

IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2022/CLE/gen/00975

B E T W E E N

SCOTIABANK (BAHAMAS) LTD.

Claimant

AND

SONIA SANDS

Defendant

Before: **The Honorable Madam Justice Carla Card-Stubbs**

Appearances: Ms. Eugeina T. Butler of Counsel for the Claimant
Ms. Romona Farquharson of Counsel for the Defendant

Hearing date: February 20, 2025

Civil Procedure and Practice- Defendant's Application to strike out Originating Summons - Originating Summons referring to Original Mortgage where parties agree that original mortgage paid of – Whether claim should be struck out where action relates to a Further Charge– Contents of an affidavit- Court's power to strike out - Rule 26.3 CPR – whether pleading discloses no reasonable cause of action and whether pleading scandalous, frivolous or vexatious proceedings, or abuse of process

Held: Application dismissed on both grounds.

On an application that a pleading discloses no reasonable cause of action, the Court ordinarily looks at the pleading itself and assumes the pleaded facts to be true. Affidavit evidence is not generally admissible to contradict the pleaded case on that ground. In this case, on a consideration of the Originating Summons on its own, and assuming the pleaded facts true, there is nothing that would cause the Court to conclude that the pleading was incurably bad or that there is a cause of action with no chance of success. Further, the Claimant's case is that it increased the amount secured by the mortgage and secured further advances. A reference in the Originating Summons to the 2001 mortgage, as a matter of pleading, is therefore not necessarily inconsistent with reliance on a Further Charge which, on the Claimant's case, derives from and supplements that mortgage. Whether that position is ultimately correct depends on the terms and legal effect of the mortgage and Further Charge, and on the evidence concerning the 2008 transaction.

Unlike a consideration of whether a pleading discloses a reasonable cause of action ex facie, the Court may consider the surrounding circumstances and affidavit evidence where the Court is asked to strike out on the grounds of scandalous, frivolous or vexatious proceedings, or abuse of process. Abuse of process is not confined to closed categories. It includes the improper use of the Court's machinery, proceedings brought for collateral purposes, concurrent proceedings, collateral attacks, and attempts to litigate matters already decided or which should have been litigated earlier. A court must take into account all the facts of the case, in order to determine whether a party is misusing or abusing the process of the Court. There was no evidence of an abuse of process in this case.

RULING

CARD-STUBBS, J

INTRODUCTION

[1.] Before this court is the Defendant's application for the Claimant's matter to be struck out as it discloses no reasonable cause of action and it is an abuse of the court's process.

[2.] For the reasons that follow, that application is dismissed.

BACKGROUND

[3.] On June 23, 2022 the Claimant bank ('Bank') brought an action against the Defendant ('Mrs. Sands') by filing an Originating Summons.

[4.] The Originating Summons describes the Bank as mortgagee under a mortgage dated October 2, 2001 and recorded in the Registry of Records in Volume 8219 at pages 361 to 381. The property identified in the summons is Lot Number Three (3) of a subdivision of Sandilands Allotments Number 64, 65 and 66, situate in the Eastern District of New Providence.

[5.] The Bank seeks by way of relief:

1. Payment of monies secured by the Mortgage
2. Delivery of possession to Scotia Bank (Bahamas) Limited of all that piece or parcel of land referred to in the said Mortgage.
3. The said Mortgage is enforced by sale.
4. Further and other relief.
5. Cost.

[6.] The Originating Summons was supported by the affidavit of Joseph V. Albury, also filed on June 23, 2022. That affidavit refers not only to the 2001 mortgage, but also to a Deed of Further Charge dated February 5, 2008. Mr. Albury states that by that Further Charge, the amount secured by the 2001 mortgage was increased to \$135,000.00 to cover further advances of \$70,000.00. He also refers to a loan granted on February 6, 2008, a promissory note, a statement of account, a demand letter, and a notice of default.

[7.] Mrs. Sands filed a Notice of Appointment of Attorney on 6th day of July, 2022.

[8.] On January 27, 2023, Mrs. Sands filed an affidavit averring, inter alia, that she was uncertain of the Deed of Further Charge dated 5th February 2008 and of a loan granted on February 6, 2008 although she has been “shown her signature” on the promissory note. She accepts that she and her late husband entered into the 2001 mortgage. She says that she never received funds from the Claimant and that she entered into any further facility only because she was told that the 2001 mortgage remained outstanding and that her home was at risk of repossession. Her evidence is that there was a life insurance policy which settled the 2001 mortgage, that the bank pressured her into another loan facility and that the bank set out to defraud her.

[9.] By way of that affidavit, Mrs. Sands purports to mount a counter claim on the grounds of negligence and fraud.

[10.] By way of response, the Bank filed the affidavit of Chante Hanna on October 23, 2023. Ms. Hanna refutes the claims of fraud and negligence and pressure. Significantly, her affidavit admits that the Bank had received insurance proceeds to settle the 2001 mortgage. Her evidence is, at paragraph 5:

“relative Mr. Anthony Sands, the Defendant’s late husband. This cheque settled the 2001 loan.”

[11.] Ms. Hanna admits that the Bank received a cheque in the sum of \$59,946.29 from Capital Life Insurance in relation to Anthony Sands and that the cheque settled the 2001

loan. She states, however, that the present action also relates to funds advanced to Mrs. Sands under a consolidated loan facility in 2008, identified as Loan No. 1559190, and evidenced by the 2008 application, promissory note, disbursement documentation, and Further Charge.

[12.] Thereafter, the Defendant sought to strike out the matter.

THE APPLICATION

[13.] On the 8th day of March, 2024 Mrs. Sands filed a notice of application for the matter to be struck out as it discloses no reasonable cause of action and it is an abuse of the court's process.

[14.] The Application states the grounds of the application as:

- i. The Plaintiff [sic] cause of action that being the recovery of a 2001 mortgage has proven to be satisfied.
- ii. The Plaintiff is seeking new claims that were not sought after in their Originating Summons Action No. 2022/CLE/gen/00975 that being outstanding credit card payments, unsecured loans, etc.
- iii. The matter 2022/CLE/gen/00975 be struck out as it was commenced with unclean hands, as the Affidavit of Chante. S. Hanna filed on the 23rd day of October, A.D., 2023 confirmed that the balance of the original mortgage was paid off by the Life Insurance Company, only after the Applicant produced evidence from the Insurance Commission supporting its position.

[15.] The Application also sought:

1. The Applicant's Counterclaim to for damages to be continued and/or granted. Subsequently sent to Taxing Master/ Registrar for Assessment of damages. [sic]
2. Costs to the Applicant on a wasted/indemnity basis.

[16.] The Application is supported by the Affidavit of Sonia Sands filed on the 8th day of March 2024. She avers in part:

2. I have read the Affidavit of Ms. Chante S. Hanna filed on the 23rd day of October, A.D., 2023 hereinafter referred to as “the Affidavit,” and hereby set out my response and support of my application to strike out the present matters.

3. The Affidavit confirmed that the 2001 mortgage was settled specifically at paragraphs five (5) and eleven (11).

6. The Plaintiff’s Originating Summons doesn’t not mention any payments for credit cards, unsecured loans, consolidated loans etc.

7. I verily believe that the Plaintiff is using this present action to seek other reliefs since the original action that being the recovery of the 2001 mortgage has been proven to be satisfied. In particular paragraph six (6) of the Affidavit of Chante S. Hanna aforesaid where she stated:

“The Claimant asserts that this action against the Defendant also relates to the funds advanced to the Defendant by way of a consolidated loan to her in 2008.....”

8. I believe that this shows that the Plaintiff is seeking to use the recovery of the 2001 mortgage which has been proven to be satisfied, to claim other monies which I believe to be abusive and deceitful.

9. The Plaintiff asserts in paragraph nine (9) that the facilities that were given to me were not related to the 2001 mortgage. However, I only entered into such facilities in 2008 in order to satisfy the 2001 mortgage because the employees of the Plaintiff told me that the 2001 mortgage was outstanding. Thus, my entering into such facilities in order to satisfy my original mortgage that being in 2001.

...

14. All previous communications where with respect the 2008 Mortgage I entered upon the insistence of the Bank to repay the arrears of the original 2001 Mortgage, or I would lose my home.

15. I vehemently deny ever obtaining any unsecured loans from Scotiabank and am hard press to believe they would grant such a facility to me a mere straw vendor.

16. Further, as the bank now claims the monies they seek are unsecured and credit cards, I verily believe those claims have no bearing on the present Applications before this Honourable Court.

17. Besides the dismissal of the bank’s claims(s), I also wish for my counterclaim to be granted or allowed to proceed.

...

20. This matter brought by the Bank is clearly an abuse of the Court’s process and fraudulent.

[17.] By her affidavit, Mrs. Sands also seeks reimbursement of monies paid under the 2008 facilities, damages for alleged fraud and/or negligence, aggravated damages, satisfaction of the original mortgage and other facilities at the bank's expense, and release of the deed of conveyance.

[18.] The Application seeks the dismissal of the bank's action and an assessment of damages on the counterclaim. Mrs. Sands contends that "the present matter should be struck out as it is frivolous, vexatious, discloses no reasonable cause of action, it is an abuse of the court's process and the present matter is likely to obstruct the just disposal of the proceedings."

SUBMISSIONS OF THE PARTIES

Defendant's Submissions

[19.] Mrs. Sands submits that the claim should be struck out because the originating summons is founded on the 2001 mortgage and the Claimant's own evidence confirms that the 2001 loan was satisfied by insurance proceeds in 2005. The Defendant argues that there is no remaining debt under the 2001 mortgage and therefore no reasonable cause of action for possession, sale, or payment.

[20.] The Defendant further submits that the Claimant cannot use affidavit evidence to convert the action into a claim for a different 2008 facility, unsecured debts, credit card liabilities, or other relief not sought in the Originating Summons. The Defendant submits that to permit the Claimant to proceed in that way would be unfair, would obstruct the just disposal of the proceedings, and would amount to an abuse of process.

[21.] The Defendant also relies on her evidence by affidavit that the 2008 facility, if entered into at all, was procured by misrepresentation. Her evidence is that she was told there was no life insurance covering the 2001 mortgage and that the mortgage was in arrears. Her evidence is that she entered the 2008 arrangements only to save her home and to repay sums which, as the Claimant now admits, had already been paid by the insurer.

Claimant's Submissions

[22.] The Bank accepts that the 2001 loan was settled by the insurance payment. However, the Claimant argues that the settlement of the 2001 loan does not answer the separate question whether the Defendant later entered into, and remains liable under, the 2008 consolidated facility and Further Charge.

[23.] The Claimant submits that the 2008 Further Charge was expressly identified and exhibited in the first supporting affidavit. On the Claimant's case, the Further Charge increased the amount secured by the 2001 mortgage and continued or supplemented the mortgage security over the same property.

[24.] The Claimant further argues that the Defendant signed the relevant 2008 documents, that the 2008 loan consolidated facilities in the Defendant's name, and that the debt remains unsatisfied. The Claimant submits that the issues raised by the Defendant - including fraud, misrepresentation, pressure, lack of receipt of funds, and accounting - are issues for trial and not for summary determination.

ISSUES

[25.] The issues for determination on this application are:

1. Whether the Claimant's action should be struck out as disclosing no reasonable cause of action; and
2. Whether the Claimant's action should be struck out as frivolous, vexatious, or otherwise an abuse of the process of the Court, or likely to obstruct the just disposal of the proceedings.

LAW AND ANALYSIS

[26.] The Court may strike out a statement of case under **Rule 26.3 CPR . Rule 26.3(1)** provides:

(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 —

- (a) there has been a failure to comply with a rule, practice direction, order or direction given by the Court in the proceedings;
- (b) the statement of case or the part to be struck out does not disclose any reasonable ground for bringing or defending a claim;
- (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; or

(d) the statement of case or the part to be struck out is prolix or does not comply with the requirements of Part 8 or 10.

[27.] The current application invokes rules 26.3(1)(b) and (c).

[28.] The Court's power to strike out is a summary power. It must be exercised with care. The parties are agreed on the general principle of law that it is a jurisdiction that it is to be utilized in plain and obvious cases. I add that it is not a mechanism by which the Court conducts a trial on affidavit, resolves contested facts, or determines serious questions of law without the benefit of proper pleadings, disclosure, and evidence.

Issue 1: Whether the Claimant's action should be struck out as disclosing no reasonable cause of action.

[29.] **Rule 26.3(1)(b)** CPR provides for striking out on the ground that the statement of case or the part to be struck out does not disclose any reasonable ground for bringing or defending a claim. Effectively, Rule 26.3(1)(b) requires that the statement of case must disclose *on its face*, a ground or cause of action known in law, for otherwise it is defective and doomed to fail.

[30.] In **Drummond-Jackson v British Medical Association and others [1970] 1 All ER 1094**, the Court of Appeal dismissed an appeal by the British Medical Association against refusal to strike out a libel claim brought by Drummond-Jackson, a practising dental surgeon. By a majority verdict, the appellate court considered that strike out as a summary power was to be used in only plain and obvious cases. In his judgment, at page 1101, Lord Pearson affirmed that a reasonable cause of action is a cause of action with some chance of success when only the allegations in the pleading are considered. The power to strike out for want of a reasonable cause of action is to be exercised only in plain and obvious cases.

[31.] In **Nagle v Feilden [1966] 2 QB 633**, Danckwerts L.J. described the strike out remedy as one to be applied only in plain and obvious cases, where the action cannot succeed or is in some way an abuse of the process of the Court. In that case, Salmon L.J. opined at page 651:

“It is well settled that a statement of claim should not be struck out and the plaintiff driven from the judgment seat unless the case is unarguable.”

[32.] The foregoing principles are observed in this jurisdiction. In **Doris Thompson v Stephen J. Albury and another [2023] 1 BHS J. No. 87**, the Court emphasized that the jurisdiction is discretionary and should be exercised sparingly. The Court should not drive

a litigant from the judgment seat where the claim has some prospect of success. In **McPhee v Nesbitt [2017] 1 BHS J. No. 59**, the Court held that a claim is not suitable for striking out if it raises a serious live issue of fact which can only be determined by hearing oral evidence.

[33.] **McPhee v. Nesbitt and another [2017] 1 BHS J. No. 59** concerned a property dispute in which the Plaintiff, claiming ownership and possession of land based on a Deed of Assent, sued the Defendants in trespass. The Defendants sought to join additional parties to a proposed counterclaim involving alleged fraud and issues under the Quieting Titles Act. The Plaintiff sought to strike out the proposed counterclaim. The learned judge, Justice Indra Charles (as she then was), opined at paragraphs 36 to 37:

36 That being said, as a general rule, the court will not strike out a claim if it raises a serious live issue of fact which can only be determined by hearing oral evidence: **Ian Peters v Robert George Spencer, ANUHCVP2009/016 - Antigua & Barbuda Court of Appeal** - per Pereira CJ [Ag.] - Judgment delivered on 22 December 2009.

37 In **Walsh v Misseldine [2000] CPLR 201, CA**, Brooke LJ held that, when deciding whether or not to strike out, the court should concentrate on the intrinsic justice of the case in the light of the overriding objective, take into account all the relevant circumstances and make ‘a broad judgment after considering the available possibilities.’ The court must thus be persuaded either that a party is unable to prove the allegations made against the other party; or that the statement of claim is incurably bad; or that it discloses no reasonable ground for bringing or defending the claim; or that it has no real prospect of succeeding at trial.

[34.] Therefore, on an application that a pleading discloses no reasonable cause of action, the Court ordinarily looks at the pleading itself and assumes the pleaded facts to be true. Affidavit evidence is not generally admissible to contradict the pleaded case on that ground.

[35.] If the application to strike out is complex and requires extended argument and fact-finding, then the case is not appropriate for striking out and such matters are to be resolved at trial: **Drummond-Jackson v British Medical Association and others [1970] 1 All ER 1094; Williams & Humbert Ltd v W & H Trade Marks (Jersey) Ltd and others; Rumasa SA and others v Multinvest (UK) Ltd and others [1986] 1 All ER 129**. A statement of case is not suitable for striking out if it raises a serious live issue of fact which can only be properly determined by hearing oral evidence.

ANALYSIS

[36.] At first blush, as Counsel for Mrs. Sands conceded, the Originating Summons appears to have a reasonable claim i.e. regarding a 2001 mortgage. *Ex facie*, the bank has a reasonable cause of action.

[37.] However, the objection of the Defendant cannot be understood without recourse to affidavit evidence. The Defendant's position is that the claim is not for the 2001 mortgage although that is what is stated on the face of the Originating Summons. The Defendant's submission is that there is no viable claim if the loan has already been paid off. To come to this conclusion, one has to peruse the affidavit evidence of both parties. It is a principle of law, in determining whether the statement of case discloses any reasonable ground for bringing a claim, that that determination is to be made on the basis of the pleading and not by reference to matters of evidence. If that is so, then there is nothing on the face of the Originating Summons to suggest other than that a viable claim exists for default of a mortgage.

[38.] I do accept that in this case, where a proceeding is commenced by originating summons and is supported by affidavit as part of the initiating process, the supporting affidavit is material in identifying the claim. It is not, in that context, merely collateral evidence later introduced to cure an unrelated pleading. The Originating Summons is supported by the affidavit of Mr. Albury. That affidavit expressly refers to the 2008 Further Charge and states that the amount secured by the 2001 mortgage was increased to \$135,000.00 to cover further advances. It also pleads the 2008 loan, the promissory note, default, the outstanding balance, demand, notice of default, possession, and the Claimant's asserted entitlement to mortgage remedies.

[39.] The Defendant's submission that a claim for a loan already satisfied is not a viable claim is attractive to the extent that if the bank's action were only a claim for the balance of the original 2001 loan, the bank would face a serious obstacle. Since the bank's own evidence is that the 2001 mortgage loan was settled by the insurance payment, the bank could not maintain a claim for payment of a 2001 loan balance which it admits was satisfied. However, that is not, in my view, the effect of the pleadings.

[40.] Mr. Albury's supporting affidavit was filed as part of the Bank's initiating material. It identified the documents on which the Claimant relied. Reading the Originating Summons and supporting affidavit together, the Claimant's case is not merely that there was a 2001 loan, but that there was mortgage security originating in 2001 and allegedly supplemented by the 2008 Further Charge.

[41.] The Court must not at this stage decide whether the Claimant is right as a matter of construction, mortgage law, or banking law. The question is narrower: is the claim plainly and obviously bound to fail? In my judgment it is not.

[42.] If this Court were to consider the Originating Summons by itself, and assuming the pleaded facts true, there is nothing that would cause me to consider that the pleading was incurably bad or that there is a cause of action with no chance of success. Similarly, if I consider the initiating affidavit that accompanied the Originating Summons mortgage proceeding, it describes how the 2008 Further Charge is alleged to be connected to the 2001 mortgage security. The Bank's case is that it increased the amount secured by the mortgage and secured further advances. A reference in the Originating Summons to the 2001 mortgage, as a matter of pleading, is therefore not necessarily inconsistent with reliance on a Further Charge which, on the Claimant's case, derives from and supplements that mortgage. Whether that position is ultimately correct depends on the terms and legal effect of the mortgage and Further Charge, and on the evidence concerning the 2008 transaction. That is not a matter to be determined at this stage.

[43.] Counsel for the Defendant invites this court to consider the insurance payment. The insurance payment is undoubtedly important. It may have significant consequences for the accounting between the parties and for the Defendant's defences and counterclaim. But the payment does not, by itself, conclusively establish that the 2008 Further Charge is void, that the 2008 promissory note is unenforceable, that the Defendant received no benefit or consideration, or that the mortgage security could not be used to secure later advances. Nor is the insurance payment dispositive of the issue as to whether a claim on the 2001 mortgage is doomed to fail.

[44.] Counsel for the Defendant also invites the court to consider Mrs. Sands' evidence in support of the strike out application. I consider that the Defendant's affidavit is not dispositive of the matter at this stage. The matters raised do not establish, on a strike out application, that the Claimant's claim on the 2001 and 2008 documents is unarguable.

[45.] For the Defendant to succeed on this ground, it would be necessary for this Court to make that determination on untested affidavit evidence. This reliance on evidence and argument demonstrates why an exercise of the summary jurisdiction to strike out the claim (on the ground that it does not disclose a reasonable cause of action for bringing a claim) is inappropriate.

[46.] In summary, Counsel for the Defendant concedes that on the face of the pleading, it is a viable claim. However she argues that in light of the evidence that the 2001 mortgage was paid, the Originating summons does not disclose a reasonable claim and is bound to

fail. I do not accept that submission. For the foregoing reasons, I conclude that the reference to the original mortgage may include a reference to a further charge. I find that the Claimant has disclosed at least an arguable cause of action. It has some prospect of success. It is not certain to fail. The claim should not be struck out on the ground that it discloses no reasonable cause of action.

Issue 2: Whether the Claimant's action should be struck out as frivolous, vexatious, or otherwise an abuse of the process of the Court or is likely to obstruct the just disposal of the proceedings.

[47.] **Rule 26.3(1)(c)** CPR provides for striking out on any of the mentioned grounds, viz, 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.

[48.] Unlike a consideration of whether a pleading discloses a reasonable cause of action *ex facie*, the Court may consider the surrounding circumstances and affidavit evidence where the Court is asked to strike out a statement of case on the grounds of scandalous, frivolous or vexatious proceedings, or abuse of process. In **Jamile Ferguson v The Commissioner of Police and another [2023] 1 BHS J. No. 220**, the Court noted that affidavit evidence is admissible on such grounds (paragraph 16 of judgment) and that proceedings may be struck out where they are obviously unsustainable, spurious, brought to harass or embarrass, or have become doomed to failure.

[49.] **Jamile Ferguson v The Commissioner of Police and another [2023] 1 BHS J. No. 220** concerns a ruling on an application to strike out a constitutional motion brought by Jamile Ferguson after his dismissal from the Police Force under section 26(c) of the Police Act 1965. It addressed whether his constitutional claims should be struck out as frivolous, vexatious, and an abuse of process. Justice Klein reviewed the general principles in relation to an application to strike out and confirmed in paragraph 20:

[20] The most firmly established and oft-repeated of these is that the jurisdiction to strike out ought to be sparingly exercised and is only intended for plain and obvious cases. This is because striking out applications are often described as draconian in nature, since they have the potential of denying a party the right to trial...

[50.] That case considered the relevant rules under the now-repealed *Rules of the Supreme Court 1978, as amended (RSC)*. Nonetheless, the principles are applicable to the rules under consideration in this case. In discussing the considerations of a court under

Order 19(1)(b) RSC (scandalous, frivolous and vexatious) and Order 19(1)(d) RSC (abuse of process), Justice Klein opined at paragraphs 17 to 18:

Scandalous, frivolous or vexatious

[17] Cases coming under the umbrella of scandalous, frivolous or vexatious include, for example, cases which are obviously unsustainable and or spurious, cases brought to harass or embarrass a party, and cases which were viable when instituted but by reason of subsequent events have become doomed to failure (“The Supreme Court Practice 1997” (“The White Book”), at paras. 18/19/15). However, a pleading or matter will not be struck out solely because it is scandalous or unnecessary, unless the allegations are also irrelevant and to allow them to stand would incur useless expense and involve the parties in unnecessary argument (*Willouby v Eckstein* [1936] 1 All ER 650). The court has also struck out cases under this rule where it was clear that the defendant intended to avail themselves of a limitation defence (*Ronex Properties v. John Laing Construction Ltd.* (1983) QB 398).

Abuse of process

[18] Abuse of process can take many forms and concerns pleadings which involve the improper use of the court’s machinery, such as the institution of proceedings for improper or collateral purposes, the bringing of concurrent proceedings in different courts, or attempts to litigate matters already decided (“res judicata”) or which should have been litigated in previous proceedings (see *Hunter v Chief Constable of West Midlands Police* [1982] AC 529).

[51.] Of a person’s rights to pursue a constitutional claim, the Learned judge opined at paragraph 40:

... Such rights can be procedurally defeated by undue delay on the grounds of abuse of process, or as a contravention of the constitutional principle itself that precludes recourse to the constitution where other adequate means of redress are or “have been available” under any law.

[52.] In **Jamile Ferguson v The Commissioner of Police**, Justice Klein concluded (at paragraph 43) that the filing of “the constitutional application at this late stage is an abuse of the process of the court” and thus the learned judge acceded to the Respondents’ application to strike it out.

[53.] I note that abuse of process is not confined to closed categories. It includes the improper use of the Court’s machinery, proceedings brought for collateral purposes, concurrent proceedings, collateral attacks, and attempts to litigate matters already decided or which should have been litigated earlier. A court must take into account all the facts of the case, in order to determine whether a party is misusing or abusing the process of the Court.

[54.] The Court should also be cautious where the strike out application itself requires prolonged and serious argument. In **Williams & Humbert Ltd v W & H Trade Marks**

(Jersey) Ltd and others, the House of Lords (per Lord Templeman at page 139) observed that, save in special circumstances, a judge should be slow to proceed with a strike out application requiring prolonged and serious argument unless striking out will obviate the need for a trial or substantially shorten it.

ANALYSIS

[55.] The Defendant submits that once the Bank discovered or admitted that the 2001 loan was settled, it attempted to reframe the action by relying on other debts, including the 2008 facility. The Defendant says that this is an improper use of the Court's process and an attempt to obtain relief not claimed in the Originating Summons.

[56.] On this ground, the Court can consider affidavit evidence and I do so. I do not accept the submission that the action is shown to be abusive. For the reasons already given, I find that the reference to the Original Mortgage was sufficient, *as a matter of pleading*, to include a claim reliant on a Further Charge which, on the Claimant's case, derives from and supplements that mortgage.

[57.] I also consider that the 2008 Further Charge was identified in the first supporting affidavit. It was not introduced for the first time after the strike out application. The Claimant's later admission that the 2001 loan was paid narrows the issues and may affect the merits, but it does not convert the proceeding into an abuse of process or an attempt to recover sums not alleged, by the Claimant, to be connected to the original mortgage.

[58.] In my opinion, there is no evidence of an improper collateral purpose. The Claimant seeks conventional mortgage remedies: payment, possession, sale, further relief, and costs. Those remedies are connected to the property and the security documents on which the Claimant relies. The Defendant disputes the legitimacy of that reliance, but a disputed claim is not, without more, an abuse of process.

[59.] There is no evidence of a prior adjudication between the parties concerning the validity of the 2008 Further Charge, the effect of the insurance payment, or the Claimant's entitlement to enforce the security. This is not a case of *res judicata*, issue estoppel, or collateral attack on a previous judgment.

[60.] The objection of the Defendant is to the pleading of the Original Mortgage (2001) when the affidavit evidence makes it clear that what is sought to be recovered are sums under the Further Charge of 2008. It seems to me that the Defendant's complaint is better characterized as one of pleading, particularization, and merits. If the Claimant's case is that the 2008 facility is the operative debt and the 2008 Further Charge is the operative security, the Claimant ought to plead and particularize that case with precision. Such clarification can be directed by case management. It does not require striking out the action. Again, striking out is to be reserved for plain and obvious cases. This is not such a case, in my opinion.

[61.] The Court must also consider proportionality and prejudice. Any prejudice caused by imprecise pleading can be addressed by directions, amendment, further particulars, disclosure, and costs. By contrast, striking out would finally deprive the Claimant of a potentially valid secured claim without trial. That would be inappropriate where the matter raises serious live issues.

[62.] This matter raises serious live issues. Mrs. Sands, on one hand, avers she is uncertain about the 2008 facility and does not believe she received funds. On the other hand, Mrs. Sands' evidence is also that she did enter into the 2008 arrangements because she was told the 2001 mortgage remained outstanding and because she wished to save her home. Those assertions raise serious issues. They require proper pleading and proof. They may found a defence or counterclaim. They are not suitable for final determination on affidavit at this interlocutory stage, particularly where the relevant banking records, disbursement documents, internal accounting, communications, and the circumstances of execution may require disclosure and oral evidence. The Defendant's allegations of fraud and pressure are serious.

[63.] In addition to the issues raised by Mrs. Sands, other issues that remain to be tried or otherwise determined on proper evidence include whether the 2008 Further Charge is valid and enforceable and whether the 2001 mortgage security remained capable of supporting the 2008 Further Charge after the 2001 loan was paid.

[64.] Those are not issues that can properly be resolved on this application. They demonstrate that the claim is not obviously unsustainable, spurious, or brought merely to harass or embarrass. My determination is that the action is not shown to be scandalous, frivolous, vexatious, or otherwise an abuse of the Court's process. Nor do I find that the Originating Summons is likely to obstruct the just disposal of the proceedings.

CONCLUSION

[65.] The Defendant's Application to strike out the action is dismissed on both grounds.

[66.] I note that the Defendant has raised, by way of affidavit, what is said to be a counterclaim. As far as the application seeks relief on a counterclaim, that is also dismissed.

[67.] This action is to be advanced to further case management as will be directed by this Court.

COSTS

[68.] The Bank has successfully resisted Mrs. Sands' application. However, I consider that the Bank did not, until met with Mrs. Sands' affidavit, conduct an "extensive review of its internal files" to confirm to Mrs. Sands that indeed insurance proceeds "relative Mr. Anthony Sands" settled the 2001 Mortgage obligation.

[69.] In those circumstances, I find that having been met with a pleading of a "2001 Mortgage", notwithstanding the accompanying affidavit, it was reasonable for Mrs. Sands to pursue the issues raised in her application.

[70.] For these reasons, this Court's order is Costs in the case.

ORDER

[71.] The ORDER and directions of this Court are as follows.

- (i) The Defendant's Application is dismissed in its entirety.
- (ii) Costs in the case.

Dated this 24th day of June 2026

A handwritten signature in black ink, appearing to read "Carla D. Card-Stubbs, J.", with a stylized flourish at the end.

Carla D. Card-Stubbs, J
Justice