decree nisi in a matrimonial cause or a judgment or order in an Admiralty action determining liability;

(iv) in the case of an order in a special case stated under the Arbitration Act;

(v) in the case of a decision determining the claim of any creditor or the liability of any contributory or the liability of any director or other officer under the Companies Act in respect of misfeasance or otherwise; or

(vi) such other cases to be prescribed as are in the opinion of the authority having power to make rules of court, of the nature of final decisions."

Therefore, a final order does not require leave to appeal.

[10.] When determining what constitutes a final order, the decision of **Peace Holdings v First Caribbean Bank** [2014] 2 BHS J No. 73 is helpful, as it applied the Privy Council ruling in **Salaman v Warner and Others** [1891] 1 QB 734 at 735. The Court of Appeal determined that:

"The question must depend on what would be the result of the decision of the Divisional Court, assuming it to be given in favor of either of the parties. If their decision, whichever way it is given,

will, if it stands, finally dispose of the matter in dispute, I think that, for these rules, it is final. On the other hand, if their decision, if given in one way, will finally dispose of the matter in dispute, but, if given in the other, will allow the action to go on, then I think it is not final but interlocutory.”

[11.] As the matter was not disposed of, the ruling is interlocutory in nature and thus requires leave to appeal.

[12.] The law concerning leave to appeal is well established. The test to be applied for the consideration for the grant of leave to appeal is stated in **Practice Direction (Court of Appeal: Leave to Appeal and Skeleton Arguments)** [1999] 1 WLR 2 at para 10-11:

“The general test for leave

10. [T]he general rule applied by the Court of Appeal, and this is the relevant basis for first instance courts deciding whether to grant leave, is that leave will be given unless an appeal would have no realistic prospect of success. A fanciful prospect is insufficient. Leave may also be given in exceptional circumstances even though the case has no real prospect of success if there is an issue which, in the public interest, should be examined by the Court of Appeal. Examples include cases that raise questions of great public interest or general policy, or where authority binding on the Court of Appeal may call for consideration.

11. The approach will differ depending on the category and subject matter of the decision and the reason for seeking leave to appeal, as will be indicated below. However, if the issue to be raised on the appeal is of general importance, that will be a factor in favor of granting leave. On the other hand, if the issues are not generally important and the costs of an appeal will far exceed what is at stake, that will be a factor which weighs against the grant of leave.”

[Emphasis added]

[13.] Further, when examining what is considered an ‘exceptional circumstance’, **Smith v Cosworth Casting Process Limited** (1997) 4 All ER 840, the principles established are as follows:

(1) The court will only refuse leave if satisfied that the applicant has no realistic prospect of succeeding on the appeal. This test is not meant to differ from that sometimes used: the applicant has no arguable case. However, this court has decided to adopt the former phrase because the use of the word 'realistic' makes clear that a fanciful prospect or an unrealistic argument is insufficient.

(2) The court can grant the application even if it is not so satisfied. There can be many reasons to grant leave, even if the court is not satisfied that the appeal has any prospect of success. For example, the issue may be one which the court considers should, in the public interest, be examined by this court or, to be more specific, this court may take the view that the case raises an issue where the law requires clarification.”

[Emphasis added]

[14.] The test is further summarized in **Kcod Smith v Coalition to Protect Clifton Bay**, SCCivApp. No. 20 of 2017 at paragraph [23], where it is stated that the considerations before the Court are:

“whether the proposed appeal has realistic prospects of success or whether it raises an issue that the court should, in the public interest, examine, or whether the law requires clarification.”

[15.] Thus, for leave to be granted, the Court must be satisfied that there is a reasonable chance of success or, more plainly, an arguable case. Moreover, where there is no reasonable prospect of success, the Court may grant leave in exceptional circumstances, in the public interest, or for the interpretation of the law.

ISSUES TO BE DETERMINED

[16.] The issues to be determined are as follows:

- a. Whether there is a reasonable prospect of success; and/or
- b. Whether the issue before the Court is one of exceptional circumstances.

Is there a reasonable prospect of success?

[17.] The Court must first determine the grounds of this application. The only Notice before this Court is that filed on 16 February, 2026. The Court notes the Claimant’s intention to rely on a Draft Notice of Appeal Motion, but there was nothing that prohibited the Claimant from filing an amended notice before the Court. Counsel for the Defendant opposed the reliance on the Draft Notice for the same reason. However, the Court notes that the 23 grounds can be distilled into the application of its discretionary powers pursuant to Part 26 of the CPR and its considerations of facts surrounding the same. Nonetheless, the Claimant is bound by its pleadings, and therefore the grounds analyzed going forward are the two listed in the application filed on 16 February, 2026.

[18.] The first ground states, “The written reasons for the learned Judge’s Decision have not yet been given despite the learned Judge having orally pronounced his Decision on Thursday, the 5th February, 2026; It is in the interest of Justice that the Claimant be provided the written reasons for the learned Judge’s Decision to determine whether the decision was rational.” The Court delivered its decision orally, beginning at paragraph 26, which is the analysis of the Decision of the Court. It is unreasonable that the reasoning of the Court was not adequately conveyed to the Claimant. The decision was published on 23 February, 2026. In any event, the rationale of the Court can be gleaned from those paragraphs alone. The Court cannot see a reasonable prospect of these grounds.

[19.] Further, even when considering the Draft Notice of Appeal Motion, the Court cannot deem that the Claimant has a reasonable prospect of success on those grounds. The considerations of

Junkanoo Estates Ltd, Yuri Stacostenko, Irina Tsareva Starostenko, and UBS (Bahamas) Ltd. (in Voluntary Liquidation *supra*; and Old Fort Bay Property Owners Association Limited v Old Fort Bay Company Limited *supra*. The Court's decision was not irrational. The facts which the Claimant argues were not considered nor given any substantial weight were, in fact, addressed (i.e., the death of lead counsel, the Defendant's prior breaches). However, the Claimant is of the view that there was no prejudice to the Defendant in making the extension application, and the Court addressed this as well.

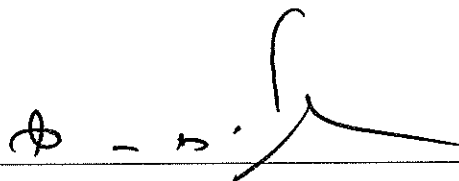
Is the issue before the Court one of exceptional circumstances?

[20.] Finally, there are no compelling or public interest reasons that the matter should be granted leave to appeal, as the test about extension of time is established in the case of **Denton v TH White Ltd.** [2014] WLR 3926. The Court, having refused an extension of time, had no choice but to strike a document that ought not to have been filed. Further, the Court accepts the decision in **Juraj Vacvel v Gordon Wayne Herman** [2017] 2 BHS J No. 48, which states that disclosure is not automatic and that the Court controls disclosure in its case management role.

DISPOSITION

[21] The Court dismisses the Claimant's application for leave to appeal for the reasons stated above.

[22.] Costs to the Defendant to be taxed if not agreed.



Justice Andrew Forbes

Dated this 15th day of May, 2026