

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

Claim No. 2020/CLE/gen/FP/00118

B E T W E E N

HOWARD EDWIN PAXTON COOPER
(Father & Beneficiary entitled under the Estate of the late
Christopher Samuel P. Cooper, deceased)

1st Claimant

AND

JENNIFER PATRICE COOPER
(Mother & Beneficiary entitled under the Estate of the late
Christopher Samuel P. Cooper, deceased)

2nd Claimant

AND

ROBERT HUGH L. ROSE

Defendant

Before: The Honourable Madam Justice Constance Delancy
Appearances: Nadia Wright with Caramel Cooper for the Claimants
Raynard Rigby, KC with Weniska Rolle for the Defendant
Hearing date(s): 6 November 2025

RULING

DELANCY, J

[1.] This is the Court's ruling on the Claimant's application for summary judgment.

Background

[2.] The action was commenced by a specially endorsed Writ of Summons filed on 9 October, 2020. The Writ was amended on 8 December 2020. The claim is for damages for loss of dependency and funeral expenses arising from the death of Christopher Cooper.

[3.] A Defence was filed on 2 November 2020 and was amended on 14 January 2021.

[4.] This action arises out of a road traffic accident that occurred on 31 October, 2019 at the intersection of Seahorse Drive and Waterfall Drive near Windsor Park Subdivision's entrance. The incident involved the Defendant, who was operating a gray 2008 Honda Airwave (GD 6893), and Christopher Cooper, who was riding an unlicensed, uninsured black Yamaha YZ600 motorcycle.

[5.] The deceased, Christopher Cooper, was fatally injured in a car accident caused by the Defendant.

[6.] The Defendant admitted liability for the accident in the Magistrates' Court on the 20th of June 2020, was convicted and fined in the Magistrate's Court for "*Killing in the course of dangerous driving, contrary to Section 44(1) of the Road Traffic Act, Ch. 2020.*"

[7.] The Claimant filed a Notice of Application supported by an Affidavit of Merritt Storr both filed 28 February 2025. The Claimant seeks, inter alia, the following:

1. i. an Order pursuant to Part 15.2 (a) and 15.2(b) of the Supreme Court Civil Procedure Rules, 2022 ("the CPR") for Summary Judgment on the grounds that the Defendant has no real prospect of successfully defending the issue of liability;
- ii. the Notice of Application filed herein on the 12th of July, 2024 to amend the Amended Statement of Claim filed herein on the 8th of December 2020 be vacated on the basis that the Affidavit of Merrit Storr stands to augment the pleadings in accordance with Practice Direction Number 3 of 2023 of the CPR and the Court's Case Management Powers;

[8.] The Defendant filed an Affidavit of Weniska Rolle on 3 November 2025 which was not accepted due to its late filing and upon which the Defendant does not rely.

Law and Analysis

[9.] The Court has the power to grant summary judgment under Part 15.2 CPR that provides: The **Court may give summary judgment on the claim or on a particular issue if it considers that the** —

- (a) claimant has no real prospect of succeeding on the claim or the issue; or
- (b) **defendant has no real prospect of successfully defending the claim or the issue.** [Emphasis added]

[10.] The test to be applied by the Court when considering whether to exercise its discretion under Part 15.2 CPR on an application for summary judgment is well established and was formulated from the dicta of **Swain v Hillman** [2001] 1 All ER 91 and **Three Rivers District**

Council and Others v Governor and Company of the Bank of England (No.3) [2001] UKHL

16: (i) the statement of case/defence must real, not fanciful, and the fact that success appears improbable is insufficient if there remains a real prospect of success; (ii) that summary judgment is a serious step; and (iii) the court, generally, is not to conduct a mini-trial.

[11.] The Counsel for the Claimants contends that they ought to be granted an order for summary judgment against the Defendant because he has no real prospect of successfully defending a claim and there is no other compelling reason for the case to proceed to trial. The ground for the Claimants' Application is that the Defendant's admission of liability and his conviction of the offence of "*Killing in the Course of Dangerous Driving*" contrary to Section 44(1) of the Road Traffic Act ("the RTA") in the Magistrates' Court is sufficient to establish that there is no real prospect of successfully defending the Claimant's claim with respect to liability.

[12.] The Claimants rely on the provisions of Section 123 of the Evidence Act ("the EA") on the basis that a conviction in the Magistrates Court has "*probative force for establishing liability in civil proceedings*". Section 123 of the EA states:

(1) **In any civil proceedings the fact that a person has been convicted of an offence by or before any court in The Bahamas or by a court-martial there or elsewhere shall, subject to subsection (3), be admissible in evidence for the purpose of proving, where to do so is relevant to any issue in those proceedings, that he committed that offence, whether he was so convicted upon a plea of guilty or otherwise and whether or not he is a party to the civil proceedings;** but no conviction other than a subsisting one shall be admissible in evidence by virtue of this section.

(2) **In any civil proceedings in which by virtue of this section a person is proved to have been convicted of an offence by or before any court** in The Bahamas or by a court-martial there or elsewhere —

(a) **he shall be taken to have committed that offence unless the contrary is proved;** and

(b) **without prejudice to the reception of any other admissible evidence for the purpose of identifying the facts on which the conviction was based, the contents of any document which is admissible as evidence of the conviction, and the contents of the information, complaint, indictment or charge-sheet on which the person in question was convicted, shall be admissible in evidence for that purpose.**

(3) Nothing in this section shall prejudice the operation of section 125 or any other written law whereby a conviction or a finding of fact in any criminal proceedings is for the purposes of any other proceedings made conclusive evidence of any fact.

(4) **Where in any civil proceedings the contents of any document are admissible in evidence by virtue of subsection (2), a copy of that document, or of the material part thereof, purporting to be certified or otherwise authenticated by or on behalf of the court or authority having custody of that document shall be admissible in**

evidence and shall be taken to be a true copy of that document or part unless the contrary is shown. [Emphasis added]

[13.] Counsel for the Defendant submits that the Claimants' application is ill conceived and the conviction of the Defendant under Section 44(1) of the RTA in the Magistrates Court does not entitle the Claimants' to a "*slam dunk*", an automatic summary judgment in the civil proceedings before this Court. Counsel argues that the Claimants must convince the Court the Defendant has no real prospect of successfully defending the claim or the issue (*Part 15.2(b) CPR*).

[14.] A claimant may rely on a conviction on an application for summary judgment but in circumstances where a defendant can demonstrate to the Court that there is a real issue to be tried summary judgment may not be appropriate. Further, the statutory wording "*unless the contrary is proven*" in Section 123(4) of the EA gives a defendant a clear right to challenge the conviction in the civil proceedings, subject to the burden placed upon him.

[15.] In **McCauley v Hope (Carryl, third party)** [1998] All ER (D) 696 which the English Court of Appeal examined Section 11 of the Civil Evidence Act 1968 (comparable to Section 123 of the EA) as per the dicta of *Sir Patrick Russell* and *Potter, LJ*:

[p. 181 G]

The closing words of that section "unless the contrary is proved" provide, in my judgment, the clearest possible mandate to a defendant in a road traffic accident case to attack his earlier conviction provided he has some good cause for so doing and can discharge the burden of proof to a civil standard that the section imposes upon him. ...

[p. 182 F]

...R.S.C. Ord. 14 is confined to cases where a defendant plainly has no defence or at best a shadowy defence and is an inappropriate procedure where there remain real questions to be tried. ...

[p. 184 F and G]

... "I consider that he went too far in stating that the abuse of process/new evidence tests propounded in Hunter apply equally to a defendant in a case of this kind. I do not preclude the possibility that, in particular circumstances, the exercise by a defendant of his right implicit in s.11(2) of the 1968 Act to challenge an earlier conviction may amount to an abuse of process, though I find it difficult to envisage such circumstances. Of course, the provisions of s.11 may well enable a plaintiff to proceed under Order 14, relying on an earlier conviction of the defendant as proof of an issue of negligence or dishonesty in civil proceedings. He will be entitled to succeed unless the defendant puts before the court evidence sufficient to satisfy the master or judge hearing the summons that there is in truth and reality an issue to be tried."

[Emphasis added]

[16.] The proof of a conviction provides the catalyst for the statutory presumption contained in Section 123 of the EA that an offence was committed unless the contrary is proven. It does automatically circumvent the duty of the Court in civil proceedings to consider the totality of evidence in a particular case and the defendant may rebut. The Court may conclude there is no real prospect of a successful defence in circumstances where a claimant's case depends essentially on the same conduct in the criminal (road traffic) proceedings and that the defendant failed to advance anything substantial to rebut the presumption. In **Stuppel v Royal Insurance Company Ltd** [1970] 3 All ER 230 as per the dicta of *Lord Denning, MR and Buckley, LJ*:

[p.235 h & j]

...I think that **the conviction does not merely shift the burden of proof. It is a weighty piece of evidence of itself.** ...

[p. 238 h & j; 239 a]

... Section 11(1) makes **proof of B's conviction admissible in evidence for the purpose of proving that B did the act of which he has been convicted. If s 11(1) stood alone it would be clear that proof of the conviction would be some evidence of B's act; it would not be clear what weight it should be given.** Under s.11(2) (a), however, **if in A's action B is proved to have been convicted he is to be taken to have committed the offence of which he was convicted unless the contrary is shown. The effect of proof of the conviction under this sub-section is, as Lord Denning MR has said, to shift the 'legal' burden of proof in respect of B's act or alleged act from A, who would otherwise have to prove it to make good his claim, to B, who must disprove it to avoid the presumption of his having committed the offence prevailing. Once the conviction has been proved the task of the court, instead of being, as would otherwise be the case, to decide whether A has successfully shown on a balance of probability, he did *not* do act.** ...

[p. 239 d]

... but the **judge's duty in the civil proceedings is still to decide that case on the evidence adduced to him. He not concerned with the evidence in the criminal proceedings except so far as it is reproduced in the evidence called before him, or is made evidence in the civil proceedings** under the Civil Evidence Act, 1968 ...

[p.239 h & j]

...In my judgment, **proof of conviction under this section gives rise to the statutory presumption laid down in sec.11(2)(a) which like any other presumption, will give way to evidence establishing the contrary on a balance of probability, without itself affording any evidential weight to be taken into account in determining whether that onus has been discharged.**

[Emphasis added]

[17.] In the instant case, the Court finds that under Section 123 of the EA a road traffic (criminal) conviction is admissible as evidence in civil proceedings; however, the inclusion of

the phrase “*unless the contrary is proven*” creates a rebuttable presumption that a convicted person committed the offence. On application for summary judgment the Court must still determine whether a defendant has no real prospect of defending the claim as mandated by Part 15.2(b) of the CPR.

[18.] Counsel for the Defendant also raised the issue of contributory negligence in his submissions and relied upon various witness statements filed herein to illustrate the point. However, the Defence and Amended Defence filed herein the Defendant did not plead the defence of contributory negligence. It is trite law that parties are bound by their pleadings. Witness statements and submissions are not pleadings and therefore cannot be utilized to cure an omission of a ground or defence.

[19.] Counsel for the Claimants drew the Court’s attention dictum of *Charles. J.* (as she then was) in **Darren Rutherford v The Commissioner of Police and another** [2019] 1 BHS J. No. 67, at paras. 61 to 62 in which she cited the Court of Appeal decision in **Bahamas Ferries Limited v Charlene Rahming**:

Issue 2: Contributory Negligence

[61] This defence was not pleaded and therefore, it cannot be relied upon by the Defendants: see *Barnett JA* in **Bahamas Ferries Limited v Charlene Rahming** SCCivApp & CAIS No. 122 of 2018 at para 39 where he said:

“The starting point must be the pleadings. In **Loveridge and Loveridge v Healey** [2004] EWCA Civ 173, *Lord Phillips MR* said at paragraph 23:

“In **Mephilemy vs Times Newspapers Ltd.** [1999] 3 All ER 775 *Lord Wolff MR* observed:

‘Pleadings are still required to mark out the parameters of the case that is being advanced by each party. In particular, they are still critical to identify the issues and the extent of the dispute between the parties.’

[Emphasis added]

[62] At para [40], Sir Michael continued:

“It is on the basis of the pleadings that the party’s [sic] decide what evidence they will need to place before the court and what preparations are necessary before trial. Where one party advances a case that is inconsistent with his pleadings, it often happens that the other party takes no point on this. Where the departure from the pleadings causes no prejudice, or where for some other reason it is obvious that the court, if asked, will give permission to amend the pleading, the other party should be entitled to insist that this is not permitted unless the pleading is appropriately amended. That then introduces, in its proper context, the issue of whether or not the party in question should be permitted to advance a case which has not hitherto been pleaded.”

[Emphasis added]

[20.] The Court having considered the pleadings, the Affidavit evidence and the submissions of the parties has determined that there are issues to be tried at trial is therefore not minded to exercise its discretion to grant summary judgment.

[21.] It is hereby ordered that the Claimants' Notice of Application for Summary Judgment is dismissed. The parties are ordered to appear for further case management conference on 7 July, 2026 at 9:30 am to set trial dates and such further or other directions as the Court deems necessary.

[22.] As the Claimant was unsuccessful in this application costs are awarded to the Defendant. Costs are to be summarily assessed if not agreed. If not agreed, the Defendant is to provide the Court and the party opposite with a *pro forma* bill of costs within 14 days and both parties are to provide submissions 14 days thereafter.

Dated the 8 day of June, 2026

[Original signed and sealed]

Constance Delancy
Justice