

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

2025/CLE/gen/FP/00038

B E T W E E N

JAVAE ENTERPRISES LTD.

1st Claimant

AND

FELICIA JOHNSON

2nd Claimant

AND

RAMSES ENERGY PARTNERS LTD.

1st Defendant

AND

RAYMOND JONES

2nd Defendant

Before: The Honourable Madam Justice Constance Delancy

Appearances: Parkco Deal for the Claimant
Osman Johnson for the Defendant

Hearing date(s): 15 December 2025

RULING

DELANCY, J

[1.] This is the Court's ruling on the Claimant's application for extension of time to file and serve a Defence to the Counterclaim filed herein

Brief Procedural Background

[2.] The Claimant commenced proceedings against the Defendants on 26 February 2025 seeking:

1. Declaration that the Defendants are in breach of a contract dated 31 July 2014 and made between the 1st Claimant and the Defendants.
2. Damages resulting from the breach
3. Injunctive relief and
4. Costs

[3.] The Defendants filed a Defence and Counterclaim on 12 August 2025, denying the claim and raising the defence of estoppel. The Defendant also counterclaimed seeking:

1. damages for breach of contract;
2. a declaration that the Defendants are entitled to repudiate the contract;
3. an Order directing the Claimants to pay the Defendants the sum of \$\$41,159.95;
4. an Order for specific performance against the Claimants; and
5. costs.

[4.] On 11 December 2025, the Claimants filed a Notice of Application for extension of time which supported by an Affidavit seeking leave to file its Defence to the Defendants' Counterclaim. The Claimants also filed a Defence and Amended Defence on 11 December 2025 without leave of the Court.

Issue

[5.] The Court must decide whether it should extend the time in which the Claimant may file and serve a Defence to the Counterclaim filed herein.

Law and Analysis

[6.] The Court has the power to extend or shorten time as a part of its case management powers under Part 26.1(2)(k) of the Supreme Court Civil Procedure Rules ("the CPR").

[7.] Counsel for the Claimants relies on the dictum of *Fraser, Snr. J.* (as she then was) in **Syla Ltd. v Laurent Dreux-Leblanc** 2020/COM/com/00015 in which she noted the opinion expressed by *Gibbs, J* at para. 31 of her decision:

In **Widenhoffer v Commonwealth** 1970 HCA 54 122 CLR 172, Gibbs J opined:

"In the present case where I have before me not only a motion for judgment, but also a motion for extension of time for filing the defence and where the defence has in fact been delivered, although out of time, and there is no ground to suggest that the defence is merely frivolous or filed for the purposes of delay and explanation has been given for the failure to deliver within time, in my opinion, it would lead to injustice to take any other course than to grant a reasonable extension of time and to refuse the motion for judgment (emphasis added)."

[8.] The general considerations for the granting of an extension of time were laid out in the Court of Appeal in **Flowers Development Company Ltd. v The Bahamas Development Company Ltd.** SCCivApp No. 14 of 2022 at para. 10 thereof:

As is evident by this rule this Court is vested with wide discretion in arriving at its determination as to whether to grant an extension of time. *Blackman JA in Derek Harold Sands and Lenora Sharell Sands v Finance Corporation of The Bahamas* SCCiv App. No.29 of 2008 opined that:

“15. The matters which fall for consideration on an application for an extension of time to lodge an appeal, namely: **(1) the length of the delay (2) the reasons for the delay, (3) whether there is an arguable case on the appeal, and (4) the degree of prejudice to the respondent if time is extended, call for the exercise of a judicial discretion**, the nature of which has been described by *Lord Donaldson of Lymington MR in Norwich & Peterborough Building Society vs. Steed* (1991) 1. WLR 449 at p. 454 as a “discretionary balancing exercise” **The discretion which is to be exercised is unfettered and should be exercised flexibly, having regard to the facts of the particular case** (see *Palata Investments Ltd et al vs. Burt & Sinfield Ltd et al*, supra.)”

[9.] Counsel for the Claimant argues that the delay of 58 days is not inordinate when the Court considers all the circumstances. Further, Counsel argues that: (a) there would be no prejudice to the Defendants if the Court is minded to accede to the Claimants’ request for an extension; (b) that the Claimants have a strong and arguable defence.

[10.] The explanation proffered for the delay was contained in the affidavit of Lennis Pinder filed on 12 December 2025. The said affidavit gave the reasons for the delay as being human error and administrative inadvertence which was not deliberate, tactical or intended to cause delay.

[11.] The length of delay in this matter is in relation to the filing of a Defence to the Counterclaim, which was delayed by 58 days. The time allowed under Part 10.3(1) CPR for the filing of a Defence is 28 days and may, upon agreement between the parties, be extended to 56 days (see *Parts 10.3(4) and 10.3(8) CPR*). The delay concerning the late filing of 58 days in this Court’s view of the facts was not inordinate and there is an extension of time application before the Court.

[12.] Counsel for the Defendants invites the Court to review the Defence to its Counterclaim and the Statement of Claim in light of the fact that the Claimants’ claim is based on a lease agreement. Counsel for the Defendant also invites the Court to review the said lease agreement and argues that is not fair just or equitable to allow the Defendants to file its Defence out of time as they owe the Claimants a substantial sum of rents and are still in occupation of the demised premises.

[13.] Counsel for the Claimants counters that the sums which the Defendants “frame” as rents are in fact contributions to the construction and finance costs. Further, the interpretation of the terms of the said lease are in dispute as the Claimants contend that such payments entitle them to an equitable interest in the demised premises. Therefore, the Claimants have an arguable case against the Defendants which ought to be dealt with at trial.

[14.] In the instant the case the claim arises out of a lease agreement between the parties. The parties invite the Court to examine the terms of the said agreement an exercise which ought not to be embarked upon at this interlocutory stage (see **Wenlock v Moloney** [1965] 2 All ER 871 and **Swain v Hillman** [2001] 1 All ER 91 at 92). The Court finds that there is an issue to be ventilated at trial.

[15.] Counsel for the Claimants also argues that the Defendants would not be prejudiced should the Court accede to their request for an extension of time. Counsel for the Defendants submits that generally applications for extension of time attracts a costs order and drew the Court’s attention to the provisions of Part 71 CPR.

[16.] The Court in exercising its discretion to grant an extension of time must do so against the background of the overriding objectives. In the circumstances the Court is minded to allow the Claimant to file a Reply and Defence to the Defendants’ Defence and Counterclaim. The Defendants shall likewise have leave to file a Reply to the Claimants’ Defence.

[17.] The Court further notes that an Amended Defence was filed by the Claimants on the 18 June, 2026. In keeping with the overriding objective as to save costs, in the circumstances, the Amended Defence shall remain as filed and stand as the Claimants’ Defence to the Defendants’ Defence and Counterclaim.

Disposition

- [18.] The Court having considered the submissions of Counsel hereby orders as follows:
- a. The Amended Defence filed on the 18 June, 2026 shall stand as the Claimants’ Defence to the Defendants’ Counterclaim.
 - b. The Defendants are granted leave to file and serve its Reply within 14 days of this hearing.
 - c. Costs of this application is granted to the Defendants and is summarily fixed in the sum of \$800 in light of the previous award of wasted costs to the Defendants in this action.

Dated the 29 day of June, 2026

[Original signed and sealed]

Constance Delancy
Justice