

IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

Claim No. 2022/CLE/gen/00864

BETWEEN

KEVIN F. ADAMS

1st Claimant

AND

JENNIFER L. WATSON

2nd Claimant

AND

CHRISTOPHER BAINBRIDGE WHEATON

(Personal Representative of The Estate of Mary Elizabeth Wheaton, deceased)

Defendant

Before: The Honourable Madam Justice Simone I. Fitzcharles

Appearances: Ms Shannelle Bethell for the Claimants

Mr Joseph Moxey for the Defendant

Hearing date(s): 11, 21 November 2025, 19 June 2026

RULING

The Application

1. This is a Ruling on an application of the Defendant, Christopher Bainbridge Wheaton (Personal Representative of the Estate of Mary Elizabeth Wheaton, deceased) (the “**Defendant**” or “**Mr Wheaton**”) to strike out the Standard Claim form of the Claimants, Kevin F Adams (“**Mr**

Adams”) and Jennifer L. Watson (“Ms Watson”) (collectively, the “Claimants”) filed on 30 May 2025.

2. The application is made by Notice of Application filed on 26 June 2025 (the “**Strike Out application**”) and is supported by the Affidavit of Chaunece M. Bastian also filed on 26 June 2025 (the “**Bastian Affidavit**”). The Strike Out application is sought pursuant to **Part 26.3** of the **Supreme Court Civil Procedure Rules (“CPR”)** on the following grounds:

- (1) The statement of case or the part to be struck out does not disclose any reasonable ground for bringing the claim; and
- (2) 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.

3. In the main action brought by the Claimants, they seek, amongst other relief, specific performance of an agreement for the sale (the “**Agreement for Sale**”) of land (the “**Exuma Property**”) of which Mr Adams and Ms Watson are purchasers and Mary Wheaton (now deceased) was vendor. Prior to completion of the sale, and after the Claimants took steps to complete the transaction such as paying the deposit on the purchase price of US\$900,000.00 and obtaining a Permit for their acquisition as non-Bahamians, the transaction came to an abrupt halt by reason of Mary Wheaton’s death. Her Estate now seeks to resile from the sale on the basis that Mary Wheaton did not hold title to the Exuma Property and that the sale is null and void.

4. More specifically, the Strike Out application is founded on a contention on the part of the Defendant, who is the son and personal representative of Mary Wheaton (deceased), that “the purported vendor, at the time of her execution of the purported Sales Agreement was not the beneficial owner” of the Exuma Property. It is contended that because Mary Wheaton allegedly failed to comply with **section 2(2) of the International Persons Landholding Act, Chapter 140, Statute Laws of The Bahamas** (the “**Act**”), the effect of **sections 3(1), 3(4) and 4(1)** of the Act is that Mary Wheaton was not the beneficial owner of the Exuma Property. Further, the Defendant submits that the purported recording of a Conveyance whereby the Exuma Property was transferred to her is null and void. Mr Wheaton contends that Mary Wheaton (deceased) breached Clauses 8, 14.1 and 14.2 of the Agreement for Sale which warranted her power and capacity to execute the transaction as beneficial owner and to convey good and marketable fee simple title to the Exuma Property absolutely. As such, the Defendant states that the Claimants cannot enforce the Agreement for Sale.

5. The Claimants resist the Strike Out application on the basis that the Defendant’s argument is unfounded and wrong in law. It is submitted that by reason of the circumstances of the transfer of the Exuma Property to Mary Wheaton, the appropriate section of the Act to be applied is **Section 6**. The result of so doing is that there was no breach on the part of the vendor which would render the Agreement for Sale illegal or unenforceable. As such, the Strike Out application ought to be dismissed.

Context of the Dispute

6. The context within which this dispute arises is set out in the Affidavit and Witness Statement of Mr Adams filed on 16 September 2022 and 29 August 2025, respectively, the Affidavit of Ms Watson filed on 29 August 2025 and the Bastian Affidavit.

Title of Mary Wheaton, deceased

7. By a property adjustment order made on 15 August 2011 by Sir Michael Barnett CJ (as he then was), pursuant to the Matrimonial Causes Act in Action Number 574 of 2005, Frank H Wheaton III (the father of the Defendant and former husband of Mary Wheaton, deceased) was ordered to convey all his legal and beneficial interest in the Exuma Property to Mary Wheaton in fee simple absolute (the “**Vesting Order**”). In compliance with the Vesting Order Frank H Wheaton III transferred the Exuma Property to Mary Wheaton, a resident of The Bahamas, by Conveyance dated 29 November 2011, which is recorded in the Registry of Records in Book 11539 at pages 434 to 437 (the “**court-ordered Conveyance**”).

The Agreement for Sale and Performance

8. It is not disputed that the Claimants, both international persons, entered into an Agreement for Sale with Mary Wheaton on 15 September 2020, which became effective on 7 October 2020 (the “**Effective Date**”).

9. The purchase price was USD \$900,000.00, as per the Agreement. A deposit of five per cent (5%) of the purchase price was paid by the Claimants as purchasers and held by Mary Wheaton’s legal counsel as the stakeholder. The contractual completion date (the “**Completion Date**”) was set for 5 January 2021, Ninety (90) days from the Effective Date.

10. The Agreement for Sale at Clause 15.2 contemplated giving an extension of time beyond the Completion Date for the Purchaser to obtain a Permit to hold Bahamian land pursuant to the Act, with provision for the service of a notice to complete. The parties agreed that service of such notice to complete would start time running before the Agreement for Sale could be cancelled and the deposit returned on failure of the purchaser to obtain the Permit. The extended completion date was set to be Twenty-one (21) days after the date the Claimants obtained their Permit from the Bahamas Investments Authority.

11. The Claimants obtained financing for the purchase on 15 December 2020. Additionally, the Permit was applied for and issued to the Claimants by the Bahamas Investment Authority on 11 February 2021, which purportedly had the effect of setting the new completion date for 4 March 2021.

12. Unfortunately, about 2 weeks before the expiry of the purported extended completion date, Mary Wheaton died testate on 19 February 2021, while there were still requisitions on title outstanding and unsatisfied by her as vendor. In particular, the issuance of a Certificate of Registration to her in respect of her interest in the Exuma Property acquired by her pursuant to the

Vesting Order of the Family Division of the Supreme Court and the court-ordered Conveyance from Frank H Wheaton III.

13. By Clause 12.5 of the Agreement for Sale, if the Vendor failed to deduce title or be ready, willing and able to deliver the Conveyance of the Exuma Property to the Claimants, the following applied:

“...then the Purchaser may give to the Vendor or the Vendor’s Attorney notice in writing requiring the Vendor to complete within such periods (not being less than Twenty-one (21) days) as the notice shall prescribe time being of the essence of the said notice and if the Vendor shall not complete accordingly the Purchaser may (but without prejudice if the Purchaser so elects to any of the Purchaser’s alternative remedies by way of damages specific performance or otherwise) require that the said deposit shall be returned to the Purchaser whereupon this Agreement shall be canceled...”.

14. At the date of Mary Wheaton’s death, no Notice to Complete for the termination of the Agreement for Sale was issued by the Claimants as purchasers.

Post Death Termination Attempts

15. It is not disputed that on or about 18 February 2021, Christopher Bainbridge Wheaton, who is the Defendant and son of the deceased seller, contacted the Claimants’ attorneys seeking to have the title documents of the Exuma Property, which Mary Wheaton had previously furnished under the Agreement for Sale, to be forwarded elsewhere. Mr Wheaton also attempted to terminate the Agreement for Sale and return the deposit to the Claimants on the grounds that the Claimants’ financing was not obtained within the 90 day period stipulated in the Agreement for Sale and that Mary Wheaton, deceased, was purportedly not vested with title to the Exuma Property as she did not produce and record a Certificate of Registration for the court-ordered Conveyance. Additionally, the Defendant intended to refund the deposit to the Claimants. At the time the Defendant made these representations, he had not obtained a Grant of Probate for the Estate of Mary Wheaton.

16. The Claimants further stated that following Mary Wheaton’s death, there arose competing bids for entitlement to act on behalf of her estate. The dispute involved the Defendant as well as his father, Frank Wheaton III, the deceased’s former husband. It was not until 29 January 2024 that the grant of probate was issued to Joseph Moxey in Probate Action No. 00823 of 2023 for the Estate of Mary Wheaton. Notwithstanding the grant, the Estate has failed or refused to complete the transaction with the Claimants.

Efforts to Resolve the Purchase & the Claim

17. The Claimants aver that they engaged in repeated attempts to resolve the matter. Correspondence, amongst which were those dated 6 September 2021, 4 October 2021, and 6 April 2022 were submitted to the Defendant and/or his legal representatives. The Claimants contended that those efforts were met with silence or refusal on the part of the Defendant. Resultantly, by

Originating Summons filed on 2 June 2022, the Claimants commenced proceedings, which were converted to a Standard Claim Form as a matter of procedure on 29 May 2025.

Issues

18. The issues arising for determination are whether the Claimants' claim should be struck out on the grounds:

- (1) that it discloses no reasonable cause of action,
- (2) that it is frivolous, vexatious, scandalous, an abuse of the process of the Court or is likely to obstruct the just disposal of the proceedings, and/or
- (3) the Agreement for Sale and the court-ordered Conveyance are illegal.

Arguments

Submissions of the Defendant

19. In summary, the Defendant submits that the claim is seriously defective. Mr Joseph Moxey, Counsel for the Defendant, contends that by virtue of **Sections 3 and 4** of the Act, "the purported Vendor at the time of the execution of the purported" Agreement for Sale "was not the beneficial owner of the [Exuma] Property as she failed to comply with **Section 2(2)** of the said Act.

20. Counsel contends that by not applying and receiving a certificate of registration to acquire land, Mrs Wheaton made any purported conveyance to the Claimants null and void. Further, the court-ordered Conveyance from Frank Wheaton III to Mrs Wheaton pursuant to the Vesting Order is null and void without such certificate of registration pursuant to **Section 4(1)** of the Act. Mr Moxey also seeks to persuade the Court that **Section 9** of the Act, which expressly applies to an interest in property under a lease or letting agreement, ought to be applied to freehold interests as well.

21. It is argued that Mary Wheaton lacked legal and beneficial capacity to sell the Exuma Property for the foregoing reason, which was in breach of paragraphs 8, 14.1 and 14.2 of the Agreement for Sale. These sections of the Agreement for Sale, in summary, warrant the Vendor's full power and capacity to execute and deliver and perform the Agreement for Sale. They warrant that the Vendor is, and at the completion date shall be, the recorded beneficial owner of the Exuma Property, who will convey good and marketable fee simple title to the Purchasers.

22. Mr Moxey submits that **Sections 3(1) and 3(4)** of the Act required Mrs Wheaton to obtain a permit before entering the Agreement for Sale. Counsel relies on **Commonwealth Bank Ltd v Quality Services Ltd** [1999] BHS J. No. 135. It is cited as authority for the proposition that contracts executed without statutory compliance may be unenforceable. Counsel also cited in written arguments **Jamat Reinsurance Company Ltd and another v Chub Cay Club Associates Ltd and another** [2020] 1 BHS J No 41.

23. For the Defendant it is also contended that the description of the Exuma Property in the Agreement for Sale “does not fit” the description of the land referred to in “the purported Conveyance...recorded in the Registry of Records at Volume 11539 at pages 434 to 437”. However, no submission is made as to the consequence of this alleged disparity.

24. Mr Moxey relies upon **Section 14**, the interpretation section of the Act which defines a “certificate” as one issued under **Section 3** of the Act. Mr Moxey also asserts that the definition of “permit” also refers to **Section 3**. Counsel therefore seeks to equate the “certificate” with that which is required by **Section 3**. He also contends that the “document” is null and void until validated and it cannot be validated until a certificate is issued. “Document” in this argument advanced by Counsel appears to refer to the court-ordered Conveyance, for he specifically states that the Agreement for Sale is not subject to validation under the Act.

Submissions of the Claimant

25. Counsel for the Claimants, Ms Shannelle Bethell, submits that the Agreement for Sale is valid and binding upon the parties, their heirs, and successors. She explains that Mary Wheaton was the beneficial owner of the Exuma Property by virtue of the Vesting Order made by Sir Michael Barnett CJ (as he then was) and by the court-ordered Conveyance from her former husband, Frank Wheaton III. Therefore, it is contended, **Sections 2 and 3** of the Act did not apply to Mrs Wheaton’s situation. Rather, it was governed by **Section 6** of the Act by reason of the manner in which Mrs Wheaton acquired the Exuma Property. Ms Bethell submits that there is no circumstance in this case where Mrs Wheaton was required to obtain permission for the acquisition of her interest in the Exuma Property.

26. To assist the Court, Ms Bethell produced an excerpt from the website of the Bahamas Investment Authority, the agency responsible for the issuance of certificates of registration and permits under the Act. The excerpt, in part, set out the following information:

“Registering a Purchase or Acquisition of Real Property

“A non-Bahamian or Permanent Resident who acquires an interest in a condominium or property to be used by him/her as owner-occupied, or for construction of such a dwelling, must apply to the Secretary to the Investments Board to register the purchase.

“The purpose of Certificates of Registration is to enable certain categories on non-Bahamians to merely register their acquisition of an interest in land or a condominium in The Bahamas without having to obtain prior approval of that acquisition from the Government of The Bahamas.

Eligibility

This process is needed for any of the following scenarios:

- a. Non-Bahamians acquiring an interest in land or condominium to be used as an owner-occupied property, provided that such land is underdeveloped and it is less than two adjoining acres.
- b. Permanent Residents of The Bahamas.
- c. Non-Bahamians acquiring an interest in land under a devise or by inheritance.
- d. Non-Bahamians acquiring an interest in land by virtue of any Court Order or as a mortgagee.

- e. Non-Bahamians acquiring leasehold interest for a trade or business for a period greater than 21 years.”

(Emphasis added).

27. Counsel further asserts that while **Section 4(1)** of the Act spells out consequences for failure to obtain a certificate of registration pursuant to **Section 2**, and for failure to obtain a permit pursuant to **Section 3**, the Act provides no consequence for a failure to obtain a certificate of registration when the acquisition falls under **Section 6**. This change in consequence is both intentional and has legal significance. Moreover, Counsel argues that this interpretation is supported by rules of construction of statutes.

28. Acquisitions by virtue of a Court Order are mandatory and may be contrasted with those which are voluntary such as are dealt with under **Sections 2 and 3**, contends Ms Bethell. Counsel cites **Cartwright v Cartwright** [1996] BHS J No 92. Further, Counsel argues that the registration or recording of the court-ordered Conveyance is not null and void, but even if that were the case, Mrs Wheaton’s acquisition and legal and beneficial title to the Exuma Property are still valid. This in turn means that the Agreement for Sale is neither illegal nor null and void as suggested by the Defendant.

29. Further, Counsel submits that to cure any ill-effects on recording of documents by the absence of a certificate of registration, a party need only re-submit his conveyance to the Registry of Records with such certificate of registration. Reliance is placed on **Thompson and others v MacDonald and others** [2012] 1 BHS J No 39.

Applicable Provisions of the Act

30. It is necessary to set out in full the material provisions of the Act. Those provisions are the following:

“2. (2) A permanent resident who acquires land or an interest in land shall apply to the Secretary to the Board to have the acquisition registered with the Board and upon receipt of evidence that the appropriate fee specified in the Schedule has been paid to the Public Treasury, the Secretary to the Board shall register that purchase or acquisition in the register and issue a certificate to the applicant.

...

3. (1) A non-Bahamian (other than a permanent resident or non-Bahamian acquiring land or an interest in land under a devise or by inheritance) who intends to acquire land or an interest in land either by way of freehold or leasehold and which acquisition is not within section 2(1) shall obtain a permit from the Board to make the acquisition by making the requisite application and producing to the Secretary to the Board evidence that the appropriate fee specified in the Schedule has been paid to the Public Treasury otherwise any acquisition shall be null and void and be without effect for all purpose of law in the absence of such a permit; but the non-Bahamian making the acquisition shall be entitled to recover with such legitimate deductions as may be justified in law any and all monies paid by him as consideration for the acquisition.

...

3. (4) Notwithstanding anything contained in subsection (1) the Board may in its absolute discretion and on such terms and conditions as it may think fit validate any purported conveyance, mortgage, transfer of mortgage or other acquisition of an interest in land made contrary to subsection (1) by

issuing a permit to the non-Bahamian; and the exercise of the power by the Board under this subsection shall have the effect of causing the conveyance, mortgage, transfer of mortgage or other acquisition which by subsection (1) is to be null and void to be valid and of full effect as if it were made subsequent to the grant of a permit.

4. (1) The documents whereby any acquisition by a non-Bahamian of an interest in land is made and to which section 2 applies together with the respective certificate issued by the Secretary to the Board shall be recorded in the Registrar General's Department and where the acquisition is recorded in that Department without requisite certificate that registration shall be null and void and be without effect for all purposes of law.

4. (2) The documents whereby an acquisition of an interest in land is made and to which section 3 applies shall on being recorded in the Registrar General's Department be accompanied by the requisite permit otherwise the recording in that Department without the permit shall be null and void and be without effect for all purposes of law.

...

6. Where a non-Bahamian acquires any land or an interest in land by reason of that property becoming vested in him by virtue of any order of a court or where a non-Bahamian goes into possession of property as mortgagee, then he shall make application to the Board to have the acquisition or going into possession registered with the Board and upon receipt of the evidence that the appropriate fee specified in the Schedule has been paid to the Public Treasury, the Secretary to the Board shall register that acquisition or going into possession and issue a certificate of registration to the applicant.

...

9. (1) Nothing in this Act shall be construed so as to require the registration with, or the grant of a permit by, the Board of the acquisition of an interest in immovable property under a lease or letting agreement unless the lease or letting agreement is for the purpose of trade or business and enables the lessee or tenant to prolong the term beyond twenty-one (21) years in which case the lessee or tenant shall register the lease or letting agreement with the Board by making application and producing to the Secretary to the Board evidence that the appropriate fee specified in the Schedule has been paid to the Public Treasury.

(2) A lease or letting agreement to which subsection (1) applies shall in the absence of registration with the Board be null and void and be without effect for all purposes of law."

Discussion

31. I will first give my observations about the various statutory provisions on which Counsel centred their arguments. Mrs Wheaton acquired her Exuma Property by the Vesting Order as a part of the property she was entitled to own in accordance with the view of the Court in divorce proceedings.

32. In my view, **Section 6** of the Act is the operative provision for court-ordered acquisitions. It specifically covers the case where "a non-Bahamian acquires any land or an interest in land by reason of that property becoming vested in him by virtue of any order of a court". **Section 6** requires that person to apply to the Bahamas Investments Board to have that acquisition registered and if that person evidences his payment of a prescribed fee, the Secretary "shall register that acquisition and issue a certificate of registration." However, while **Section 6** requires the person to apply to the Board to have the acquisition registered and for a certificate of registration to be issued, it does not provide that failure to do so makes the acquisition null and void, illegal or

incapable of onward conveyance. No consequences are imposed in **Section 6** for a failure by a person who acquires land by order of a court to obtain a certificate of registration.

33. The Court observes that while the Claimants' Counsel relied upon and discussed **Section 6** of the Act in her arguments, the Defendant's Counsel did not discuss it. I am of the view that **Section 6** of the Act has direct application to the acquisition by Mrs Wheaton of the Exuma Property by way of the Vesting Order and the Claimants raise a properly contestable statutory argument in relation to the applicability of this Section.

34. Now, if **Section 6** alone applies, there would be no prescribed consequence in the Act for a failure to obtain a certificate of registration before proceeding to sell the land.

35. **Section 2(2)** is a more general provision than **Section 6** insofar as **Section 2(2)** does not appear to be the provision governing acquisition by court order. **Section 2(2)** speaks generally to acquisitions of Bahamian land by a permanent resident and requires that a certificate of registration be obtained by that person. The overlap with **Section 6** is the requirement that a fee be paid and a certificate of registration be obtained.

36. Unlike **Section 6**, **Section 2(2)** of the Act is fortified by an express statutory consequence for not obtaining a certificate of registration. By **Section 4(1)**, any recording of documents presented to the Registrar General's Department without the accompanying certificate of registration shall be null and void and without effect for all purposes of the law.

37. In my opinion, Mrs Wheaton checks all of the boxes, so to speak, for **Section 2(2)** as she was a permanent resident who acquired Bahamian land. There is no specification or requirement in that section that the land must be acquired in any particular way, so arguably this could have applied to Mrs Wheaton's situation generally. It could be said of her situation that while the source of the mandatory requirement for a certificate of registration is **Section 6**, the consequence of not obtaining the same is rooted in **Section 2(2)** and **Section 4(1)**.

38. Importantly, however, there is no provision by which a failure to produce the certificate of registration causes the acquisition of land itself to be void, illegal or incapable of remedy for the onward transfer of the land. Moreover, there is no express time limit for obtaining the certificate of registration under **Section 6** or **Section 2(2)**. The certificate appears to be obtainable at any time when the application is made to the Board and evidence of payment of the requisite fee is shown to the Secretary.

39. In this regard, the Court finds helpful the remarks of Adderley J (as he then was) in **Thompson and others v MacDonald and others** [2012] 1 BHS J. No. 39. At paragraph 45 the Court stated:

"45. The plaintiffs contend that because a Permit or Certificate of Registration is not attached to various recorded documents it means that the conveyances are void. What section 4 of the 1993

Act provides is that in the case where the lodging of the conveyance is not accompanied by the certificate or permit the recording, not the conveyance itself, is null and void. If such a certificate exists the valid conveyance can be re-submitted for recording with the certificate or Permit, or alternatively with an affidavit of Bahamian citizenship.

(Emphasis added).

40. Having read **Sections 3(1), 3(4), 4(2) and 9**, (the full text of which I have set out above), my view is that by their express words, they have no applicability to Mrs Wheaton's situation. **Section 9** deals with leasehold interests. **Section 3(1)** does not apply to permanent residents. In concluding as much, I read disjunctively the two categories of persons who are excepted from the purview of **Section 3(1)**. They are: (1) permanent residents and (2) non-Bahamians acquiring land or an interest in land under a devise or by inheritance. These categories of persons are specifically treated with in separate parts of the Act, namely **Section 2(2)** (regarding permanent residents) and **Section 2(3)** (regarding the second category).

41. Mr Moxey correctly points out that **Section 14** of the Act defines 'certificate' as follows:

“ ‘certificate’ means a certificate of registration issued by the Secretary to the Board under section 3 certifying that an acquisition by a non-Bahamian to which that section applies has been duly registered”.

(Emphasis added).

42. However, when one reads **Section 3**, it is clear the provision only deals with situations in which the issuance of a permit is required, and not a certificate of registration. The Defendant's argument seizes upon this definition, along with the references to acquisition of “freehold” interests in land and to the application to a “non-Bahamian” in **Section 3(1)** to press the point that Mrs Wheaton was required to obtain a permit for her acquisition. If this provision were applicable as argued, Mrs Wheaton's failure to obtain a permit would make her acquisition (and not merely her recording of documents) null and void.

43. I do not agree that this argument demonstrates that the Claimants have no reasonable prospects of succeeding in this case. The scheme of the Act shows clear differences between the certificate of registration and the permit, and differences in the fees and requirements for each of those documents.

44. The reference in **Section 14** to **Section 3** as the appropriate section pursuant to which a certificate of registration is issued is perhaps a reference to a previous version of the Act, that is, the original No. 41 of 1993, in which Section 2 proclaimed the repeal of The Immovable Property (Acquisition by Foreign Persons) Act. It appears that in that previous version, Section 3 covered the circumstances in which no permit is required, and section 4 covered the circumstances in which a permit is required. When the Laws of The Bahamas were later consolidated and renumbered, the old Section 2 was removed and the new Section 2 became the provision speaking to situations in which certificates of registration were required, with the new Section 3 dealing with situations in which a permit is required. In the circumstances, the reference to **Section 3** in the **Section 14**

definition of ‘certificate’ in the Act appears to be a clerical artifact from an unrevised portion of an older version of the Act. It does not avail the Defendant in the circumstances of this case.

45. Based on the Court’s assessment of the parties’ arguments, I am not satisfied that the Claimants have no meritorious argument that the court-ordered Conveyance is valid. I am not satisfied that the Act operates to invalidate Mrs Wheaton’s beneficial ownership of the Exuma Property. If it were so, the untenable implication would be that the Vesting Order of the Supreme Court could be thwarted by the requirement for a certificate of registration or a failed attempt to record documents in the Registrar General’s Office.

46. As to the illegality or invalidity Agreement for Sale, the Defendant’s argument that it is illegal or invalid because of Mrs Wheaton’s failure to obtain a certificate of registration before she died is not accepted by the Court. In the modern approach to illegality courts consider the purpose of the law, the impact upon public policy, and proportionality. This includes weighing up whether denying relief would constitute an overkill or be draconian. Applying those considerations, (and as stated above) there is no express statutory provision rendering contracts for sale void where registration requirements remain outstanding. The argument put forth by the Defendant mistakenly equates administrative non-compliance with the invalidation of contractual agreements.

47. In my opinion, the Act regulates the acquisition and registration of Bahamian property, and having regard to the material sections thereof, it is clear the Act does not automatically void agreements between parties. Moreover, it appears that any identified defect may be subject to remedy. Consequently, the obiter remarks made in the case of **Commonwealth Bank Ltd v Quality Services Ltd** does not apply to the matter before this Court, and the Agreement is not shown at this stage to be illegal or void. Nor is it unenforceable on public policy grounds.

Strike Out

48. The Court’s power to strike out a claim or defence is governed by **CPR 26.3(1)(b) and (c)**, which provides:

“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 -

...

(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...”.

49. The Court adopts the well-established approach in **Three Rivers District Council v Bank of England** [2001] UKHL 16. It states that a claim should not be struck out unless it is bound to fail and is incapable of cure by amendment. At this stage, the pleaded facts must be assumed to be true, and the Court asks whether, upon those facts, the claim is arguable.

50. The Claimants have pleaded a concluded Agreement for Sale, payment of deposit, financing approval, acquisition of a permit, and a readiness and willingness to complete. Further, they present viable arguments in relation to the failure by Mrs Wheaton, deceased, and her Estate to perform the Agreement for Sale and on the statutory implications of Mrs Wheaton's actions. In my view, this is not a claim which ought to be summarily disposed of on a strike out application as the Claimants raise properly contestable arguments.

51. A strike out will only be granted in plain and obvious cases where a claim or defence has no real prospect of success. This case involves, amongst other issues, a question of statutory interpretation which fundamentally decides the scope of the law. In these circumstances I am minded to avoid cutting off this type of analysis at an interlocutor stage, for to do so would deprive a litigant of a trial on the merits. In the absence of compelling clarity, caution must be taken against the precipitate resolution of contested issues of statutory interpretation. (See **Williams & Humbert Ltd v W & H Trade Marks (Jersey) Ltd** [1986] AC 368).

52. While the parties argue rival interpretations of provisions of the Act, those are not the only questions to be tried in this matter. Amongst others, there are issues of equitable and legal ownership, as well as how the law will treat the Estate's reliance upon the failings of its own as the basis on which to avoid performance of contractual obligations. Moreover, there has been no discovery or trial on the facts, which may reveal, amongst other matters, whether steps were taken by Mrs Wheaton before her demise to remedy and answer relevant requisitions in the transaction with the Claimants.

53. At the strikeout stage, a valid question is whether the Defendant's proposition is so clear that the claim must fail; the Court finds that it is not. In my view, the claim plainly discloses a reasonable cause of action.

54. In the circumstances, and based upon my findings, I order that the application to strike out the Claimants' case be dismissed with costs to the Claimants to be assessed if not agreed. The matter shall proceed to trial and in this regard, the Court shall provide further directions.

Dated 26 June 2026



Simone I Fitzcharles

Justice