COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

COMMON LAW AND EQUITY DIVISION

Claim No. 2023/CLE/GEN/00829

IN THE MATTER of an Indenture of Mortgage made the 21st day of December, A.D. 2006 between Carla Marie Neeley and Royal Bank of Canada

AND IN THE MATTER of the Mortgages Act, Chapter 156 of the Revised Laws

BETWEEN

RBC ROYAL BANK (BAHAMAS) LIMITED
Formerly ROYAL BANK OF CANADA

Claimant

AND

CARLA MARIE NEELEY

Defendant

Before: The Honourable Justice Camille Darville Gomez

Appearances: Mrs. Dennise Newton Briggs for the Claimant
Mr. Norwood Rolle for the Defendant

Hearing Date: 21st May, 2026

Practice and Procedure - Costs — Jurisdiction and Discretion – Costs follow the event – Defendant's Costs - Mode of Exercise of Discretion

RULING

DARVILLE GOMEZ, J

[1.] This application concerns the costs consequences of an application for the production of further documents. More particularly, it raises the question whether, after disclosure has been given, an applicant should first seek any outstanding documents from the opposing party before invoking the Court's jurisdiction. Such dynamics are relevant to the Court's exercise of its discretion on costs.

Background

[2.] The action was commenced by the Claimant (referred to interchangeably as the "Claimant" or the "Bank") by a Fixed Date Claim on 25th September, 2023 against the Defendant for vacant possession, an order permitting it to exercise its power of sale, and judgment for sums said to be outstanding under the mortgage. In support of its Fixed Date Claim, the Claimant filed an Affidavit in Support on 25th September, 2023 sworn by Cara V. Rolle.

[3.] By Notice of Application filed on 24th April 2026, supported by the Defendant's Affidavit filed on the same date, the Defendant sought an order compelling the Bank to produce certain documents too numerous to mention ("application for the production of further documents" or the "application"). The Bank opposed the application and filed an Affidavit of Terence Smith on 13th May, 2026 and a second Affidavit of Terence Smith on 14th May, 2026 in response.

[4.] Prior to making the application, the Defendant had twice requested disclosure of relevant documents from the Bank: first before filing her defence and again before the Case Management Conference ("CMC"). On each occasion, the Bank maintained that disclosure was premature because the proceedings had not yet reached the CMC stage.

[5.] Following the CMC, the Court gave case management directions. The Bank thereafter served its list of documents and made available an unfiled bundle of documents pursuant to its disclosure obligations.

[6.] The Defendant remained dissatisfied with the documents provided and filed the application for the production of further documents.

[7.] The application came on for hearing after discovery and inspection had occurred.

[8.] Upon reviewing the specific documents sought, it became apparent that a number of them had already been disclosed, whether in the affidavit supporting the Fixed Date Claim, or through discovery. I refer to the Bank's submissions relevant to this point:

"5.2 It is important to note that despite the Claimant having already facilitated discovery by way of the Claimant's unfiled Bundle of Documents, the Defendant nevertheless proceeded to file the instant application seeking, in large part, documents which had already been disclosed to the Defendant. Further prior to making this application, the Defendant made no attempt to engage with the Claimant to clarify whether the requested documents had already been provided, remained

outstanding, or could otherwise be identified from the documents disclosed. Had such engagement occurred, the Claimant could have addressed any concerns or provided any necessary clarification without the need for the Court's intervention and the attendant costs of this application."

[9.] In relation to those documents that had not been produced, the Bank undertook to provide them, insofar as they could be located, by the next Pre-Trial Review scheduled for 9 June 2026, while noting that some documents might no longer be available due to the passage of time.

[10.] In those circumstances, the substantive relief sought by the application was resolved by the Bank's undertaking. The only issue remaining for the court's determination is therefore the issue of costs.

Law

[11.] I refer to rule 71.6 of the Supreme Court Civil Procedure Rules, 2022 ("CPR") as follows:

> 71.6 Successful party generally entitled to costs. (1) Where the court decides to make an order about the costs of any proceedings, the general rule is that it must order the unsuccessful party to pay the costs of the successful party. (2) The court may, however, make no order as to costs or, in an exceptional case, order a successful party to pay all or part of the costs of an unsuccessful party. (3) Without limiting the court's discretion or the range of orders open to it, the court may order a person to pay — (a) costs from or up to a certain date only; (b) costs relating only to a certain distinct part of the proceedings; or (c) only a specified proportion of another person's costs. (4) In deciding who, or if any person should be liable to pay costs, the court must have regard to all the circumstances. (5) Without limiting the factors which may be considered, the court must have regard to — (a) the conduct of the parties both before and during the proceedings; (b) whether a party has succeeded on particular issues, even if not ultimately successful in the case, although success on an issue that is not conclusive of the case confers no entitlement to a costs order; (c) the manner in which a party has pursued — (i) a particular allegation; (ii) a particular issue; or (iii) the case; (d) whether the manner in which the party has pursued a particular allegation, issue or the case, has increased the costs of the proceedings; (e) whether it was reasonable for a party to — (i) pursue a particular allegation; or (ii) raise a particular issue; and whether the successful party increased the costs of the proceedings by the unreasonable pursuit of issues; and (f) whether the claimant gave reasonable notice of an intention to pursue the issue raised by the application.

[12.] The starting point or general principle is that costs follow the event per rule 71.6 of the CPR meaning that the unsuccessful party must pay the successful party's costs. Though the court, however, retains a wide discretion to depart from this rule, including making no order as to costs or, in exceptional circumstances, ordering the successful party to bear all or part of the costs of the unsuccessful party.

[13.] The rule further empowers the court to confine liability for costs to a particular date, a distinct part of the proceedings, or a specified proportion of another party's costs. In exercising its discretion, the court must consider all the circumstances, including the conduct of the parties before and during the proceedings; whether a party succeeded on particular issues even if not ultimately successful overall; the manner in which allegations or issues were pursued and whether this increased costs; the reasonableness of pursuing or raising particular allegations or issues; whether the successful party unreasonably increased costs; and whether the claimant gave reasonable notice of an intention to pursue the issue raised by the application.

[14.] These principles in rule 71.6 have consistently been applied in various cases.

[15.] In the case of **Straker v Tudor Rose (a firm) [2007] EWCA Civ 368** the Court of Appeal provided guidance on when it may be appropriate to depart from the general rule that costs follow the event. Waller J (V-P) had this to say:

"[12] Having regard to the general rule, the first task must be to decide who is the successful party. The court should then apply the general rule unless there are circumstances which lead to a different result. The circumstances which may lead to a different result include:

(a) a failure to follow a pre-action protocol;

(b) whether a party has unreasonably pursued or contested an allegation or an issue;

(c) the manner in which someone has pursued an allegation or an issue; and

(d) whether a successful party has exaggerated his claim in whole or in part."

[16.] Further, where the overall winner has pursued substantial but unsuccessful, distinct, or disproportionately expensive issues, the Court may reflect that limited success through a percentage or other proportionate costs order, generally preferring that practical approach to a detailed issue-based assessment: **The Procter & Gamble Company v SCA [2012] EWHC 2839 (Ch); Various Claimants v WM Morrison Supermarkets plc [2018] EWHC 1123 (QB)**.

[17.] Though not applicable in the instant action, an inflated or exaggerated claim, unreasonable litigation conduct, or the unreasonable rejection of an admissible offer may warrant a reduction, a date-limited order, or an order in the opponent's favour for a particular period, provided the order fairly reflects the real outcome and the costs actually generated by the relevant conduct: **Fox v Foundation Piling Ltd [2011] EWCA Civ 790; Walker Construction (UK) Ltd v Quayside Homes Ltd [2014] EWCA Civ 93.**

[18.] The Defendant's position is that she was ultimately successful on the application, and the general rule is that costs follow the event. The Bank objected and submitted that the application was unnecessary or could have possibly been avoided had the request for the documents been made prior to the filing of the application.

[19.] I agree with the Bank to the extent that engagement with the Bank prior to the filing of the application was reasonable. While I accept that it may not have resulted in the avoidance of the application entirely, it may have limited its scope.

[20.] Therefore, the real issue here is about the conduct of the Defendant in making the application for the production of further documents.

[21.] The Defendant had already requested on two occasions that the Bank disclose certain information similar to what was contained in the application. I do not agree with the Bank's refusal to disclose the information earlier and prior to the CMC, because earlier disclosure might well have obviated the filing of a defence or the continuation of the action to trial.

[22.] However, after the CMC stage, once the Bank had disclosed its documents, it would in my view have been reasonable for the Defendant to request in writing from the Bank the documents set out in her application. After all, she had done so on two previous occasions, and the effort involved in making that further request prior to filing the application would have been minimal. Again, as before, such conduct by the Defendant might have eliminated the need for the application altogether, limited the scope of the request and reduced the costs incurred. Indeed, as became apparent at the hearing, several of the documents sought had already been disclosed.

[23.] The question therefore becomes whether those circumstances justify a departure from the general rule that costs follow the event.

[24.] In my judgment, they do.

[25.] Although the Defendant was ultimately successful in securing the Bank's undertaking to produce the outstanding documents, her own conduct contributed to the costs of the application. During the hearing it became apparent that a number of the documents sought had already been disclosed by the Bank prior to discovery. In other instances, the Bank objected to disclosure on the ground that the materials were internal documents, and the Court upheld those objections in part. For the majority of the remaining requests, the Bank was able to provide alternative documents or reports that adequately conveyed the information sought. Accordingly, only a limited number of documents required the Court's intervention.

[26.] Therefore, if the parties were engaged prior to making the application, it may have been limited in its scope to the documents that the Bank was unwilling to disclose and this would have reduced costs.

[27.] Consistent with the authorities, the Court's discretion under CPR r 71.6, and in particular sub-rules (5)(a), (c) and (d), must reflect the conduct of both parties. The Bank's earlier refusal to disclose the requested information was unjustified and discouraged settlement, thereby increasing costs. Equally, the Defendant's failure to make a further written request before resorting to an application was relevant, as it unnecessarily generated litigation. As **Ritter v Godfrey [1920] 2 KB 47** illustrates, unattractive conduct alone does not displace the general rule, but where conduct has unnecessarily created expense, a proportionate order is warranted. The practical approach endorsed in **Procter & Gamble v SCA [2012] EWHC 2839 (Ch)** and **WM Morrison [2018] EWHC 1123 (QB)** supports a limited or percentage costs order where the successful party has pursued issues in a manner that increased costs. The present case falls squarely within that category.

[28.] The Defendant sought costs in the sum of $1,500.00. In the circumstances, and for the reasons set out above, I reduce the costs recoverable by 50% and award $750.00 to the Defendant to be paid by the Bank.

Dated the 31st day of July, 2026

Camille Darville Gomez
Justice