

COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
COMMON LAW AND EQUITY DIVISION  
BETWEEN

2025/CLE/GEN/00030

DAPHNE PATRICIA PATTON

Claimant

AND

COMMONWEALTH BREWERY LIMITED

Defendant

**Before:** The Honourable Mr Justice Franklyn Williams, KC  
**Appearances:** Mr. Halson Moultrie of Counsel for the Applicant  
Mr. Nicolas Pennerman of Counsel for the Defendant  
**Hearing:** On the papers

### DECISION

*Strike Out –Overriding Objective - Supreme Court Civil Procedure Rules 2022 – Part 26.3 (1)(c) – Abuse of Court Process - Inherent Jurisdiction – Non-Disclosure Agreement – Application to strikeout Claimants exhibits- Section of 26 the Employment (Amendment) Act 2017*

**Williams J.**

1. Pursuant to Rule 26.3 (1) ( c) of the Supreme Court Civil Procedure Rules, 2022, and or under the inherent jurisdiction of the Court, the Defendant makes application for an order striking out that portion of the Claimant’s Statement of Claim which references and exhibits a confidential Deed of Settlement and Release (“the Deed”), and which is the subject of an express non disclosure clause between the Defendant and a third party.
2. The application is made by Notice of Application filed on 30 January 2026 and attended by the affidavit of Rikendra Rolle

### Factual Background

3. By Standard Claim form filed on 15<sup>th</sup> January 2025, the Claimant brought an action against the Defendant claiming, *inter alia*, wrongful dismissal, unfair dismissal and damages for breach of the Employment Act. 2002, Ch. 321A. The Claimant claims that the redundancy exercise relative to her was and is a sham, conducted to cloak it’s wrongful and unfair termination of her employment;

further that the position made redundant and attendant responsibilities continue under a different title. This application was supported by a number of exhibits including the Deed.

### Issue

4. Whether the postscript and exhibit of relating to a Confidential Deed of Settlement and Release in the Claimants' Statement of Claim should be struck out on the grounds that it is a confidential nondisclosure agreement between the Defendant and a third party.

### Discussion

5. Part 1.1(1) of the Civil Procedure Rules ("the CPR") confers upon the Court the power and responsibility of managing each case. It provides:

*"The overriding objective of these Rules is to enable the Court deal with cases justly and at proportionate cost."*

6. The grounds of the Defendant's application are that the postscript exhibiting the Deed are an abuse of the Court's process and that the Deed is subject to express non disclosure provisions.
7. The rules and principles on which this application is to be determined are not in dispute :
  - (1) In addition to any other power under these Rules, the Court may strike out a statement of case or part of a statement of case if it appears to the Court that –
    - ...
    - (c) the statement of case or the part to be struck out is frivolous, vexatious, scandalous, an abuse of the process of the Court or is likely to obstruct the just disposal of the proceedings; ..."

8. The Court has an inherent power to prevent misuse of its processes. In **Hunter v Chief Constable of the West Midlands** [1981] 3 All ER 727. Diplock LJ found:

*“...the inherent power which any court of justice must process to prevent misuse of its procedure in a way which, although not inconsistent with the literal application of its procedural rules, would nevertheless be manifestly unfair to a party to litigation before it, or would otherwise bring the administration of justice into disrepute among right thinking people. The circumstances in which abuse of process can arise are varied...”*

9. Generally speaking, striking out is said to be appropriate only in plain and obvious cases. In **William and Humberts Ltd v Ward H Trade Marks (Jersey) Ltd** [1986] 1 ALL ER 129 Templeman LJ cited with approval the dicta of Lindley MR in *Hubbuck & Sons Ltd v Wilkinson, Heywood and Clark* [1895 – 9] ALL ER Rep 244:

*“Two courses are open to a defendant who wishes to raise the question whether, assuming a statement of claim to be proved, it entitles the plaintiff to relief. One method is to raise the question of law as directed by Ord. xxv. r.2; the other is to apply to strike out the statement of claim under Ord. xxv r.4 The first method is appropriate to cases requiring argument and careful consideration. The second and more summary procedure is only appropriate to cases which are plain and obvious, so that any master or judge can say at once that the statement of claim as it stands is insufficient, even if proved, to entitle the plaintiff to what he asks.”*

10. The defendant submits that this jurisdiction is exercised most frequently where one party seeks to rely upon material which the other party claims, as here, to have been obtained or deployed improperly. The defendant relies on the dicta of the court in a number of authorities. Neuberger MR in **Imerman v Tchenquiz** [2010] EWCA Civ 908 in support of this proposition:

*“If confidence applies to a defendant who adventitiously, but without authorisation, obtains information in respect of which he must have appreciated that the claimant had an expectation of privacy, it must, a fortiori, extend to a defendant who intentionally, and without authorisation, takes steps to obtain such information. It would seem to us to follow that intentionally obtaining such information, secretly and knowing that the claimant reasonably expects it to be private, is itself a breach of confidence...It would be a breach of confidence for a defendant, without the authority of the claimant, to examine, or to make, retain, or supply copies to a third party of a document whose contents are...confidential to the claimant... a claimant who establishes a right of confidence in certain information contained in a document should be able to restrain any threat by an unauthorised defendant to look at, copy, distribute any copies of, or to communicate or utilise the contents of the document...and also be able to enforce the return (or destruction) of any such document or copy.”*

10. In **Lord Ashburton v Pape** [1911 – 13] ALL ER Rep 708, Cozens Hardy M.R., writing for the Court of Appeal stated :

*“The principle upon which the Court of Chancery has acted for very many years has been to restrain the breach by publication of confidential information improperly or surreptitiously obtained...and to restrain persons into whose possession that confidential information has come from themselves in turn divulging or propagating it.”*

11. The defendant submits that the mere fact that the that parties have entered into a settlement does not constitute admission of liability or wrongdoing; further, that courts recognise that such agreements commonly contain express provisions confirming that compromise is not to be taken as admission of liability. See Lennon QC sitting as Deputy Judge, Chancery Division in **Ras Al Khaimah Investment Authority v Azima** [2020] EWHC 1327 (Ch) found that the settlement agreement there expressly provided that it *“did not constitute an admission of liability or wrongdoing by either party.”* Here, the defendant referring to the fact that at recital F the parties agreed to settle their dispute upon the basis that the payment was made *“without any admission of liability whatsoever.”* submits that no inference of liability may be drawn
12. Again, on this issue of confidentiality and settlement, Griffiths LJ in **Rush & Tompkins Ltd v Greater London Council** [1989] A.C. 1280 recalled the judgement of Oliver LJ in **Cutts v Head** [1984] Ch. 290, 306:

*“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 the proceedings. They should, as it was expressed by Clauson J in **Scott Paper Co v Drayton Paper Works Ltd. (1927) 44 R.P.C 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.”*

13. The defendant submits that the Statement of Claim expressly refers to, and exhibits, a Deed of Settlement and Release entered into between the defendant and a third party; the limited circumstances do not include disclosure to, or reliance upon the Deed by, the claimant in these proceedings. Clause 6 of the Deed:

*“The parties represent, acknowledge and agree that the terms and conditions of this Agreement shall be kept confidential. Under no circumstances shall the parties disclose or discuss the terms and conditions of this Agreement with any other person or entity other than:*

- (a) *A party's counsel; or*
- (b) *A party's affiliate or assign; or*
- (c) *In the case of the Releasor, a party's spouse*

*Without the express written consent of all the parties hereto,  
unless a party is compelled by law to make such disclosure.”*

14. Finally, the defendant submits that the postscript and the exhibited Deed should be struck in its entirety for the following reasons:

1. To be allowed to rely on it is improper
2. The Deed is plainly a confidential agreement between the defendant and a third party
3. The claimant appears to have obtained the Deed in circumstances inconsistent with the confidentiality obligations
4. The claimant should not be allowed to benefit from a breach of confidentiality
5. The claimant was neither entitled to obtain nor rely on the Deed
6. To allow the claimant to rely on the Deed is both unfair and inconsistent with the proper administration of justice.

15. The claimant points to the qualifying provisions of the Deed and submits that its disclosure “falls squarely within the ‘other than’ exemptions.

16. The Court’s jurisdiction to strike out pleadings is both statutory and inherent. Allen P, writing for the Court in **PLC Bettas Limited v Hong Kong and Shanghai Banking Corporation Limited and HSBC Bank** SCCiv App No. 312 of 2013 found that the power to strike out is a draconian remedy which should be employed only in clear and obvious cases where it is possible to say at an interlocutory stage that the particular claim could not be proved. Osadebay JA writing for the Court in **Hamby v Heritage Estates Ltd** SCCiv App No. 21 of 2008 provides guidance on how the rule is to be applied:

*“It is well established that the jurisdiction to strike out is to be used sparingly and limited to and obvious cases where there is no need for a trial. There is no doubt that the exercise of that jurisdiction may deprive a party of the examination and cross examination of witnesses which change the result of a case .” At page 613 of Electra Private Equity Partners, Auld LJ stated: “It is trite law that the power to strike out a claim . . . should only be exercised in ‘plain and obvious cases’. That is particularly so where there are issues as to material primary facts and the inferences to be drawn from them, and when there has been no discovery or oral evidence. In such case, as Mr. Aldous submitted, to succeed in an application to strike out,*

*a defendant must show that there is no realistic prospect of the plaintiff establishing a cause of action consistently with his pleading and the possible facts of the matter when they are known. Certainly, a judge, on a strike out application where the central issue is one of determination of a legal outcome by reference to as yet undetermined facts, should not attempt to try the case on the affidavits. ... There may be more scope for early summary judicial dismissal of a claim where the evidence relied on by the plaintiff can properly be characterised as "shadowy" or where "the story told in the pleadings is a myth...and has no substantial foundation". ... However, the court should proceed with great caution in exercising its power of strike out on such a factual basis when all the facts are not known to it, when they and the legal principles turning on them are complex and the law, as here, is in a state of development...."*

17. The claimant relies on the finding of Legatt L.J. and Swinton Thomas L.J. (concurring) in **Unilever plc v Proctor and Gamble**[2000] FSR 344. During without prejudice negotiations in which the appellant/claimant sought a declaration of non infringement of the respondent/defendant's patent a threat was made by the defendant to bring infringement proceedings. The main legal issue was whether the '**without prejudice**' rule shielded statements made during the negotiations from being used as evidence in an action for threats under **section 70 of the Patents Act 1977**

*"... "without prejudice" is not a label which can be used indiscriminately so as to immunise an act from its normal legal consequences, where there is no genuine dispute or negotiation."*

18. In **Initial Services, Ltd v Putterill and Another** CA [1968] 1 QB 396 a laundry company issued a circular indicating that its recent price increases reflected were to offset the imposition of selective employment tax. The company's sales manager resigned shortly thereafter, taking with him documents from the company's files. These he gave to newspaper reporters of the Daily Mail. The Daily Mail published an article alleging that there was collusion between launderers to maintain high pricing, that while price increases reflected offset of selective employment tax, the real motivation was the increase in profits. The laundry company sued the former sales manager and the newspaper owners seeking an injunction and damages, alleging breach of confidence and claiming delivery up of the confidential papers. The sales manager pleaded in defence that the alleged arrangement to keep prices up was within s.6 of the Restricted Trade Practices Act, 1956, was not registered and that the circular was misleading to the public. The laundry company applied to strike out these paragraphs of the defence. Of confidential documents and the obligation not to disclose, Denning M.R. found:

*"...Now I quite agree that there is such an obligation. It is imposed by law. But it is subject to exceptions... . Suppose a master tells his servant: "I am going to falsify these sales notes and deceive the customers. You are not to say anything about it to anyone." If the master thereafter falsifies the sale notes, the servant is entitled to say: "I am not going to stay any longer in the service of a man who does such a thing. I will leave him and report it to the customers." ... Counsel suggested this exception was confined to case where the master has been "guilty of a*

*crime or fraud”; but I do not think that it is so limited. It extends to any misconduct of such nature that it ought to be in the public interest to be disclosed to others. Wood, V.C., put it in a vivid phrase (1): “There is no confidence as to the disclosure of iniquity.” ...*

*“no private obligations can dispense with that universal one which lies on every member of the society to discover every design which may be formed, contrary to the laws of the society, to destroy the public welfare.”*

*See Annesley v Earl of Anglesea (3)...”*

19. In **Science Research Council v Nasse; Leyland Cars v Vyas** [1978] 3 All ER 1196 CA, on appeal from the Industrial Tribunal, and arising from claims of discrimination employment it was held (Denning MR) that there was no immunity in such cases from disclosure of confidential information on the ground of public interest privilege; discovery was not to be ordered unless it was necessary for disposing fairly of the proceedings or for saving costs. In exercising that discretion, the public interest in disclosure of the information in the interest of justice had to be balanced against the public interest in preserving confidentiality.
  
20. The claimant states that this application is made to drive her from the judgement seat, to undermine and nullify her case. In **Angela Denise Curtiss and others v. Zurich Insurance PLC and East West Insurance Company Limited** the claimants (150) brought a claim for damages for deceit; in particular, they were induced to purchase flats subsequently found to be in less than satisfactory condition, by fraudulent misrepresentations contained in cover notes issued by Zurich. By notice of application, Zurich applied for an order striking out the entirety of four of the trial witness statements, and portions of several others for non compliance with CPR PD57AC.T. In striking out in entirety the four witness statements, declining to strike out portions of those remaining, and substantially dismissing the application Keyser J found:

*“These and a myriad of other examples lead me to the view that the application was not, primarily, brought with a view to ensuring the efficiency of the trial process but in the hope of emasculating the evidence of a witness who is central to the claimant’s case. Mr. Grant and Mr. Turner describe the application as ‘strategy’, meaning that word in a pejorative sense, and I think they are right.”*

*The trial will proceed without the distraction of the application. It will, of course, be open to counsel to cross examine on the basis that a witness statement is not in the witness own words, or that its contents have been improperly suggested by the person who took instructions for the statement, or on whatever other ground, or to submit that the evidence of a certain witness is of limited or no value.*

*But we could just as well have done without an application, leaving the points to be Dealt with at trial by counsel cross examining quickly and pertinently on some parts of the evidence, disdainfully ignoring other parts, and dealing appropriately with the evidence in submissions. The additional time this would have taken in*

*preparation and hearing would have been modest and is far outweighed by the application.”*

21. The claimant claims that her termination under the aegis of a redundancy exercise is a sham, and is in fact, unlawful. Further, that the position from which she was terminated, its functions and responsibilities continue, filled by another, albeit under different nomenclature; in making that claim, the claimant says that the postscript with Deed exhibited is not frivolous, vexatious, scandalous or an abuse of process, but a necessary element in the establishment of her claim.

### **Conclusion and Disposition**

22. It seems to me that the defendant’s application proceeds on assumption. Respectfully, the issue of investigating those assumptions is not here one for me. How and in what circumstance(s) the claimant came into possession of the Deed is in my view *de minimis*, if not wholly irrelevant. The Deed, the claimant says is central to and underpins, the establishment of her claim that the termination of her employ was unlawful, unfair and done contrary to the requirements of the Employment Act. The claimant ought be allowed to prove her claim.
23. The defendant has not shown (**Hamby**) “...that there is no reasonable prospect of the plaintiff establishing a cause of action consistently with her pleading and the possible facts of the matter when they are known” or that “the evidence relied on by the plaintiff can properly be characterised as “shadowy” or where “the story told in the pleadings is a myth...and has no substantial foundation”...”.
24. I do not find the postscript and the exhibited Deed to be frivolous, vexatious, scandalous of the defendant or an abuse of the process of the court. In my view, to strike in this particular case would foreclose full consideration of the issue(s) and evidence properly had in a trial and undermine the overriding objective of these Rules.
25. In my view, and in this particular case, the public interest in the proper conduct of employment relations according to law outweighs the public interest in the preservation of the right of the defendant to keep secret confidential information.
26. In the premises, and for the reasons given, I decline to strike out the postscript and the Deed exhibited thereto.
27. I make no order for costs as there was no request for same.

Williams J



24 June 2026