COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Commercial Division

Claim No. 2025/CLE/gen/00546

BETWEEN

ELISHA DWIGHT ROLLE

Claimant

AND

PERRY VISCOUNT A. INGRAHAM STRACHAN

Defendant

RULING

Before: The Honourable Mr. Acting Justice Raynard S Rigby KC

Appearances: Mr. J. Michael Saunders for the Defendant/Applicant
Mrs. Erica D. Munroe for the Claimant

Hearing Dates: Heard on the papers

Submissions: 18 June 2026 and 7 July 2026

Strike out statement of case – Part 26.3 of the Supreme Court Civil Procedure Rules, 2022 – Draconian remedy – Request for information - Part 34 of the Supreme Court Civil Procedure Rules, 2022 – Meaning of "information relevant to the determination of any matter which is in dispute in the proceedings" – Case Management Regime - Interim Relief – Part 17 of the Supreme Court Civil Procedure Rules, 2022 – Section 21 of the Supreme Court Act - Risk of damage to Vessel – Vessel income earning potential – Matters to be taken into account when determining application – Balance of convenience - Irremediable prejudice – Conditions to be applied – Fortification of undertaking in damages

Rigby J (Actg.):

Introduction

1. This is my decision on two applications made by the Defendant in this action.

2. The first application was made by a Notice of Application filed on 5 November 2025 pursuant to Part 26.3 and Part 34 of the Civil Procedure Rules, 2022 ("**CPR**"). The Defendant applied to the Court to strike out the Claimant's Statement of Claim and Defence to Counterclaim occasioned by the failure of the Claimant to provide the information and documents set out in a letter dated 3 July 2025.

3. The second applicant was made by a Notice of Application filed on 8 January 2026 seeking an Order that the Defendant be permitted to immediately regain possession of a 1985 Chris-Craft 31 Scorpion Vessel ("the Vessel").

4. Both applications are supported by filed Affidavits.

5. The Claimant opposed the applications and filed Affidavits in response.

The action & the pleadings

6. The Claimant commenced the present action claiming breach of contract and loss and damage in the amount of $20,500.00, and storage fees in the amount of $11,725.00 in respect of the Vessel. The Claimant alleges that in April 2024, he and the Defendant entered into a contract to carry out repairs on the Vessel. The Claimant suggests that the agreed fee was $3,000.00 and the Defendant paid the sum of $500.00.

7. The further allegation is that in June 2024 the Defendant agreed to have the Vessel rig and they agreed to a fee of $15,000.00. At that time, the Claimant reminded the Defendant of the outstanding sums due for the work conducted on the Vessel in April 2024 and told the Defendant of a storage fee of $35.00 per day if the Defendant failed to pay the balance.

8. In the Defence & Counterclaim filed on 15 August 2025, the Defendant acknowledges that he is the owner of the Vessel and that he paid the sum of $500.00. The Defendant denies that the Claimant caried out the work on the Vessel and that any sums are due and owing. Interestingly, the Defendant acknowledges the fee of $15,000.00 to rig the Vessel but denies that he was reminded by the Claimant of the outstanding balance in June 2024.

9. The Defendant's Counterclaim is for the sum of $46,000.00, representing the sums spent to paint the Vessel, repair the flooring and to have the Vessel detailed. The Defendant alleges that the paint started to fade because the Claimant refused to

cover the Vessel from the elements. He also claims damages for wrongful detention of the Vessel.

10. The Claimant filed a Reply & Defence to Counterclaim on 10 September 2025 essentially maintaining its pleaded case and suggesting that the Defendant admitted to "*the second scope of work carried out by the Claimant was agreed at $15,000.00*".

The affidavit evidence

11. The Defendant's Affidavit in support of the applications was filed on 13 January 2026. Mr. Strachan states that the Vessel is "**located on open property off of Sunrise Road**" and is "**exposed to the elements and without secure protection**". He avers that the Claimant has no ownership of the Vessel and that his request to retrieve the Vessel was refused.

12. The Defendant also alleges that the Claimant does not have a business licence and is not the owner of the property where the Vessel is kept.

13. The Affidavit of G. A. Christian Gibson filed on 13 January 2026 also supports the Defendant's application. Mr. Gibson, a licensed private investigator, states that based on his searches he was unable to determine that the Claimant holds a business licence and is not the owner of the property where the Vessel is located. He also exhibits photographs of the Vessel on the Claimant's property.

14. The Claimant opposes the applications and relies on the Affidavits of Elisha Dwight Rolle filed on 15 June 2026 and that of Deborah Basden filed on 18 June 2026.

15. In his Affidavit, Mr. Rolle, the Claimant, acknowledges that he does not have a business license and states that one is not required because he is "**not a public mechanic, nor do I operate a commercial boat repair facility open to the public**". He states that he engages in the private purchase of distress vessels to renovate and upgrade them using his capital and eventually selling them via private sale.

16. In addressing the arrangement with the Defendant's Vessel, Mr. Rolle states that he and the Defendant had a "**private contractual agreement ... to upgrade the Defendant's vessel.... [that] he expended substantial personal funds out of pocket to purchase physical parts, components, and specialized marine equipment. These items are now permanently installed inside the Defendant's vessel.**"

17. Mr. Rolle further suggests that the Defendant would be enriched if he is allowed to take possession of the Vessel without paying the balance of $32,225.00. He also confirms that the Vessel is located on property controlled by him; he has the

responsibility of safekeeping and that the Vessel is protected from any possible vandalism or theft.

18. The Claimant made suggestions that the Defendant did not pay customs duty and value added tax on the Vessel when it was imported.

19. The Affidavit of Deborah Basden exhibits the photographs of the Vessel which bear a stamp date of 16 June 2026. The photographs show presumably the after-repairs state of the Vessel. There is no evidence before the Court relating to the pre-repair state of the Vessel.

20. In a reply Affidavit filed on 6 July 2026, the Defendant, Perry Strachan, reiterates that he does not accept that the Vessel is on the Claimant's property and that the photographs confirm that the Vessel is exposed to "**the open elements without adequate cover or protection and is suffering visible deterioration**". He also rejects the Claimant's claim to a possessory lien of the Vessel and maintains his right to seek relief from the Court.

<u>The strike out application/request for information</u>

21. The strike out application is made pursuant to Parts 26.3 and 34 of the CPR.

22. Part 26.3 of the CPR addresses the Court's jurisdiction to strike out a party's statement of case whether in whole or in part. It provides:

> **26.3 Sanctions – striking out statement of case.**
> **(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.**
> **(2) Where —**
> **(a) the Court has struck out a claimant's statement of case;**
> **(b) the claimant is ordered to pay costs to the defendant; and**
> **(c) before those costs are paid, the claimant starts a similar claim against the same defendant based on substantially the**

same facts, the Court may on the application of the defendant stay the subsequent claim until the costs of the first claim have been paid.

23. The regime governing the request for information is addressed at Part 34 of the CPR. I set out below Parts 34.1 and 34.2 of the CPR.

> **34.1 Right of parties to obtain information.**
> (1) This Part enables a party to obtain from any other party **information relevant to the determination of any matter which is in dispute in the proceedings**.
> (2) To obtain the information referred to in paragraph (1), the party must serve on the other party a request identifying the information sought.
>
> **34.2 Order compelling reply to request for information.**
> (1) If a party does not, within fourteen days, give information or agree to give such information within a reasonable period thereafter which another party has requested under rule 34.1, the party who served the request may apply for an order compelling the other party to do so.
> (2) An order may not be made under this rule unless it is necessary in order to dispose fairly of the claim or to save costs.
> (3) When considering whether to make an order, the Court must have regard to —
> (a) the likely benefit which will result if the information is given;
> (b) the likely cost of giving it; and
> (c) whether the financial resources of the party against whom the order is sought are likely to be sufficient to enable that party to comply with the order.

24. The information sought is set out in a letter dated 3 July 2025, which states the following:

> 1. **As to paragraph 1 of the SOC a copy of the Claimant's Business Licence, in force and the documents confirming his rights to the property.**
> 2. **As to paragraphs (sic) 4-7 any documents that confirm any agreements, payments or outstanding balance relating to the business relationship between the parties.**

25. The Claimant's opposition to the application is that the Defendant's request came before he filed an Acknowledgement of Service in the action and that a response "**would be premature**" at that time.

26. By an email dated 18 July 2025 from Mrs. Munroe to the Defendant's Counsel, Mr. Saunders, she promised to provide a response to the request for information once an Acknowledgement of Service is filed but that was not provided.

Analysis & determination of strike out application

27. I am satisfied that the strike out application should be dismissed and I so order.

28. The basis of the application to strike out is not that the claim is frivolous or scandalous or an abuse of the process of the court. clear. It is based on the fact that the information sought by the letter of 3 July 2025 was not provided by the Claimant. On this premise, it seems to me that the jurisdiction under Part 26.3 of the CPR is not satisfied – viz "**(a) there has been a failure to comply with a rule, practice direction, order or direction given by the Court in the proceedings**". No Order was made by the Court under Part 34 ordering the Claimant to provide the information sought in the letter of 3 July 2025. Furthermore, the relief to strike out a party's statement of case, whether in whole or in part, is not available where information is not provided pursuant to Part 34 of the CPR. There are alternative measures and options in the Rules available to the party requesting certain information to compel the party requested to provide the information.

29. I also considered the strike out application under the wider jurisdiction under Part 23, that is - **(b) the statement of case or the part to be struck out does not disclose any reasonable ground for bringing or defending a claim; and (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**. I do not consider that the facts before me warrant or justify the invoking of the Court's draconian jurisdiction under these subrules. I deem that there are triable issues raised in the pleadings in this matter and therefore this is not a plain and obvious case to invoke the rule.

30. The issues in the pleadings are the nature and scope of the agreement between the parties for the repair and rig of the Vessel. The Defendant admits that he paid the Claimant $500.00. There is also no allegation in the Defence & Counterclaim that the Claimant illegally took possession of the Vessel. The evidence supports a view that the Defendant voluntarily delivered the Vessel to the Claimant to undergo the repair works. The dispute is centered on the "agreement" reached between the parties.

31. In **Real Time Systems Ltd v Renraw Investments Ltd and Ors (2014) 84 WIR 439** the Privy Council addressed the interpretation of Part 26.2 of the Trinidad & Tobago's CPR and the application seeking to strike out the respondent's statement of case. I fully agree with the approach enunciated by Lord Mance who gave the decision for the Board:

> **[16] In the Board's opinion, the Centre's submissions involve a misconception as to the scheme of the Civil Proceedings Rules and the role of the court under them. Rule 35.3 involves a restriction on the ability of a party to request information. But it says nothing about the court's powers. In the present case, the Centre is not applying for information. It is applying to strike out, and it is in these circumstances for the court to decide upon the appropriate response.**
>
> **[17] In that connection, the court has an express discretion under r 26.2 whether to strike out (it 'may strike out'). It must therefore consider any alternatives, and r 26.1(1)(w) enables it to 'give any other direction or make any other order for the purpose of managing the case and furthering the overriding objective', which is to deal with cases justly. As the editors of the Caribbean Civil Court Practice (2011) state at Note 23.6, correctly in the Board's view, the court may under this sub-rule make orders of its own initiative. <u>There is no reason why the court, faced with an application to strike out, should not conclude that the justice of the particular case militates against this nuclear option, and that the appropriate course is to order the claimant to supply further details, or to serve an amended statement of case including such details, within a further specified period. Having regard to r 26.6, the court would quite probably also feel it appropriate to specify the consequences (which might include striking out) if the details or amendment were not duly forthcoming within that period</u>.**
>
> **[18] The Centre could in the present case have applied not under r 26.2 to strike out, but under r 26.3 for an 'unless' order, requiring Real Time to serve an amended statement of case or adequate details within a specified period, failing which the statement of case would be struck out. Since the Centre's interest was in getting rid of the proceedings, it did not so apply. But it would again be very strange if, by choosing only to apply for the more radical than the more moderate remedy, a defendant could force the court's hand, and deprive it of the option to arrive at a more proportionate solution.**

32. I fully endorse the comments made by Chief Justice Sir Ian Winder in **Maurice O. Glinton & Co. (a Firm) v Robert K. Adams and another [2024] 1 BHS J. No. 34** in discussing the jurisdiction under CPR Part 26.3(1). He said:

In Duchess of Sussex v Associated Newspapers Limited [2021] 1 All ER 336 (Ch) ("Duchess of Sussex"), Warby J (as he then was) provided a helpful summary of the correct approach to be taken when considering the English equivalent at paragraph 33(2), where he said:
An application under CPR 3.4(2)(a) calls for analysis of the statement of case, without reference to evidence. The primary facts alleged are assumed to be true. The Court should not be deterred from deciding a point of law; if it has all the necessary materials it should 'grasp the nettle': ICI Chemicals and Polymers Ltd v TTE Training Ltd [2007] EWCA Civ 725, [2007] All ER (D) 115 (Jun), But it should not strike out under this sub-rule unless it is 'certain' that the statement of case, or the part under attack discloses no reasonable grounds of claim: Richards (t/a Colin Richards & Co) v Hughes r20041 EWCA Civ 266. r20041 PNLR 706 (at [22]). <u>Even then, the Court has a discretion: it should consider whether the defect might be cured by amendment: if so, it may refrain from striking out and give an opportunity to make such an amendment.</u>

[80.] Rule 26.3(1)(c) of the CPR is a blend of the grounds formerly contained in Order 18, rules 19(1)(b), (c) and (d) of the RSC. In Duchess of Sussex, Warby J considered the correct approach to be taken when considering an application to strike out brought under rule 3.4(2)(b), the comparable but not identically worded provision of the English CPR. He said at paragraphs 33(3), 33(4) and 34:

Rule 3.4(2)(b) is broad in scope, and evidence is in principle admissible. The wording of the rule makes clear that the governing principle is that a statement of case must not be 'likely to obstruct the just disposal of the proceedings'. Like all parts of the rules, that phrase must be interpreted and applied in the light of the overriding objective of dealing with a case 'justly and at proportionate cost'. The previous rules, the Rules of the Supreme Court, allowed the court to strike out all or part of a statement of case if it was 'scandalous', a term which covered allegations of dishonesty or other wrongdoing that were irrelevant to the claim. The language is outmoded, but I agree with Mr White that the power to exclude such material remains. Allegations of that kind can easily be regarded as 'likely to obstruct the just disposal' of proceedings.

'Abuse of process' is a sub-set of category (b). An abuse of process is a significant or substantial misuse of the process. It may take a variety of forms. Typical examples are proceedings which are vexatious, or attempts to re-litigate issues decided before, or claims which are not 'worth the candle' (Jameel (Yousef) v Dow Jones & Co Inc [2005] EWCA Civ 75. [2005] QB 946. [2005] 2 WLR 1614). But the categories are not closed.

In the context of r 3.4(2)(b), and more generally, it is necessary to bear in mind the Court's duty actively to manage cases to achieve the overriding objective of deciding them justly and at proportionate cost: as the Court of Appeal recognised over 30 years ago, 'public policy and the interest of the parties require that the trial should be kept strictly to the issues necessary for a fair determination of the dispute between the parties': Polly Peck (Holdings) plc v Trelford [1986] 2 All ER 84 at 94, [1986] QB 1000 at 1021(O'Connor LJ). An aspect of the public policy referred to here is reflected in CPR 1,1(2)(e): the overriding objective Includes allotting a case 'an appropriate share of the court's resources, while taking into account the need to allot resources to other cases'.

[81.] The Court, when exercising the power to strike out conferred by the CPR, will have regard to the overriding objective and to its general powers of case management under Part 26 of the CPR. The Court has a discretion whether to strike out and therefore must consider whether any alternatives adequately meet the justice of the case, such as, where the complaint is a defective statement of case, making an unless order requiring the party against whom strike out is being considered to serve an amended statement of case within a further specified period of time: Real Time Systems Limited v Renraw Investments Limited (2014) 84 WIR 439.

33. In **Ieremeieva and another v Estera Corporate Services (BVI) Ltd and others 27 ITELR 124** Wallbank J sitting in the Eastern Caribbean Supreme Court made some instructive comments on the discretion to strike out a statement of case. I set out below several paragraphs of the decision, which mirror the law of this jurisdiction, and which I fully adopt:

[72] The discretion to strike out must also be exercised with a view to furthering the Overriding Objective of the CPR:8 see eg, Hope-Ross v Dinning AXAHCVAP 2020/0005 & 0006

(unreported, delivered 30 April 2021) at para [21] (Farara JA (Ag)). The Court of Appeal further explained that:

'The central principles which undergird the court's jurisdiction to strike out all or part of a statement claim are now settled …:

In brief, these principles are as follows:

(i) The court must 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 case in the sense that it has no real prospect of succeeding at trial. (CITCO Global Custody NV v Y2K Finance Inc [2009] ECSCJ No. 165 (delivered 19 October 2009).

(ii) A statement of 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. Further, a statement of claim should not be struck out where the dispute between the parties involves a substantial point of law which does not admit of a plain and obvious answer, or the law is in a state of development, or where the strength of the case may not be clear because it has not been fully investigated. (Ian Peters v Robert George Spencer [2009] ECSCJ No. 212 (delivered 22 December 2009), per Pereira CJ; Tawney Assets Limited v East Pine Management Limited and others [2012] ECSCJ No. 284 (delivered 17 September 2012) per Gordon JA [Ag].)

(iii) On hearing an application to strike pursuant to CPR 26.3(1)(b), the pleadings alone are to be examined. The trial judge should assume that the facts alleged in the statement of claim are true unless they are manifestly incapable of proof. (CITCO Global Custody NV v Y2K Finance Inc [2009] ECSCJ No. 165 (delivered 19 October 2009) per Edwards JA at para. 13, and Martin Didier G.C et al v Royal Caribbean Cruises Ltd. SLUCVAP consolidated appeals 2014/0024 and 2014/0004 (delivered 6 June 2016, unreported) per Pereira CJ at para. 28.)

(iv) Striking out is a draconian step or 'nuclear option' and ought only to be deployed sparingly, in the clearest of cases. The reason for proceeding cautiously is that the exercise of the jurisdiction to strike out deprives a party of its right to a trial and of its ability to strengthen its case through the process of disclosure, the filing of witness statements or witness summaries and other procedures such as requests for further information. (Ian Peters v Robert George Spencer ANUHCVAP2009/0016 (delivered 22 December 2009) per Creque JA; see also HRH Prince Abdulaziz Bin Mishal Bin Abdulaziz Al Saud v Apex Global Management Ltd and another [2014] EWCA Civ 1106.)

(v) As striking out is a draconian step, the court must consider whether the interests of justice are better served by permitting an amendment, to pleadings or deploying some other sanction, instead of striking out the statement of claim. (Pereira CJ in The Attorney General of Saint Lucia v Darrel Montrope [2020] ECSCJ No. 235. (delivered 9 July 2020); See also Peerless Limited v Gambling Regulatory Authority and others [2015] UKPC 29 and Real Time Systems Limited v Renraw Investments Limited and Others [2014] UKPC 6.).

[73] The Claimants rely further on two other, English, authorities, which are broadly to the same effect: Harrington v Charles [2023] EWHC 2420 (Ch) and Begum v Maran (UK) Ltd. [2021] EWCA Civ 326

34. I also considered the strike out application under the Court's inherent jurisdiction (see **Summers v Fairclough Homes Ltd [2012] 4 All ER 317**). I found no basis to exercise my discretion to strike out the statement of case and therefore refused to do so. There was no evidence of abuse of process and/or misconduct by the Claimant to justify the use of the "nuclear bomb". I regard the strike out regime to be one of ultimate last resort and is not intended to drive the Claimant from his right to pursue a bona fide claim. A fair trial in this matter is possible. Pleadings are closed and therefore the matter is at the case management stage. I will use my powers under the CPR to give directions for this matter to proceed to a trial. In my judgment this will achieve the overriding objectives of the CPR to deal with cases justly.

<u>Analysis & determination of request for information</u>

35. The Standard Claim Form filed on 1 July 2025 pleads at paragraph 1 that the Claimant is "**the owner of a business involved in the repair of boats and which he operated from his residential property**". In as much as that is central to the case, which in my judgment, it is not, I do not deem the request to satisfy the test to be applied under Part 34 of the CPR.

36. In my judgment the premise of the Defendant's request for the business licence and the details of the ownership of the property are not matters that are central features of the agreement between the parties and are therefore not in dispute in

the pleadings. These are not matters that are pleaded in the Defence & Counterclaim filed by the Defendant.

37. In relation to the request for "**any documents that confirm any agreements, payments or outstanding balance relating to the business relationship between the parties**", I deem this request to be reasonable, however I do not think that the Court's powers under Part 34 justify an 'early' disclosure ahead of the case management conference. While it requires the Claimant to disclose the documents such as receipts and vouchers that he may have incurred to undergo the repair, that information must form part of the usual disclosure in the context of the progress of the litigation. Furthermore, the request came after the filing of the Defence & Counterclaim, and thereby in my judgment it is not warranted.

38. In **Harcourt v FEF Griffin (Representatives of Pegasus Gymnastics Club) and others [2007] All ER (D) 333** the Court had to decide on whether the disclosure of an insurance cover was warranted under the English CPR Part 18[1] to the claimant who was likely to receive a significant award in a personal injury claim. Irwin J. granted the request. I accept that the regime under Part 18 is not identical to that of Part 34 of the CPR. The decision, albeit not strictly followed as per the authorities which follow in this Ruling, it nonetheless provides a useful guide of the term "**matters in dispute**". I deem the case a special one on its peculiar facts. In the course of the decision Irwin J said:

> **10. The nature and extent of the Defendants' insurance cover is not in itself a 'matter....in dispute in the proceedings' between the Parties, in the sense that the proper quantum of damages payable to the Claimant could be determined without determining whether the Defendants can actually pay those damages. However, it appears to me that the wording of CPR. r. 18 requires to be interpreted reasonably liberally. The purpose of the jurisdiction must be taken to be to ensure that the Parties have all the information they need to deal efficiently and justly with the matters which are in dispute between them. Moreover, the wording need not be taken to imply that there must be a live disagreement about the relevant issue, since on very many occasions parties are properly required to furnish information pursuant to CPR r. 18 precisely to discover whether there is or is not a live**

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[1] CPR, r. 18.1 reads as follows:
(1)The court may at any time order a party to -
(a) **clarify any matter which is in dispute in the proceedings**; or
(b) give additional information in relation to any such matter, whether or not the matter is contained or referred to in a statement of case.
(2)(1) is subject to any rule of law to the contrary.
(3) Where the court makes an order under paragraph (1), the party against whom it is made must -
(a) file his response; and
(b)serve it on the other parties within the time specified by the court.

disagreement between the parties on a given point. The whole thrust of the new approach to civil litigation enshrined in the Civil Procedure Rules is to avoid waste of time and cost and to ensure swift and, as far as possible, proportionate and economical litigation. Therefore, I have no hesitation in finding that if there is no rule of law or significant rule of practice to the contrary, then the wording of CPR r. 18 is broad enough to cover information of this kind.

39. I also note that in **West London Pipeline and Storage Ltd and another v Total UK Ltd and others [2008] All ER (D)** David Steel J disagreed with the decision of Irwin J in **Harcourt v FEF Griffin** (supra). In coming to his decision Steel J recognised that the case likely turned on its own facts where an interim payment was ordered to be made. I set out below some paragraphs from the decision.

> 21. In my judgment, TAV is correct in its submission that the court has no jurisdiction to require disclosure of their insurance position. It appeared to be common ground that the insurance policies were not disclosable under CPR Part 31 whether as part of standard disclosure or otherwise. They do not support or adversely affect any party's case, they are not relevant to the issues nor do they constitute documents which may lead to a train of inquiry enabling a party to advance his own case or damage his opponent's.
>
> 22. By the same token it is difficult to see how information furnished under CPR Part 18 would relate to any matter which is in dispute in the proceedings. Such was the position in Harcourt as well:
>
> "10.The nature and extent of the Defendants' insurance is not in itself a "matter in dispute in the proceedings" between the parties, in the sense that the proper quantum of damages payable to the claimant could be determined without determining whether the defendant can actually pay those damages."
>
> 23. Is it possible to construe the rule more liberally? The first difficulty is the terms of the Practice Direction supplementing CPR Part 18:
>
> "1.2A Request should be concise and strictly confined to matters which are reasonably necessary and proportionate to enable the first party to prepare his own case or to understand the case he has to answer."

I detect no conflict in this practice direction with the terms of the rule which it supplements. The insurance position does not impact on the ability to prepare the case let alone understand any potential defence.

40. Richard Salter QC in **Al Saud and another v Gibbs and another [2022] EWHC 706 (Comm)** also addressed the regime under the English Part 18. He also discussed Irwin J's comments in **Harcourt v FEF Griffin** (supra). The paragraphs below are material to my decision in the instant application:

> 32. With great respect to Irwin J, it seems to me that his more liberal and pragmatic approach to CPR Pt 18 risks stretching the scope of the rule beyond that which can reasonably be thought to be contemplated by its terms. **The rule expressly says that the matter about which clarification or further information can be sought must be one "which is in dispute in the proceedings". That wording, in my judgment, makes it clear that there are two cumulative aspects to this restriction: the matter must be "in dispute", and that dispute must be "in the proceedings".**
> 33. That means (for example) that requests under Pt 18 cannot be used for the purpose of obtaining material for cross-examination as to credit (Thorpe v Chief Constable of Greater Manchester [1989] 1 WLR 665), or to obtain material to support different claims between the same parties or claims against different parties (Trader Publishing Ltd v Autotrader.com Inc [2010] EWHC 142 (Ch)). As Morgan J observed in Barness v Formation Group Plc [2018] EWHC 1228 (Ch) at [10]:
> **.. [R]ule 18 deals with the current position at the time of the application to the court and requires the court to identify: what matter is currently in dispute? It is only in relation to such a matter that an order can be made clarifying the matter or giving additional information in relation to the matter ..**
> 34. The terms of the Practice Direction also make it clear that requests and orders under CPR Pt 18 must be strictly confined to matters which are reasonably necessary and proportionate for the stated purposes. In Hall v Sevalco Ltd [1996] PIQR 344 at 349 (a case about interrogatories under the RSC) Lord Woolf MR observed that "necessity is a stringent test": and in King v Telegraph Group Ltd [2004] EWCA Civ 613, [2005] 1 WLR 2282 at [63], Brooke LJ laid particular stress on the strictness required by the terms of the Practice Direction:
> **.. the emphasis, as always in the CPR, is on confining this part of any litigation (in which costs tended to get out of control in the pre- CPR regime) "strictly" to what is**

necessary and proportionate and to the avoidance of disproportionate expense …

35. In my judgment, the requirement of the rule that the information sought must relate to a "matter which is in dispute in the proceedings", and the requirement of the practice direction that any request must be strictly confined to matters which are reasonably necessary and proportionate for one or other of the stated purposes, are threshold conditions. If those conditions are not satisfied, then the court simply has no jurisdiction to make any order under CPR Pt 18 (though, as Thirlwall J has pointed out, there may be other powers available to the court to assist in avoiding the waste of time and costs and in achieving the "swift and .. proportionate and economical litigation" referred to by Irwin J).

36. If, however, those threshold conditions are satisfied, then the question becomes a matter for the court's discretion. The power under CPR Pt 18 is one of the court's case management powers, and its exercise should be considered in the context of the overall case management of the action: see Toussaint v Mattis [2001] CP Rep 61, CA, at [16], per Schiemann LJ.

37. CPR Pt 1.2 requires the court to seek to give effect to the overriding objective when considering whether and, if so, how to exercise a power such as that under CPR Pt 18. As Roth J noted in the cartel case of National Grid Electricity Transmission plc v ABB Ltd [2014] [EWHC] 1555 (Ch) at [39]:

A Part 18 request .. is to be interpreted in the light of the overriding objective and is part of the more open approach to litigation which the CPR seeks to establish and promote.

38. As the notes at paragraph 18.1.10 of the White Book state, that will usually mean in cases involving CPR Pt 18 having regard:

.. (a) to the likely benefit which will result if the information is given and (b) to the likely cost of giving it; and (c) whether the financial resources of the party against whom the order is sought are likely to be sufficient to enable that party to comply with such an order ..

39. The requirement in the Practice Direction that requests under CPR Pt 18 must be strictly confined to matters which are reasonably necessary and proportionate for one or other of the stated purposes reflects that fact that requests and orders under CPR Pt 18 are not an automatic aspect of the progress of litigation under the CPR, and should not therefore be made as a matter of routine.

40. Statements of Case, if properly drafted, should already contain all the information necessary to define the issues which

the court has to decide and to ensure that each party knows the case which it has to meet: see eg Ventra Investments Ltd v Bank of Scotland [2019] EWHC 2058 (Comm) at [22] to [25]. Moreover, clarity is usually better served by brevity than prolixity. As Lord Woolf MR pointed out in McPhilemy v Times Newspapers Ltd and others [1999] 3 All ER 775 at 793:

.. As well as their expense, excessive particulars can achieve directly the opposite result from that which is intended. They can obscure the issues rather than providing clarification ..

41. It follows that it will not usually be either necessary or proportionate (or in accordance with the overriding objective) for the other party to request (or for the court to order) a party who has served a compliant but concise statement of case to expand upon that pleading by the provision of more detailed further information.

42. In cases begun using the procedure in CPR Pt 7, disclosure under CPR Pt 31 will normally be followed by the exchange of witness statements under CPR Pt 32. It will therefore also not often be necessary or proportionate (or in accordance with the overriding objective) for the other party to request (or for the court to order) a party to provide at any earlier stage information which will in due course be revealed on disclosure or which will be contained in those witness statements or in expert reports: see eg National Grid Electricity Transmission plc v ABB Ltd [2012] EWHC 869 (Ch) at [73] to [74], per Roth J, and Stocker v Stocker [2014] EWHC 2402 (QB) at [27], per HHJ Richard Parkes QC (sitting as a judge of the High Court).

...

50. On an application under Pt 18, the court is not required to take at face value and without analysis everything that a party says in its response or its witness statements. In some cases it may be clear that there is no real substance in the assertions made: see eg (in the context of CPR Pt 24) ED & F Man Liquid Products v Patel [2003] EWCA Civ 472 at [10], per Potter LJ. However, it is also clear that the court should not, on such an interim application, conduct a "mini-trial". In most cases, it will neither be possible nor appropriate (having regard to the overriding objective) to go behind what is said in answers to Pt 18 requests: cf the guidance given by Beatson J in West London Pipeline and Storage Ltd v Total UK Ltd [2008] EWHC 1729 (Comm) at [80], in relation to challenges to claims to privilege. To reject a statement contained in a document verified by a statement of truth will, in many cases, involve the implicit conclusion that the person making the statement has lied. That is a conclusion which a court will understandably be reluctant to

reach on an interim application where the statement has not been tested in cross-examination.

41. In considering the authorities noted above, particularly **Al Saud and Anr v Gibbs** (supra), in my judgment the requirements of Part 34 are not satisfied to warrant the exercise of my discretion. While the information sought - "**any documents that confirm any agreements, payments or outstanding balance relating to the business relationship between the parties**" – is broadly within the scope of the "***matter which is in dispute in the proceedings***", I do not deem the request to be reasonably necessary and proportionate, particularly in light of the fact that the application is made at a late stage; after pleadings are closed, and the next stage in the proceeding is the case management conference. It is for these reasons that I decline to grant the request and dismiss the application under Part 34 of the CPR.

Analysis & determination of the injunctive relief application

42. The Defendant and the Claimant rely on the test set out in **American Cyanamid Co v Ethicon Ltd [1975] 1 All ER 504**. Given its prominence in cases before the Court, I need not set out the often-cited statements of Lord Diplock. I will limit myself to merely stating that I must refrain from engaging in a 'straight jacket' or a 'box ticking' approach to the four-stage test; namely, (i) whether there is a serious issue to be tried; (ii) whether damages would be an adequate remedy; (iii) whether the 'balance of convenience' favours the plaintiff or defendant; and (iv) consideration of any special factors that might affect the exercise of the court's discretion.

43. The Defendant argues that it has a substantive claim to ownership of the Vessel and a right to its possession and that the serious issue to be tried is whether the Claimant has a possessory or proprietary interest in the Vessel. He also relies on the decision of **Elisha Miller v Glinton SCCivApp No. 4 of 2022** to support the claim that damages is not an adequate remedy in light of interference with the Vessel and threatened harm. The Defendant further argues that the balance tilts in favour of the applicant and relies on **Sail Rock Limited v Old Fort Bay Property Owners Association Limited 2023/CLE/gen/00547**.

44. The Claimant suggested that the Defendant does not have a strong counterclaim and that the Claimant has the benefit of a common law mechanic lien over the Vessel. The Claimant also argued that damages are an adequate remedy and relies on the photographs to support the view that the Vessel is not suffering from irreparable or active damage.

45. The Claimant further argued that the Defendant's failure to "**give a financial undertaking as to damages**" and his failure to provide "**any proof of his financial ability to satisfy the Claimant's claim if he loses**" are reasons to dismiss the application.

46. The Claimant urged the Court to maintain the status quo in light of the Defendant's delay of 17 months in seeking interim relief.

47. In granting the application, I addressed my mind to section 21 of the Supreme Court Act which grants the Court a wide latitude to grant relief once it is "**just and convenient to do so**" and it can do so "**on such terms and conditions as the Court thinks fit**". The Court can also grant the relief "**whether the person against whom the injunction is sought is or is not in possession under claim of title or otherwise...**".

48. The Court's discretionary jurisdiction is further set out in Part 17 of the CPR. That jurisdiction empowers the Court to grant interim remedies including "**(b) an interim injunction; or (i) an order permitting a party seeking to recover personal property to pay a specified sum of money into court pending the outcome of the proceedings and directing that, if the party does so, the property must be given up to the party**". Additionally, the Court is not limited to the examples of the relief set out in Part 17 but "**(3) [t]he fact that a particular type of interim remedy is not listed in paragraph (1) does not affect any power that the Court may have to grant that remedy**".

49. The application before the Court is essentially to seek relief to have the Vessel, the relevant property for the purposes of Part 17, preserved and placed in the custody of its owner, the Defendant. There is no dispute that the Defendant owns the Vessel. The dispute is a narrow one in the action to whether the Claimant was engaged to carry out the services and is owed the sum of $32,225.00 as alleged by the Claimant. The parties agree that the sum of $500.00 was paid by the Defendant to the Claimant, albeit the Defendant suggests that it was the full fee, and the Claimant alleges it was a deposit for the work to be undertaken.

50. In applying the four-stage test outlined in **American Cyanamid Co** (supra), I have no hesitation in agreeing that there is a serious issue to be tried. The terms of the oral contract "agreed" by the parties is a critical feature of the dispute. The Court after the trial will have to determine if the parties agreed for the work to be at a cost of $500.00 or at a higher price as alleged by the Claimant. There does not appear to be any dispute that the Claimant was engaged to perform some form of repair to the Vessel. That is ultimately a matter for the trial judge and therefore falls outside of my determination on the instant application.

51. I am unable to fully assess the current state of the Vessel versus its state when initially delivered to the Claimant. I note that the photographs used by the Claimant to oppose the application shows the current state as of June 2026. The photographs, if they are accurate, reflect a Vessel in relatively pristine condition. It does not appear to be suffering from the elements of weather and there are no obvious signs of deterioration as alleged by the Defendant. I have no evidence before me to determine if the Vessel is likely to be the subject of a theft. I note however that it was in the Claimant's possession since April 2024 without incident.

52. The only evidence of the intended use of the Vessel before the Court is a Permit to Engage in Foreign Fishing Conducted for Sporting Purposes which expired on 21 December 2022. A new permit was not exhibited by the Defendant, however the expired permit shows that the Vessel has some income earning potential.

53. Mrs. Munroe suggests that the Claimant has a mechanic lien over the Vessel. I treat that to mean a repairer's lien (see **Green v All Motors Ltd, [1916-17] All ER Rep 1039** and see **Tappenden (trading as English & American Autos) v Artus and Anr. [1963] 3 All ER 213**).

54. In **UTB, LLC v Sheffield United Limited [2018] EWHC 1663 (Ch)** the Court had to determine whether to grant interim injunctive relief in a shareholder dispute in which a shareholder of a company was being asked to advance a loan to it against its wishes. The court found that it should only grant the relief if satisfied that it was really necessary to prevent a substantial risk of serious damage to the value of the shares and refused to grant the relief. The court also considered the meaning of the term 'preservation of property' under the UK CPR 25. Fancourt J. made some statements that I find instructive on the instant application. He stated:

> 32. The true question is whether it is proper for the Court, in the circumstances before it, to make an order of the kind sought. This, as Lord Scott explained, involves an examination of the restrictions and limitations that have been placed by a combination of judicial precedent and rules of court on the circumstances in which injunctive relief can properly be granted. Reference to precedent does not, however, require an applicant to bring himself four square within an established category of case in which relief has previously been granted. As Lord Nicholls of Birkenhead said in Mercedes Benz AG v Leiduck [1996] 1 AC 284 at 308, after referring to previous dicta in cases in the Privy Council:
>
> "These are highly persuasive voices that the jurisdiction to grant an injunction, unfettered by statute, should not be rigidly confined to exclusive categories by judicial decision. The court may grant an injunction against a party properly before it where this is required to avoid injustice, just as the statute provides and just as the Court of Chancery did before 1875. The court habitually grants injunctions in respect of certain types of conduct. But that does not mean that the situations in which injunctions may be granted are now set in stone for all time. The grant of Mareva injunctions itself gives the lie to this. As circumstances in the world change, so must the situations in which the courts must properly exercise their jurisdiction to grant injunctions. The exercise of the jurisdiction must be principled, but the criterion is

injustice. Injustice is to be viewed and decided in the light of today's conditions and standards, not those of yester-year."

...

34. In what seemed to be an attempt to plug that hole, Mr Downes argued that one of the cases in which the court could grant interim relief was where a party to proceedings has acted or was threatening to act unconscionably: see per Lord Brandon of Oakbrook in South Carolina Insurance Co v Assurantie Maatschappij "De Zeven Provincien" NV [1987] AC 24, 40. In general terms that is no doubt an accurate statement of a class of cases in which the Court will often act, but these are cases in which the unconscionable behaviour would give rise to some private right, or public harm, if not restrained. A prohibitory injunction might well be granted to prevent a party from acting inconsistently with assurances previously made, on which a claimant had arguably relied to its detriment, but a mandatory order requiring UTB to lend money to Blades does not obviously fall into that category, absent an agreement to do so.

...

42. Although that would doubtless be the paradigm case, the rule does not require to be interpreted so as to exclude other types of property. "Relevant property" is property which is the subject of a claim or as to which any question may arise on a claim. For the avoidance of doubt the rule provides that it includes land. But there is no exclusion of other types of property. It may well be that intangible property, such as shares or some intellectual property, cannot be detained, inspected, sampled or experimented on, but that does not mean that it cannot be "relevant property". Those types of property can be preserved, or sold if there is good reason to sell them quickly, or income from them can be paid to an applicant until trial. It cannot be said that if there is a dispute over ownership of a portfolio of investments, the court would not have power under this rule to order the sale of certain shares, or order the payment of income from the portfolio pending trial. The argument that the use of the word "assets" in rule 25.1(1)(g) in contradistinction to "relevant property" suggests that the latter has a limited meaning is not convincing: the reason for the use of the word "assets" in paragraph (g) is simply to distinguish assets over which a freezing order may be made from the relevant property that is the subject of the claim or as to which any question may arise on the claim.

43. In any event, even if that is wrong and intangible property is not within rule 25.1(1)(c), the rule does not limit the power of the court to grant an interim injunction or cut down the broad equitable power to grant appropriate injunctive relief pending trial. It confirms or confers power to make orders of the kind falling within the rule; it does not exclude or limit the court's general power. Rule 25.1(3) itself provides that "the fact that a particular kind of interim remedy is not listed in paragraph (1) does not affect any power that the court may have to grant that remedy".

55. In considering the balance of convenience, I deem that it is equally balanced on the instant facts before me. The Claimant has a right to his lien and the Defendant has a right to the Vessel once the sums due and owing are settled. The just result in my view is to allow the Vessel to be returned to the Defendant on condition that he pays the sum of $32,000.00 into Court or into an interest-bearing account in the joint names of Counsel for the parties within 30 days of the date of this Order or such other further period as may be agreed by the parties.

56. In arriving at this view, I considered the statements made by the English Court of Appeal in **Energy Venture Partners Ltd v Malabu Oil and Gas Ltd. [2015] 1 All ER (Comm) 97** in respect of fortification of the undertaking in damages once an injunction is granted. Tomlinson LJ said:

> **[52] In my judgment the approach adopted by the judges of first instance in these cases has been entirely appropriate and in accordance with principle. I agree with Hamblen J's resort to symmetry – since the claimant has obtained a freezing order preserving assets over which it may be able to enforce on the basis of having shown the court that it has a good arguable case, it is only appropriate that if the defendant can show that it too has a good arguable case that it will suffer loss in consequence of the making of the order, it should equally be protected. It may be said that what the defendant in such circumstances obtains is security whereas the claimant obtains something less, but in many cases, of which the present is probably one, a freezing order has the practical if not theoretical effect of giving security to the claimant for its claim.**
>
> **[53] It is completely contrary to principle to require proof on the balance of probabilities on such an application and so to do would encourage wasteful satellite litigation. In my judgment Briggs J was correct in Jirehouse to summarise the principles as he did at para [25]:**

'Broadly speaking, they require an intelligent estimate to be made of the likely amount of any loss which may be suffered by the Applicant for fortification (here the Defendants) by reason of the making of an interim order. They require the court to ascertain whether there is a sufficient level of risk of loss to require fortification. They require that the loss has been or is likely to be caused by the granting of the injunction.'

The three requirements are of course inextricably linked. The principles could equally be summarised, as Hamblen J did at para [31] of his judgment, as a requirement that the applicant for fortification show a good arguable case for it. In this interlocutory context, showing a sufficient level of risk of loss to require fortification is synonymous with showing a good arguable case to that effect. In some cases the assessment of loss may at the interlocutory stage be difficult. It is in such cases that an intelligent estimate is required. An intelligent estimate will be informed and realistic although it may not be entirely scientific.

[54] As to causation, it is sufficient for the court to be satisfied that the making of the order or injunction was a cause without which the relevant loss would not have been suffered, as Gibbs J put it in the High Court of Australia in Air Express Ltd v Ansett Transport Industries (Operations) Pty Ltd (1981) 146 CLR 249 at 313. That was said in the context of an application to enforce the undertaking. At the stage of considering whether fortification of the undertaking is required, the proposition could be restated as it is sufficient for the court to be satisfied that the making of the order is or was a cause without which the relevant loss would not be or would not have been suffered. That is the hurdle which the applicant must surmount. It is of course open to the respondent to demonstrate that it has not been surmounted, as by demonstrating that there is no causal link between the granting of the injunction or order and the loss in question. If, however, disproving the asserted causal link as to which a good arguable cause is shown requires the deployment of extensive contentious evidence and argument, that is not an exercise to be attempted at the interlocutory stage. That was the approach of Floyd J at paras [18] and [25] of his judgment in Bloomsbury, set out at para [48] above, and I agree with it.

57. I am also guided in my views by the decision of Johnson J in **Adeem Investment Holding Company KSCH v Al-Humaidhi and others [2021] EWHC 1483 (Ch)** where he concluded that there was a sufficient level of risk of loss, corresponding to a good arguable case, to require fortification in the sum of £4m due to the causal connection between the making of the interim injunction and the prospective loss. He concluded that "**the making of the injunction is a cause without which the loss would not be suffered**".

58. In my judgment the "**just and convenient**" approach is to grant the injunction on the terms highlighted above, principally because it will cause the least irremediable prejudice. The statements made by Lord Hoffman in **National Commercial Bank of Jamaica v. Olint Corp. Ltd. [2009] UKPC 16** are instructive:

> **[16] The second feature is the basis upon which Jones J decided to refuse an interlocutory injunction and the Court of Appeal decided to grant one. It is often said that the purpose of an interlocutory injunction is to preserve the status quo, but it is of course impossible to stop the world pending trial. The court may order a defendant to do something or not to do something else, but such restrictions on the defendant's freedom of action will have consequences, for him and for others, which a court has to take into account. <u>The purpose of such an injunction is to improve the chances of the court being able to do justice after a determination of the merits at the trial. At the interlocutory stage, the court must therefore assess whether granting or withholding an injunction is more likely to produce a just result.</u> As the House of Lords pointed out in *American Cyanamid Co v Ethicon Ltd* [1975] 1 All ER 504, that means that if damages will be an adequate remedy for the plaintiff, there are no grounds for interference with the defendant's freedom of action by the grant of an injunction. Likewise, if there is a serious issue to be tried and the plaintiff could be prejudiced by the acts or omissions of the defendant pending trial and the cross-undertaking in damages would provide the defendant with an adequate remedy if it turns out that his freedom of action should not have been restrained, then an injunction should ordinarily be granted.**
>
> **<u>[17] In practice, however, it is often hard to tell whether either damages or the cross-undertaking will be an adequate remedy and the court has to engage in trying to predict whether granting or withholding an injunction is more or less likely to cause irremediable prejudice (and to what extent) if it turns out that the injunction should not have been granted or withheld, as the case may be.</u> <u>The basic</u>**

principle is that the court should take whichever course seems likely to cause the least irremediable prejudice to one party or the other. This is an assessment in which, as Lord Diplock said in *American Cyanamid* [1975] 1 All ER 504 at 511:
'It would be unwise to attempt even to list all the various matters which may need to be taken into consideration in deciding where the balance lies, let alone to suggest the relative weight to be attached to them.'

Conclusion & Disposition

59. For the reasons set out above, I dismiss the Notice of Application seeking an Order to strike out the statement of case and the request for information set out in the letter of 3 July 2025.

60. I grant the Notice of Application for interim relief and hereby order the Vessel to be returned to the Defendant on condition that he pays the sum of $32,000.00 into Court or into an interest-bearing account in the joint names of Counsel for the parties within 30 days of the date of this Order or such other period as may be agreed by the parties.

61. I further set a case management conference for Monday, 20 July 2026 at 1:00 pm to set directions for a trial.

62. With respect to the issue of costs of the applications, given the terms of the Orders made, I deem the just order is for costs to abide the outcome of the action.

DATED the 15 day of July 2026

RSRigby J. Actg.

Raynard S Rigby KC
Acting Justice