

IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

Claim No. 2023/CLE/GEN/00862

BETWEEN

POWER WINDSUN LIMITED

Claimant

AND

WARREN ARANHA

First Defendant

AND

LINCOLN BAIN

Second Defendant

Before: The Honourable Madam Justice Camille Darville-Gomez

Appearances: Mr. Darzhon J. R. Rolle for the Claimant
Mr. Wilver Deleveaux for the First Defendant
Mr. Lincoln Bain pro se

Hearing Date: 29 July, 2026

Civil Procedure — Defence — Duty to plead material facts: Under rule 10.5 of the Supreme Court Civil Procedure Rules, 2022 – Civil Procedure — Requests for information — Rule 34 CPR - Pleadings — Particulars of Defence

RULING

- [1.] The Claimant commenced this action by standard claim form filed on 31 December, 2025 for the following reliefs: (i) possession of two properties situated on the northern side of West Bay Street and east of Delaporte Point in the western district of the Island of New Providence (the “properties”) (ii) declarations that the Defendants have no right, title or interest in the properties and no right to occupy or possess any part of [them]; (iii) a perpetual injunction restraining the Defendants whether by themselves or by their servants and/or agents from entering or occupying

the properties or in any way interfering with the Claimant's possession and use of the Properties; (iv) damages for trespass; and (v) mesne profits.

- [2.] The First Defendant has not filed a Defence.
- [3.] The Second Defendant filed a Defence on 13 February, 2026. In paragraphs 5, 7 and 8, he pleaded respectively that no permits had been issued as alleged, that the Properties were nowhere near completion, that he always had access and that no barricades prevented his access, and that the First Defendant had produced to him bona fide documents asserting a valid claim of ownership.
- [4.] The Claimant by a Notice of Application filed on 15 April, 2026 sought pursuant to rule 34.2(1) of the Supreme Court Civil Procedure Rules, 2022 (the "CPR") further information from the Second Defendant relative to paragraphs 5, 7 and 8 of his Defence filed on 13 February 2026. (the "Application") The Claimant also sought consequential time in which to consider and, if so advised, file a Reply.
- [5.] The Application is supported by the affidavit of Aaliyah Smith filed on 14 April 2026. It exhibited the Claimant's letter of 6 March 2026 requesting further information from the Second Defendant in the following terms:

6th March 2026

BY HAND

EMAIL: donnamajor@hotmail.com

Mrs. Donna Dorsett Major

Suite 12, Boyd Road

Nassau, New Providence, Bahamas

Dear Mrs. Dorsett:

RE: POWER WINDSUN LIMITED V WARREN ARANHA AND LINCOLN BAIN
CLAIM No. 2023/CLE/GEN/00862 REQUEST FOR FURTHER INFORMATION

Having reviewed the Defence filed herein on 13th February 2026 on behalf of the Second Defendant, there were several assertions made by the Second Defendant that were not particularized and/or supported by documentary evidence. To that end, pursuant to Rule 34.1 of the Supreme Court Civil Procedure Rules, 2022 (as amended) the Claimant hereby formally requests the following further information to properly draft a Reply (if necessary):

Paragraph 5

"5. The Second Defendant objects to Paragraph 4A, B and C as pleaded by the Claimant, as the Basis of their claim, as there were no permits issued as alleged by the Claimant. Further, at all material times, the properties were nowhere near completion."

Request:

- a) Further information regarding the permits required and alleged to have not been attained by the Claimant;
- b) Further information as to the properties were "nowhere near completion" and indicate what works were still outstanding at this time; and
- c) The Claimant queries whether the Second Defendant intends to rely on documentary evidence such as photographs, reports or correspondence to substantiate the claims made. If so, the Claimant also requests that said documents be provided.

Paragraph 7

"7. Paragraph 6 is neither accepted and/or denied, however the Claimant is put to strict proof thereto, as the Second Defendant always had access and there were no barricades preventing the Second Defendant's access."

Request:

- a) Further information as to the Second Defendant's basis for being at the properties in question and how he gained access to same:
 - i. Whether the access was by means of a lease/tenancy agreement, a license or some other arrangement which permitted him access to the properties; and
 - ii. The particulars of any agreement entered into by the Second Defendant specifying with parties to said agreement, whether it was a written or oral agreement, the consideration (if any) and its duration.
- b) Further information with respect to when the Second Defendant originally gained access to the properties and whether he has had exclusive possession since then.

Paragraph 8

"8. Paragraph 7 is denied; the First Defendant has always produced to the Second Defendant bona fide documents asserting a valid claim of ownership to these properties."

Request:

- a) Further information regarding each document presented to you by the First Defendant. Kindly identify and provide each document (inclusive of the date, parties and/or signatories) relied upon by the First Defendant. Furthermore, we ask that you confirm whether the documents are stamped and recorded at the Registry of Records and the specifics involved.

We ask that the Second Defendant provide the aforementioned information requested within fourteen (14) days of receipt of this letter. This information should include any material the Second Defendant intends to rely upon to substantiate his Defence in this action. Without such information being provided, The Claimant is unable to properly formulate a response in addition to the parties not being able to narrow the issues before the court and have the matter appropriately disposed.

Should the Second Defendant fail to provide the requested information within the specified timeframe, my client will have no alternative but to make an application to the Court seeking an order compelling the Second Defendant reply to its request.

We look forward to your response.”

- [6.] The request was acknowledged as received on 9 March 2026. As at 14 April 2026, the Second Defendant had not provided a substantive response.
- [7.] Hence, the Claimant brought this application.

The Law

- [8.] Rule 10.5 of the Supreme Court Civil Procedure Rules, 2022 (the “CPR”) requires a defendant to set out all the facts on which the defendant relies, explain a denial and set out any different version of events which the defendant intends to prove. It further requires the defendant to identify in or annexed to the Defence any known document considered necessary to the defence. It reads as follows:

10.5 Defendant’s duty to set out case.

- (1) The defence must set out all the facts on which the defendant relies to dispute the claim.
- (2) The statement of facts referred to in paragraph (1) must be as short as practicable.
- (3) In the defence the defendant must say which, if any, allegations in the claim form or statement of claim —
 - (a) are admitted;
 - (b) are denied; and
 - (c) are neither admitted nor denied, because the defendant does not know whether they are true;
 - (d) the defendant wishes the claimant to prove.
- (4) If the defendant denies any of the allegations in the claim form or statement of claim —
 - (a) the defendant must state the reasons for doing so; and
 - (b) if the defendant intends to prove a different version of events from that given by the claimant, the defendant’s own version must be set out in the defence.
- (5) If, in relation to any allegation in the claim form or statement of claim, the defendant does not —
 - (a) admit it; or
 - (b) deny it and put forward a different version of events, the defendant must state the reasons for resisting the allegation.

(6) The defendant must identify in or annex to the defence any document known to the defendant which is considered to be necessary to the defence.

(7)

(8) The defendant must verify the facts set out in the defence by a certificate of truth in accordance with rule 3.8.

[9.] The Supreme Court Guidelines 2024 referred to the case of **Kearsley v Klarfeld [2005] EWCA Civ 1510**. That decision confirmed that a party need not plead the evidence by which its case will be proved, nor advance a separate substantive allegation of fraud merely because it invites the Court to reject the opposing party's account. It must, however, set out clearly and positively the material facts and reasons upon which it relies, so that the opposing party has fair notice of the case to meet.

[10.] I set out the provisions of Part 34 of the CPR which addressed the Application before the Court by the Claimant. It reads as follows:

PART 34 – REQUESTS FOR INFORMATION

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 Orders 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.

34.3 Information obtained under Part 34 not to be used in other proceedings.

A party may use information obtained —

(a) in compliance with an order under rule 34.2; or

(b) in response to a request under rule 34.1,

only in the proceedings in which the request or order was made unless otherwise ordered by the Court.

34.4 Statement of truth.

Any information provided under this Part must be verified by a statement of truth in accordance with rule 3.8.

- [11.] In essence, rule 34.2 of the CPR permits an application to compel information following a request under rule 34.1 where the requested information has not been provided within fourteen days or within a reasonable period agreed thereafter. An order may only be made where necessary to dispose fairly of the claim or to save costs. In determining whether to make an order, the Court must have regard to the likely benefit of the information, the likely cost of giving it, and the respondent's financial resources. An order may not be made under this rule unless it is necessary to dispose fairly of the claim or to save costs.
- [12.] In **King v Commissioner of Customs (2006) Supreme Court, Jamaica, no 2005 HCV00120 (unreported)** referred to in Commonwealth Caribbean Civil Procedure Third Edition by Gilbert Kodilinye and Vanessa Kodilinye, McDonald-Bishop J (Ag) ordered particulars related to the content of a defence following the guidelines laid down in Part 34.2. In this case, customs officers of the Contraband Enforcement Unit, in the purported execution of a special warrant had removed various boats and other equipment belonging to the claimants. The defence contained an averment that the claimants had failed to provide the authority with proof that they obtained import entry documents and paid the requisite customs duties on the equipment. The claimants filed and served a written request for information pursuant to Part 34.1, seeking particulars of the facts on which the reasonable suspicion of the customs officers that the equipment seized constituted uncustomed or prohibited goods was based. The defendants failed to respond within a reasonable time, or to advance any explanation at the case management conference, and the Claimants subsequently applied to the court pursuant to Part 34.2(1) for an order compelling the defendant to supply the information. The defendant argued that under the CPR the most suitable times for request for information to be made would be after disclosure of documents and exchange of witness statements since by such times a party would know what would be needed to meet the opponent's case. While McDonald-Bishop J (Ag) (as she then was) accepted this argument "*as the formulation of a sound and useful principle*", she also accepted the observation of Henn Collins, LJ in **Alman v Oppert [1900–3] All E.R. (Rep), 281** who stated that "*a person who sets up his defence that he believed a statement and had reasonable grounds for so doing, can hardly say that it would be an intolerable burden to state the grounds for his belief*". She referred to Part 34.2(2) and concluded that, in the circumstances of that case, disclosure of the grounds was necessary to enable the claim to be fairly disposed of. In particular, she considered that "*if the claimants were to await the exchange of witness statements to ascertain the facts upon which the defence is based,*

they might be placed at a disadvantage in properly evaluating the merits of their case and in properly preparing to meet the defendant's case."

- [13.] In **Executive Marine Management Services Limited v Fowlco Maritime & Project Services Limited and others 2024/CLE/gen/00588**, Registrar Toote (Ag) (as he then was) considered the Claimant's application under Rule 34 of the CPR seeking further information from the First Defendant in aid of preparing a Reply to the Defence and Counterclaim. The Claimant requested disclosure of a management agreement between the First and Third Defendant, as well as evidence of communications involving Mr. Paul Mellor and Capt. Venkat Kesav concerning the deployment of the tugboat *Heroic I*. The First Defendant resisted the application on the basis that the requests improperly sought evidence rather than clarification of pleadings, and were therefore premature, falling within the ambit of discovery to be addressed at the Case Management Conference. The Court accepted this submission, holding that Rule 34 is directed to requests for information necessary to clarify pleadings, not to compel early production of evidence. Accordingly, the application for further information was denied.

Analysis and Disposition

- [14.] I refer to the paragraphs in the Defence which are being considered; however, I have included the paragraphs in the Statement of Claim to which they correspond:

Statement of Claim

"Mesne profits – basis of claim

- 4A. Mesne profits are claimed on the user principle as the reasonable market rent for the Properties during the period of exclusion. The pleaded monthly rate of \$17,500 reflects (i) a professional rental valuation to be adduced, (ii) letting comparables for similar Delaporte/West Bay townhouses, and (iii) the Claimant's projected short and long-term rental yields obtained prior to exclusion.
- 4B. The Claimant seeks an inquiry and assessment of mesne profits from January 2023 until delivery up of possession, at the pleaded rate or such other rate as the Court finds proven.
- 4C. Further or alternatively, if the Court concludes that (but for the trespass) the Properties would have required a reasonable period for completion of works before it could have been let, mesne profits are claimed from the expiry of that reasonable period until delivery up of possession to be assessed on the evidence.

Trespass and Exclusion

5. In or around December 2022, the First Defendant by himself and/or by his servants or agents, wrongfully entered the Claimant's Property and took possession of it.
6. In particular, the First Defendant changed the locks and barricaded the doors of each townhouse, thereby preventing the Claimant's officers, employees, workmen, servants and agents from gaining access and excluding the Claimant from possession.

7. The First Defendant has since purported to assert lawful ownership of both Properties and has unlawfully authorized and/or permitted the Second Defendant to occupy Townhouse 2.”

Defence

- “5. The Second Defendant objects to Paragraph 4A, B, and C, as pleaded by the Claimant, as the Basis of their claim, as there were no Permits issued as alleged by the Claimant. Further, at all material times, the properties were nowhere near completion.
7. Paragraph 6 is neither accepted and/or denied, however, the Claimant is put to strict proof thereto, as the Second Defendant always had access and there were no barricades preventing the Second Defendant’s access.
8. Paragraph 7 is denied; the First Defendant has always produced to the Second Defendant bona fide documents asserting a valid claim of ownership to these properties.”

[15.] The Claimant seeks the following: particulars of the permits and outstanding works alleged; the basis, date and terms upon which the Second Defendant gained and retained access to the properties; and identification of the documents which the First Defendant is said to have produced. The 6 March, 2026 letter also requests copies of documents and other evidence, including photographs, reports and correspondence. The Claimant queries whether the Second Defendant intends to rely on documentary evidence such as photographs, reports or correspondence to substantiate the claims made. If so, the Claimant also requests that said documents be provided.

[16.] The Second Defendant opposed the application and submitted that the requests were premature and improperly sought to circumvent the disclosure process. He relied on **Executive Marine Management Services Limited** where the request made was held to be, in substance, premature evidence-gathering rather than a proper request for information.

[17.] The Second Defendant in his oral submissions had this to say:

- (i) That in relation to paragraph 5 that there were no permit signs on the building;
- (ii) That it is the Claimant’s job to prove his assertion;
- (iii) That he intends to produce photos and videos but this can be done at the Case Management Conference (“CMC”) stage;
- (iv) The allegation in paragraph 7 does not pertain to him, rather, to the First Defendant;
- (v) The allegation in paragraph 8 relates to the First Defendant. He contends that he was shown these documents as the police at the Cable Beach Police Station were.

[18.] At the outset, I readily accept that parts of the Claimant’s request, particularly those seeking copies of documents, photographs, reports, correspondence, and other material intended to substantiate

the Defence, are directed at evidence. Those matters are properly dealt with at the CMC stage through discovery and witness statements.

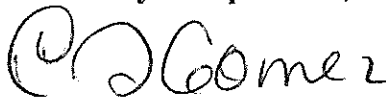
- [19.] However, the Defence pleaded factual allegations central to the claim: that the requisite permits were absent; that the properties were incomplete; that the Second Defendant had access; and that he was furnished with documents said to evidence ownership. Those allegations are pleaded at a level of generality which does not adequately disclose the case the Claimant is required to meet.”
- [20.] In particular, the allegation or assertion that the First Defendant supplied “*bona fide documents*” asserting title necessarily involves documents which appear to be material to the Defence. The documents are neither identified nor annexed. Similarly, the assertion of access does not state whether the Second Defendant relied upon a lease, licence, permission, or another arrangement, nor does it state the material terms of any such arrangement.
- [21.] In my view, in applying rule 10.5 of the CPR, the Second Defendant is required to plead the factual basis of his assertions concerning permits, the state of completion, access and the documents said to support the First Defendant’s claim to ownership. The Claimant is entitled to know the material facts relied upon and the identity of documents said to be necessary to the pleaded case. Such information will define the issues, enable the Claimant to determine whether a Reply is required, and assist the efficient management of the proceedings.
- [22.] During his oral submissions, the Second Defendant identified the basis for the disputed assertions in his Defence. He stated, in particular, that he had not seen any permit sign or permit number displayed on the property, and that he relied on documents shown to him by the First Defendant as the basis for his access to the property. He did not, however, identify the nature of those documents. In my view, it would not be burdensome to require him to plead those matters. Requiring that information before the CMC would assist the Claimant in identifying what witnesses or evidence may be necessary to meet the case advanced. It would also avoid any unnecessary disruption to the timetable, including the trial date, if those matters were left to be clarified only at the CMC stage.
- [23.] It is therefore necessary for the fair disposal of the claim in accordance with rule 34.2(2) and 34.2(3) of the CPR and is proportionate to order its provision. I cite with approval the dicta of McDonald-Bishop in **King v Commissioner of Customs** that “*if the claimants were to await the exchange of witness statements to ascertain the facts upon which the defence is based, they might be placed at a disadvantage in properly evaluating the merits of their case and in properly preparing to meet the defendant’s case.*”
- [24.] However, my order is confined to clarification and identification because I do not believe that at the pleading stage the Claimant is entitled to compel the production of the evidence by which those allegations or assertions may ultimately be established. I do appreciate thought that this is not necessarily a “*hard and fast*” rule applicable to every case.

[25.] In my view in the instant action, the documentary evidence or other evidence can properly be addressed at the CMC stage.

[26.] Therefore, the Application is granted in part in the following terms:

- (i) Within twenty-one (21) days of the date of this Order, that is by 22 September 2026, the Second Defendant shall serve and file an amended Defence, or alternatively a document setting out further information verified by a statement of truth which:
 - (a) identifies the permits alleged in paragraph 5 of the Defence not to have been issued, and states the material facts upon which that allegation is made;
 - (b) states the material facts relied upon for the assertion that the properties were nowhere near completion, including the works said to have been outstanding at the material time;
 - (c) states the basis upon which the Second Defendant says he had access to, or was entitled to enter or occupy, either property, including the date access was first obtained, whether any lease, licence, permission or other arrangement is alleged, and the material terms, parties and duration of any such arrangement;
 - (d) identifies each document said in paragraph 8 of the Defence to have been produced by the First Defendant and relied upon as asserting a valid claim of ownership, by date, nature of document, parties or signatories (if known), and the title or interest it is said to support; and
 - (e) otherwise states the material facts relied on in paragraphs 5, 7 and 8 of the Defence in accordance with rule 10.5 of the CPR.
- (ii) The Claimant may file and serve a Reply within twenty-one (21) days after service of the amended Defence or further information, that is by 6 October 2026.
- (iii) Costs awarded to the Claimant in the sum of \$2,500 to be paid by the Second Defendant before the trial of the action.

Dated this 1st day of September, 2026



Camille Darville Gomez
Justice of the Supreme Court