

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

Claim No. 2017/CLE/gen/FP/00116

B E T W E E N

ELNET MARITIME LTD

Claimant

AND

DESMOND ROLLE

Defendant

Before: The Honourable Madam Justice Constance Delancy

Appearances: Jacy Whittaker for the Claimant

Ryan Brown for the Defendant

Hearing date(s): On the papers

RULING

DELANCY, J

[1.] This is the Court’s ruling on the Claimant’s application for strike out of portions of the Defendant’s Witness Statement filed herein.

[2.] On 5 February 2026, the Claimant filed a Notice of Application to strike out portions of the Defendant’s Witness Statement filed herein on 3 February 2026. The Claimant supported its application with skeleton arguments and the Defendant was directed to submit skeleton arguments. The partes agreed that the Court would decide the application on the papers.

[3.] The Claimant identified paras. [10] to [13] and [22] as the alleged offending portions of the Defendant’s Witness Statement on the following grounds:

2.2.1. Paragraph 10 purports to respond to Mrs. Prescod’s Witness Statement and indicates that the Defendant “will elaborate at Court,” which is not a proper function of a witness statement.

2.2.2. Paragraph 11 directly challenges Mrs. Prescod’s evidence at paragraphs 8 and 8.3 and asserts legal entitlements regarding overtime compensation. This constitutes legal submission, not evidence of fact.

2.2.3. Paragraph 12 references Mrs. Prescod's evidence at paragraph 9, disputes her calculations, and asserts a legal entitlement to a specific overtime rate. This is submission on a contested issue.

2.2.4. Paragraph 13 responds to paragraph 10 of Mrs. Prescod's Witness Statement and offers the Defendant's commentary on the relevance of the Motor Vessel Bibby Sapphire incident, which is argument rather than fact evidence.

2.2.5. Paragraph 22 directly addresses paragraph 13 of Mrs. Prescod's Witness Statement and offers the Defendant's opinion on the Claimant's revenue fluctuations. This is pure submission and unsupported opinion.

Law and Analysis

[4.] Part 29.5(1)(a) to (g) of the Supreme Court Civil Procedure Rules ("the CPR") sets out what must be included in a witness statement:

- (a) be dated;
 - (b) be signed or otherwise authenticated by the intended witness;
 - (c) give the name, address and occupation of the witness;
 - (d) include a statement by the intended witness that he believes the statements of fact in it to be true;
 - (e) **not include any matters of information or belief which are not admissible or, where admissible, must state the source of any matters of information or belief;**
 - (f) **so far as reasonably practicable, be in the intended witness's own words;** and
 - (g) sufficiently identify any document to which the statement refers without repeating its contents unless this is necessary in order to identify the document.
- [Emphasis added]

[5.] A witness statement is intended to constitute the evidence that a witness intends to adduce at trial. In the instant case the Court, under its case management powers, ordered that the witness statements were to stand as their respective witnesses' evidence-in-chief. The Court adopts the view of learned authors of **Commonwealth Caribbean Civil Procedure**, 4th Ed. at p.223 thereof:

...the **main purpose of witness statements is to avoid 'surprise' at the trial** and to encourage settlements, and **this is accomplished by the mutual service by the parties, prior to trial, of details of the actual evidence to be adduced.**

[Emphasis added]

[6.] The Court has the power to strike out "*any inadmissible scandalous, irrelevant or otherwise oppressive matter*" of any witness statement (*per Part 29.5(2) CPR*). The Court is also enjoined by the overriding objectives to ensure that the parties are "*on an equal footing*" (*per Part 1.1(2)(a) CPR*).

[7.] Counsel for the Claimant submits that paras. [10] and [11] ought to be struck as they purport to argue, respond and/or comment on the Witness Statement of Chiquita Prescod filed herein ("Prescod Witness Statement") which is not the function of a witness statement. Counsel

relies on the dictum of *Sir Terence Etherton* in **JD Wetherspoon PLC v Harris** (2013) 1 WLR 3296:

39. Mr Goldberger would not be allowed at trial to give oral evidence which merely recites the relevant events, of which he does not have direct knowledge, by reference to documents he has read. **Nor would he be permitted at trial to advance arguments and make submissions which might be expected of an advocate rather than a witness of fact.** These points are made clear in paragraph 7 of Appendix 9 to the Chancery Guide (7th ed), which is as follows:
“A witness statement should simply cover those issues, but only those issues, on which the party serving the statement wishes that witness to give evidence in chief. Thus it is not, for example, the function of a witness statement to provide a commentary on the documents in the trial bundle, nor to set out quotations from such documents, nor to engage in matters of argument. Witness statements should not deal with other matters merely because they may arise in the course of the trial.”
40. Nor would Mr Goldberger be permitted to give expert opinion evidence at the trial. **A witness of fact may sometimes be able to give opinion evidence as part of his or her account of admissible factual evidence in order to provide a full and coherent explanation and account.** That is what, it would appear, Master Bowles recognised when he refused the first Defendant’s application to adduce expert evidence on market practice. It is what the first Defendant has done in his witness statements. Mr Goldberger, however, has expressed his opinions on market practice by way of commentary on facts of which he has no direct knowledge and of which he cannot give direct evidence. In that respect he is purporting to act exactly like an expert witness giving opinion evidence. Permission for such expert evidence has, however, been expressly refused.
41. **I recognise, of course, that these rules as to witness statements and their contents are not rigid statutes. It is conceivable that in particular circumstances they may properly be relaxed in order to achieve the Overriding Objective in CPR r.1 of dealing with cases justly**

[Emphasis added]

[8.] Counsel for the Defendant counters that the admission of evidence to prove facts related any fact in issue at trial is governed by Section 4 of the Evidence Act:

In any proceeding evidence may be given of facts relevant to any fact in issue, including

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- (a) any fact which is so closely connected with any fact in issue as to form in the opinion of the court part of the same transaction, whether it occurred at the same time and place or at some different time and place;
 - (b) any fact which is the occasion, cause or effect, immediate or otherwise of any fact in issue;
 - (c) any fact which explains the circumstances under which any fact in issue is said to have happened, or which afforded an opportunity for its occurrence, or which fixes or helps to fix the time or place of its occurrence;

- (d) any fact which is consistent or inconsistent with any fact in issue or which supports, rebuts, qualifies or explains an inference suggested by any fact in issue;
- (e) any fact which shows or constitutes a motive or preparation for any fact in issue;
- (f) any fact or thing tending to identify any person or thing whose identity is a fact in issue;
- (g) any fact may assist the court or the jury in assessing the damages or penalty in cases in which such assessment is necessary.

[9.] Counsel for the Defendant further submits that it is the role of the presiding judge to determine how the evidence will be taken at trial. Counsel relies on the dictum of *Mann, LJ* in **Wilkinson v West Coast Capital and others** (2005) EWHC 1606 (Ch) at para. [5] thereof:

Those cases, and indeed others in a similar vein, illustrate the very important powers of the court to control proceedings before it to make sure they remain manageable, proportionate and fair to the parties. If one were constructing a list of cases to which that power might be thought to be particularly appropriate, unfair prejudice petitions would be fairly high on the list. **However, desirable though the power to control evidence obviously is, particular care must in my view be taken when it is sought to exercise the power before a trial.** It is noteworthy that the two cases which I have referred to above were both cases in which the issues as to evidence arose during the course of trials. By the time that the issue arises in that context, the judge is likely to have a much fuller overall picture of the issues in the case and of the evidence which is going to be adduced in support of them. In a large number of cases, he or she is likely to be in a better position to make judgments which turn on the real value of the line of evidence in question and its proportionality, and in very many cases its admissibility. **A court which is asked to approach these questions at the interlocutory stage is much less likely to have that picture, and should be that much more careful in forming a view that the evidence is going to be irrelevant, or if relevant, unhelpful and/or disproportionate. One must also bear in mind the extent to which it is desirable to consider these matters at all at an interlocutory stage. One must be on one's guard, in applications such as this, not to allow case management in relation to witness statements to give rise to significant time-and cost-wasting applications; those should not be encouraged. In my view, I should only strike out the parts of the witness statements which I am currently considering if it is quite plain to me that, no matter how the proceedings look at trial, the evidence will never appear to be either relevant or, if relevant, will never be sufficiently helpful to make it right to allow the party in question to adduce it. With evidence of this nature, that is likely to be quite a heavy burden.**

[Emphasis added]

[10.] In the instant case the Court in exercise of its case management powers ordered that the witness statements of the respective witnesses shall stand as evidence-in-chief. Paras. 10 and 11 of the Defendant's Witness Statement appears to respond to and give commentary on the Prescod Witness Statement which is not the purpose of a witness statement (see **JD Wetherspoon supra.**)

[11.] Part 29.9 CPR “*Amplifying witness statements at trial*”, a witness, with the permission of the Court, may be allowed to:

- (a) **amplify the evidence as set out in his or her witness statement if that statement has disclosed the substance of the evidence which the witness is asked to amplify;**
- (b) **give evidence in relation to new matters which have arisen since the witness statement was served on the other parties;** or
- (c) **comment on evidence given by other witnesses.**

[Emphasis added]

[12.] The inclusion of the phrase “*will elaborate at Court*” in para. [10] signals to the Court that the Witness already knows what evidence he intends to adduce but elected not to do so in his witness statement. This stance is in contravention of the overriding objective of “*equal footing*” and may place the Claimant in the position of having to wait until the trial for the disclosure of the information and thus be ambushed by the other side.

[13.] The Court having reviewed para. [10] of the Defendant’s Witness statement finds that the same is in response to the Prescod Witness Statement and did not disclose the source of the information contained herein (*per 29.5(e) CPR*). Further, the Witness indicates that he intends to “*elaborate at Court*” such “*amplification*” or comment on evidence given by other witnesses may only occur with the permission of the Court by giving oral evidence at trial. In the circumstances, para. [10] of the Defendant’s witness statement is hereby struck out.

[14.] The Court having reviewed paras. [11] to [13] of Defendant’s Witness statement finds that the same is in response to the Prescod Witness Statement contains legal submissions, commentary and opinions which ought not be contained a Witness statement. However, the aforementioned paragraphs do contain some information which are in the direct knowledge of the Defendant and are relevant. The portions struck out are as set out below:

11. ~~*Mrs. Prescod acknowledges at paragraph 8 that I was employed to work for a 40-hour week. However, at paragraph 8.3 she stated that there was an “optional “on-call” monitoring compensation of \$30.00 per Saturday and \$60.00 per Sundays and Holidays. Firstly, there was nothing optional about it; it was mandatory.*~~ The Claimant signed off on all overtime owed and I had to work. There were only 3 NSCs working for the Claimant and we had to rotate each weekend, or we would be fired. Secondly, I did not agree to only receive the amounts. ~~*Overtime was supposed to be paid in accordance with local law.*~~ I was making \$13.38 per hour from 2016. I was entitled to double pay for each over time I worked in the amount of \$214.00 per day, not \$30.00 as claimed. I did not sign any agreement that modified the labour law. I also had to cover for other NSCs if a ship was in port at a time when his shift had ended and was not compensated for that. I also had to cover for other TSCs if a ship was in port at a time when his shift had ended and was not compensated for that.

12. ~~At paragraph 9, Mrs. Prescod acknowledges that~~ I have been owed overtime since 2017, but in the amount of \$14,120.95. ~~However,~~ I am entitled to twice my regular rate of \$13.38 per hour for public holiday or day off I worked.
13. ~~At paragraph 10 of her Witness Statement, Mrs. Prescod referred to the.~~ The incident with Motor Vessel Bibby Sapphire. ~~That~~ had nothing to do with my termination as it occurred in 2015 and was not communicated to me on 10 April 2017 as the reason for my termination. ~~It is necessary that I provide as much information about this.~~ To be very clear, this incident did not come up at the meeting on 10 April 2017.
22. ~~As it relates to paragraph 13 of Mrs. Prescod's Witness Statement, the incidents referred to in her Witness Statement have absolutely nothing to do with the revenue and percentages. There are ebbs and flows due to how much business is going on at Statoil. I will explain this: revenue went from approx. \$200k down to \$ to \$69k before my engagement with the Claimant.~~ I started in 2014. Revenue spike to its peak in 2015 to \$252k. It then went down to \$74k the following year (after this incident) which the 2016 revenue is still more than the 2013 revenue. The revenue spikes and drop have to do with how much business, more specifically crude oil operations must be done on Grand Bahama, Majority of crude oil is done at Statoil. GAC is a global oil trading hub, and the Claimant works on its behalf in The Bahamas.

[Emphasis added]

Disposition

[15.] The Court having reviewed the Defendant's Witness Statement along with the Statement of Claim, Defence and Counterclaim and Reply and Defence to Counterclaim herein hereby orders that para. [10] and portions of paras. [11] to [13] and para. [22] of the Defendant's Witness statement as set out in paras. [13] and [14] of this ruling shall stand as struck out;

[16.] The Claimant shall have the costs of and occasioned by this application to be paid to it by the Defendant. Such costs if not agreed by the parties are to be assessed by the Court on the papers. The Claimant shall prepare a pro forma bill of costs to be laid over to the Court and served on the Defendant within 21 days from the date of this ruling.

[17.] The trial of this matter is scheduled for 4 and 5 May, 2026.

Dated the 30 day of April, 2026

[Original Signed and Sealed]

Constance Delancy
Justice