

**IN THE COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law and Equity Division
Claim No. 2022/CLE/GEN/01152**

BETWEEN:

ARTHUR LIGHTBOURNE

Claimant

AND

ABACO OUTBOARD ENGINES LIMITED

Defendant

Before: The Honourable Mr. Justice Leif Farquharson

Appearances: Romona Farquharson-Seymour and Samuel Taylor for the Claimant
Jacy Whittaker for the Defendant

Heard on the papers

RULING

1. This action was commenced by writ filed on 12 August 2022. The Claimant, who describes himself as a fisherman and bonefish guide residing in Abaco, seeks damages arising from the loss of his 18-foot Egret vessel. He alleges that the vessel was placed into the custody of the Defendant in August of 2019 for the purpose of being fitted with a new engine and that he paid the Defendant \$10,920.00 to complete the job. He asserts the Defendant failed to effect the repairs within the agreed timeframe and failed to deliver up the vessel. He seeks general and special damages by way of compensation. The claim is brought in breach of contract and/or negligence. Although the broad nature of the claim seems straightforward enough, the Statement of Claim is lacking certain particulars one would normally expect to see in a pleading of this nature.
2. By its Defence, the Defendant expressly reserved the right to apply to strike out the Claimant's Statement of Claim or to seek further and better particulars. On the matters of substance, the Defendant makes no admission that the material vessel was taken into its custody, it denies the allegations of breach of contract and negligence, and denies that the Claimant suffered any loss or damage as a result of its actions or omissions. Further or alternatively, it alleges that the Defendant's business, premises and equipment were completely destroyed during Hurricane Dorian and that any contract between itself and the Claimant was frustrated and/or performance was rendered impossible.

3. The matter was originally before Fraser, Snr. J (as she then was) and came on for case management before her in May of 2024. At this hearing, counsel for the Claimant pointed out that the writ as filed only contained a “*general indorsement*” (albeit this was drafted in the form of a Statement of Claim and the Defendant had filed a Defence thereto). Seemingly out of an abundance of caution, she therefore requested and was granted leave to file a Statement of Claim properly so-called, to essentially regularise the Claimant’s pleadings. This was to be done by 3 June 2024. The Defendant, in turn, was given leave to amend its Defence, which was to be done by 17 June 2024.
4. The deadline for the Claimant to file a Statement of Claim pursuant to Fraser, Snr. J’s order having passed, the Defendant filed an application to strike out the claim and for summary judgment in its favour. The Claimant thereafter on 23 October 2024 filed a Statement of Claim properly so-called. The parties appeared before me on 6 February 2025. Counsel then confirmed that they were content to have the Defendant’s outstanding application determined on the papers, which I did on 26 March 2025. In short, I declined to strike out the claim and grant summary judgment as prayed and ordered that the Statement of Claim filed on 23 October 2024 was to stand. I also issued further consequential directions relative to the filing of an amended defence, if necessary, the filing of a reply by the Claimant and other matters.
5. Further to my ruling of 26 March 2025, the Defendant filed a Defence to the Claimant’s Statement of Claim on 27 March 2025. The Defendant simultaneously filed an expansive request for further and better particulars of the Claimant’s Statement of Claim. The Claimant subsequently filed a Reply on 15 April 2025. The Reply was, in part, responsive to the Defence. It also supplied information which, on the Defendant’s case, ought to have appeared either in the Statement of Claim or in a response to its request for further and better particulars. No formal response was provided to the request for further and better particulars.
6. The Defendant now moves the Court by notice of application filed on 16 April 2025, seeking:
 - (i) An order pursuant to rule 26.3 of the *Supreme Court Civil Procedure Rules, 2022* (“*CPR*”) striking out substantially the entirety of the Claimant’s Reply on the grounds that it improperly supplements or expands the Statement of Claim by introducing new allegations of fact or material assertions not pleaded in the Statement of Claim;
 - (ii) Further, or alternatively, an order pursuant to CPR 26.3 striking out the majority of the Claimant’s Statement of Claim for failure to comply with CPR 8.7(1);
 - (iii) An order pursuant to CPR 8.8 debarring the Claimant from relying on any allegations or factual assertions not set out either in his Statement of Claim or in particulars issued in response to its request for further and better particulars;
 - (iv) Costs.

The Parties’ Pleadings in Outline

7. Given the nature of the Defendant’s application, it is useful to refer to the parties’ pleaded cases.
8. The Claimant in his Statement of Claim materially avers:

- “4. On or about the 16th day of August, A.D., 2019, the Defendant agreed, partly in writing and partly oral, to outfit the Claimant's vessel with a new engine and provided the Claimant with an invoice in the amount of Ten Thousand Nine Hundred and Twenty Dollars (\$10,920.00) to complete the work.*
- 5. The Claimant secured a loan in the amount of the invoice, that being Ten Thousand Nine Hundred and Twenty Dollars (\$10,920.00) from Commonwealth Bank to pay for the repair and thereafter delivered his vessel on its trailer to the Defendant for the work to be done while Commonwealth Bank, delivered a Commonwealth Bank manager's cheque in the agreed amount to the Defendant, as full and final payment on behalf of the Claimant.*
- 6. It was a term of the service contract that on completion of the repairs to the Claimant's vessel, which the Defendant estimated to be about three (3) weeks, the Defendant would call the Claimant to collect his vessel.*
- 7. The Claimant never received a call or any communication from the Defendant advising of the process, or the status of the vessel or otherwise.*
- 8. The Claimant attempted to reach the Defendant, its principals and/or its servants, and/or its agents after the stipulated time frame, but from September 2019 to the present was unable to communicate with or get a response from any of them.*
- 9. The Claimant contends that the Defendant's failure and/or refusal to repair and deliver the aforesaid vessel to the Claimant is a breach of the contract between the parties and further that the Defendant has breached its statutory and common law duty of care owed to the Claimant.*
- 10. As a result of the Defendant's breach of contract and negligence, the Claimant has suffered loss and damages.*

PARTICULARS OF NEGLIGENCE OF THE DEFENDANT

- 1. The Defendant failed to exercise reasonable skill and care whilst the vessel was in its care and custody.*
- 2. The Defendant failed to exercise a reasonable degree of safety and security of the vessel, as such there was no mechanisms in place by the Defendant to prevent the loss of the vessel.*
- 3. The Defendant negligently and/or failed to allow the Claimant to collect his vessel after the repairs were completed.*
- 4. Due to the negligence of the Defendant, the Claimant has suffered loss and damages.*

PARTICULARS OF BREACH OF CONTRACT OF THE DEFENDANT

- 1. The Claimant and the Defendant agreed that the Defendant would repair the vessel within three (3) weeks upon the payment of Ten Thousand Nine Hundred and Twenty Dollars (\$10,920.00)*
- 2. The Defendant failed to honour the agreement in not delivering the vessel to the Claimant upon completion.*
- 3. The Defendant failed to complete the agreed repairs on the vessel within the three (3) week timeframe that was agreed upon.*
- 4. The Defendant failed to communicate with the Claimant about the progress and/or status of the vessel.*
- 5. The Defendant willfully ignored the Claimant.*
- 6. The Defendant breached the implied term of good faith in failing to perform its duties and obligations.*

7. *The Claimant paid the full amount that being Ten thousand Nine Hundred and Twenty Dollars (\$10,920.00) for the Defendant to repair his vessel but the Defendant failed to honour that agreement.*
8. *The Defendant filed to honour the agreed amount (\$10,920.00) and is falsely claiming that the Claimant owes more funds.*
9. *The Defendant breached the implied term that they would that they would take reasonable efforts to safely secure the vessel while it was in their care and custody.*
10. *The Defendant wrongly held the Claimant's vessel after the repairs were completed without any reasonable cause after the Claimant paid the agreed amount for the repairs.*
11. *In all the circumstances the Defendant breached its contractual obligations with the Claimant in failing to repair the vessel within the agreed timeframe, wrongly holding the Claimant's vessel after the agreed amount was paid in full and not reasonably securing the Claimant's vessel and the Claimant has suffered loss and damages."*

9. By its Defence, the Defendant materially avers:

- (i) It is unable to admit the allegations in paragraphs 4 and 5 of the Statement of Claim. The Claimant has failed to plead any specific terms of the alleged contract, such as *"the exact agreement reached, the date of the agreement, the price or consideration, or the obligations undertaken by each party"*. The Claimant has further failed to plead the contents or significance of the invoice referred to or any factual or legal basis for the implication of any contractual term(s) (see *Defence, para. 13*);
- (ii) It does not admit that it agreed to a three-week timeframe for completion of the repairs as alleged (*Defence, para. 14.1*);
- (iii) *"[P]erformance of any such agreement was rendered impossible due to the complete destruction of the Defendant's premises and tools by Hurricane Dorian, a catastrophic act of God"*. The contract between the parties, if properly pleaded and proved, was therefore frustrated (*Defence, paras. 14.2 and 14.3*);
- (iv) The Claimant has not identified any particular contractual obligation that was breached (*Defence, para. 14.4*);
- (v) Any failure by the Defendant to communicate following the onset of Hurricane Dorian was due to devastation caused by the storm, which destroyed (among other things) telecommunications and infrastructure. The Defendant did not wilfully ignore the Claimant and communicated with customers to the extent possible under the extraordinary circumstances (*Defence, paras. 15 and 16*);
- (vi) The Defendant denies committing any breach of contract or negligence and contends that the destruction of the Claimant's vessel, if it did occur, was the result of Hurricane Dorian. On this basis, the contract between the parties was in any event frustrated and discharged (*Defence, paras. 17.1, 17.7, 22-22.3*);
- (vii) The Defendant does not admit the existence of any duty of care in tort owed to the Claimant beyond the duties arising under the parties' contract (*Defence, para. 17.2*);
- (viii) The alleged statutory duty owed to the Claimant is wholly unparticularised and no statute is identified, and the existence of such duty is in any event denied (*Defence, paras. 17.4-17.6*);
- (ix) The Claimant fails to plead any particulars of loss and damage and, in any event, it is denied that any loss and damage which may have been suffered by the Claimant is attributable to the Defendant (*Defence, para. 17.2, 19.5-19.6, 20, 21*).

10. As indicated, when filing its Defence, the Defendant simultaneously filed an expansive, 23-page request for further and better particulars of the Claimant's Statement of Claim. This went unanswered and the Claimant filed a Reply, materially averring:

"Particulars

4. *Each particular pleaded by the Defendant under this head is answered below by identifying the passages in the specification relied on in answer.*
5. *In response to paragraph 13.1 of the Defendant's Defence filed on the 27th day of March, A.D., 2025 (hereinafter "the Defence"), the Claimant denies the Defendant assertion and avers that the parties entered into a contract on or about the 16th day of August, A.D., 2019. The terms of the aforesaid agreement were that the Defendant would complete the repairs to the Claimant's vessel within three (3) weeks and the cost would be Ten Thousand Nine Hundred and Twenty (\$10,920.00) Dollars. Furthermore, one of the implied terms of the agreement was that the Defendant would secure the Claimant's vessel as a reasonable and prudent man would, raising a professional duty owed to the Claimant.*
6. *In response to paragraph 13.2 of the Defence, the Defendant put the Claimant to strict proof of the existence of an invoice and/or a contract. (Now produced and shown to me is a copy of the invoice and cheque marked as Exhibit "AL - 1" and "AL - 2" respectively).¹*
7. *To respond to paragraphs 13.4 and 13.5 of the Defence, the Defendant denied that good faith was a term of the agreement. However, it is trite law that parties entering into a contract must do so in good faith. The Claimant entered into the contract with good faith and believed and/or expected the Defendant to do the same.*
8. *In response to paragraph 13.8 of the Defence, the Claimant denies the Defendant assertion that the contract was not made partly in writing and partly orally. The fact that the Defendant was in possession of the Claimant's vessel proves that the parties entered into a contract. Specifically, the oral terms of the agreement were inter alia:*
 - i. *The Defendant would repair the Claimant's vessel within three (3) weeks.*
 - ii. *The cost of the repair would be Ten Thousand Nine Hundred and Twenty (\$10,920.00) Dollars.**The terms in writing of the contract were:*
 - i. *The cost of the repair would be Ten Thousand Nine Hundred and Twenty (\$10,920.00) Dollars, full and final payment. The Claimant relies on the exhibit marked as "AL - 1" and "AL- 2" respectively.*
9. *To respond to paragraph 14.1 of the Defence, the Defendant in its first Defence filed on the 9th day of January, A.D., 2023 at paragraph nine (9) agreed that the repairs to the Claimant vessel would be completed within three (3) weeks. However, at paragraph 14.1 of the Defence filed on the 27th day of March, A.D., 2025, the Defendant is now asserting that they do not admit to agreeing to a three week timeframe. The Claimant is of the belief that the Defendant is not being truthful and forthcoming and as such, the Court must adopt the view that the parties agreed to the repairs being completed within three (3) weeks.*

¹ "AL1" appears to be an invoice issued by the Defendant to the Claimant dated 16 August 2019, confirming a payment on account in the sum of \$10,920.00. "AL2" appears to be a cashier's cheque in the amount of \$10,920.00, dated 16 August 2019, drawn on Commonwealth Bank, Marsh Harbour branch, payable to the Defendant on behalf of the Claimant.

10. *In response to paragraph 14.2 of the Defence, the Defendant relies on an Act of God in order to assert that any contractual obligation was vitiated due to Hurricane Dorian. However, the Claimant asserts that the Defendant is prohibited from relying on an Act of God given the fact that the Claimant has produced an invoice proving that the amount was paid in full and the Defendant ought to have contacted the Claimant to collect his vessel before the arrival of the hurricane. Most notably, the Claimant contends that had the Defendant contacted the Claimant to collect his vessel, the vessel would not have been destroyed as the Claimant lives in Sandy Point, Abaco (southern Abaco) and Sandy Point was not greatly affected by Hurricane Dorian. As such, the Defendant failed to act with reasonable skill, care and due diligence of a business professional by failing to give the Claimant an opportunity to collect his vessel.*
 11. *In response to paragraph 15 of the Defence, the Claimant disagrees with the Defendant assertion that any failure to communicate with the Claimant was due to the devastation of Hurricane Dorian. Furthermore, the Defendant ought to have communicated with the Claimant before the arrival of the storm demanding that the Claimant collect his vessel in order to secure it, given the fact that the Claimant paid the Defendant in full.*
 12. *The Defendant was negligent in failing to properly secure the Claimant's vessel, failing to contact the Claimant to collect his vessel, etc. Moreover, the Defendant breached the contract by asserting that the Claimant was in arrears in the amount of about Five Hundred (\$500.00) Dollars. This has been addressed as the Claimant has produced an invoice proving that he paid the bill in full.*
 13. *The Claimant contends that the Defendant was negligent by failing to be in possession of insurance/marine insurance to cover boats and vessel in their care, custody and control. This failure was negligent on the Defendant's part as the Claimant has lost the use of his vessel and has experience loss and damages."*
11. The Defendant's application is supported by an affidavit sworn to by Raven Evans, a paralegal employed with Messrs. ParrisWhittaker, attorneys for the Defendant. Ms. Evans essentially speaks to the pleadings filed in the action, refers to the Claimant's non-response to the Defendant's request for further and better particulars and outlines the complaints raised by the Defendant in the current application. In this vein, she asserts that the Claimant's reply contains new factual allegations, including alleged express and implied terms of the material contract, details of performance and a new assertion concerning lack of insurance coverage. She states that none of these allegations were previously pleaded in the Statement of Claim and maintains that the Reply seeks to impermissibly supplement the Statement of Claim.
 12. No affidavit evidence has been filed by the Claimant in opposition to the current application.

Discussion and Analysis

Material provisions of the CPR, replies and further particulars

13. CPR 8.7(1) requires a claimant to include in his or her claim form or statement of claim "a statement of all the relevant facts" relied on. The claim form or statement of claim must

also identify any document known to the claimant which the claimant considers to be necessary to his or her case (CPR 8.7(3)). A claimant may not rely on any allegation or factual argument which is not set out in the claim, but which could have been set out there, unless the Court gives permission or the parties agree (CPR 8.8).

14. A reply is a statement of case,² but it has a specific procedural purpose: it responds to matters raised by the defence (see CPR 10.9). The filing of a reply is optional. A claimant who serves no reply is not therefore taken to admit matters raised in the defence (*The Supreme Court Rules, 2022 Practice Guide, 2024*, p.108). A useful discussion of the purpose and scope of a reply is contained in the judgment of Pepperall J. in *Martlet Homes Ltd. v. Mulalley & Co. Ltd.* [2021] EWHC 296 (TCC). The English rules addressing replies differ slightly from their Bahamian counterparts and are accompanied by a practice direction. The Bahamian CPR also contain no provision similar to the English rule 15.9 expressly addressing the filing of a statement of case subsequent to a reply (i.e. similar to the former RSC Order 18, rule 4, which permitted the filing of a rejoinder and subsequent pleadings with leave). Although not binding, I regard the following passage in *Martlet Homes* concerning the basic function of a reply and its interrelationship with a claimant's earlier statement of case to be instructive:

"18. Indeed, a claimant who does not file a Reply is not taken to admit the matters raised in the Defence: r 16.7. While the rules give little guidance to what can be pleaded in a Reply, para 9.2 of Practice Direction 16 provides:

'A subsequent statement of case must not contradict or be inconsistent with an earlier one; for example a reply to a defence must not bring in a new claim. Where new matters have come to light the appropriate course may be to seek the court's permission to amend the statement of case.'

19. No party may serve a statement of case after a Reply without the permission of the court: r 15.9. While a Reply is reasonably commonplace, the editors of the 2020 edition of *Civil Procedure (The White Book)* rightly observe, at para 15.9.1, that permission to serve subsequent statements of case will only be appropriate in the most exceptional circumstances and that the court is more likely to permit amendments to earlier statements of case.

20. In my judgment, the terms of r 16.4(1)(a), the optional nature of the Reply, the rule restricting subsequent statements of case and the terms of the Practice Direction all point to the clear conclusion that any ground of claim must be pleaded in the Particulars of Claim. New claims must be added by amending the Particulars of Claim and cannot simply be pleaded by way of Reply. I reject Mr Selby's submission that such view would deprive the Reply of all purpose. A Reply can be particularly useful in order to refute a ground of defence. For example, a Reply can properly plead:

- 20.1 a later date of knowledge pursuant to ss 14 or 14A of the Limitation Act 1980, or that the court should disapply the primary limitation period pursuant to ss 32A or 33 of the Act, in answer to a plea in the Defence that the claim is statute barred;
- 20.2 that an exemption or limitation clause was not incorporated into the parties' contract or that it was of no effect in excluding or limiting liability because the clause did not satisfy the condition of reasonableness within the meaning of the Unfair Contract Terms Act 1977; or

² See CPR 2.1

- 20.3 *that the defendant is estopped by some earlier judgment or representation from relying upon a particular defence.*

In each example, the claimant would be pleading new facts in order to refute a defence, but it would not be pleading a new claim. Equally, while there is no obligation to respond upon the facts, a Reply can usefully admit a fact alleged in the Defence (thereby avoiding the cost and trouble of needing to prove the fact and allowing the court and parties to focus on the real issues) while explaining why such admitted fact does not provide a defence to the claim. Or a Reply can deny an allegation of fact and usefully explain why such allegation must be wrong.

21. Not only is the proposition that one can advance a new claim in a Reply contrary to the clear terms of the Practice Direction, but it is also inherently undesirable and contrary to the overriding objective of dealing with cases justly and at proportionate cost. If such practice were to be condoned, claimants would not need to be precise in their formulation of the Particulars of Claim since they could always have a second bite of the cherry when pleading the Reply. Defendants would have to seek permission from the court in order to answer by way of Rejoinder any new claims pleaded in the Reply, which might in turn call for a Surrejoinder from the claimant. Further, a claimant seeking to bring a new claim after the expiry of the limitation period could sidestep r 17.4 altogether (although possibly not s 35 of the Limitation Act 1980) by avoiding the need to make any amendment.”³ [Emphasis supplied]

15. The authors of *The Caribbean Civil Court Practice* (3rd ed.), 2024, put the matter more succinctly and state as follows (at p.269):

“The filing of a reply is completely optional as it is presumed that the claimant does not admit any part of the defence. However, to the extent that a claimant wishes to respond to the defence by pleading factual matters not set out in the statement of case or statement of claim, a reply can be used to do so. This is subject to the caveat that the reply is not to be used to raise a new claim.”

16. CPR 34 entitles a party to obtain from any other party information relevant to the determination of any matter in dispute in the proceedings. An order may not be made under the rule “*unless it is necessary in order to dispose fairly of the claim or to save costs*” (CPR 34.2(2)). CPR 34.2(3) also requires consideration of the likely benefit of the information, the likely cost of providing it and the financial resources of the party required to comply. Extensive and disproportionate requests for further information are strongly discouraged and will usually not be allowed where the court considers that the nature of the case to be met is clear (see 2024 *White Book*, p.532 and *The Caribbean Civil Court Practice* (3rd ed.), 2024, p.272).
17. The case of *Real Time Systems Ltd. v. Renraw Investments Ltd. and Ors.* (84) WIR 439 is also instructive for present purposes. The underlying dispute concerned an alleged loan. In answer to a pre-action protocol letter demanding repayment, the appellant through its attorneys requested particulars of the loan, namely: whether the agreement was oral or in writing; when it was made and who were the parties; and, if oral, what were

³ Upheld in *Martlet Homes Ltd. v. Mulalley & Co. Ltd.* [2022] EWCA Civ 32, although the appeal concerned amendments and not Pepperall J’s conclusions relating to the Reply.

its specific terms and conditions. The respondent's response was to issue proceedings, by a claim form and statement of case both generally framed, and to thereafter seek summary judgment. The appellant resisted this application, alleging that the funds advanced were a gift. It also applied to strike out the proceedings as an abuse of process for, *inter alia*, failure to provide proper particulars of the alleged loan and non-compliance with the Trinidad equivalent of CPR 8.7.

18. At first instance, the respondent's statement of case was struck out. On appeal, this was overturned and the matter remitted to the judge for reconsideration of the appropriate order to make on the striking out application. The Court of Appeal's decision was upheld by the Board. Central to the Board's analysis was the interrelationship between Parts 25, 26 and 27 of the Trinidadian CPR, addressing, respectively, the High Court's duty to manage cases, its general case management powers and the right of parties to obtain information.
19. Unlike the Bahamian Part 34, the Trinidad rules contained a provision stating that an application for an order compelling the provision of information could not be made before the time for serving witness statements had expired nor less than 42 days before the date fixed for trial. The Privy Council rejected the suggestion that this precluded the Court from ordering further particulars of a claim to be provided at an earlier stage, if otherwise warranted. The headnote, which is quoted below, sufficiently explains the Board's reasoning:

"The court has an express discretion under CPR 26.2 whether to strike out. It must therefore consider any alternatives, and CPR 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.⁴ The court may under this sub-rule make orders of its own initiative. 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 might 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. While CPR 35.3 involves a restriction on the ability of a party to request information, it says nothing about the court's powers. It does not follow from r 35.3 that, if the pleadings are not satisfactory prior to exchange of witness statements, there is nothing that can be done about it. That would be a very strange conclusion, particularly under a new system of rules designed to enable matters to proceed smoothly and efficiently." [Emphasis supplied]

20. Coming back to the matter at hand, I would not regard it as an appropriate exercise of the Court's discretion to strike out substantially the entirety of the Claimant's Reply merely because it contains material which could have been provided by way of response to the Defendant's request for further and better particulars. The rules do not demand formalism for its own sake. The Court's concern is whether the documents, read fairly, define the

⁴ Cf. Bahamian CPR 26.1(v)

issues, give the Defendant fair notice of the case to be met and permit the action to be managed justly and proportionately. As part of this, the Defendant must also be afforded an opportunity to address and respond factually to the case against it.

21. The present course is, however, less than satisfactory. The Claimant's affirmative case should not be left to emerge by comparing the Statement of Claim, the Defence and the Reply. This presents uncertainty as to which facts are relied upon as material allegations or particulars in support of the actual claim itself and which are merely responsive to the Defence. The CPR also contain no express provision addressing the filing of any 'statement of case' after a reply, such as is found in rule 15.9 of the English CPR and Order 18, rule 4 of the former RSC, the latter of which permitted the filing of a rejoinder by a defendant.

The Claimant's Reply

22. I address the Reply first. The alleged three-week completion term and agreed price of \$10,920.00 are already substantially pleaded in the Statement of Claim. The Reply supplies additional detail as to their alleged oral or written character (see *Reply, paras.5 and 8*). The alleged failure reasonably to secure the vessel also appears in the Statement of Claim (*Reply, paras.5 and 10*). Any further information required to identify the contractual or tortious basis of that existing allegation falls to be considered when determining the relevant requests for particulars.
23. The contention that the Defendant should have communicated with the Claimant before Hurricane Dorian may both answer the frustration defence and particularise the existing allegations concerning communication and reasonable care (*Reply, para.10*). Such passages are not to be removed merely because they contain detail absent from the Statement of Claim.
24. Paragraph 13 of the Reply advances negligence through failure to carry marine insurance. This is an additional ground of liability, not a particular or detail of the pleaded failures to safeguard or return the vessel. It is struck out, without determination of its substantive viability or any application to introduce it by amendment. The distinction between new facts answering a defence and an additional ground of claim is illustrated by *Martlet Homes*, paras.18-24.
25. The reference in paragraph 12 of the Reply to the Defendant's assertion of \$500 being in arrears is not a new claim. Particulars 8 and 10 of the contractual breaches in the Statement of Claim already allege an unjustified demand for additional funds and wrongful retention of the vessel after payment. The Reply supplies an approximate amount. The demand and its connection to retention may require particulars, not striking out.
26. Paragraphs 5 and 8 of the Reply likewise elaborate existing contractual allegations. Paragraph 7 concerns the already pleaded good faith term (see *Statement of Claim, particulars of breach of contract no. 6*). Paragraphs 10 and 11 answer the hurricane and communication defences and are retained, subject to clarification as to the source of the obligation. This is addressed further below.
27. In paragraph 4 of the Reply, the words "*in the specification*" are deleted or struck because no specification is identified. In paragraph 6, the affidavit-style words "*Now produced and shown to me is*" are struck, leaving the identification of the invoice and cheque. The final

sentence of paragraph 9, beginning “*The Claimant is of the belief that the Defendant is not being truthful...*”, is struck as unnecessary argument. In paragraph 12, “*etc.*” is struck so that it cannot reserve unidentified allegations. No other passage of the Reply is struck out.

Defendant’s request for further particulars

28. I now turn to the outstanding requests for particulars. For each request, I have considered the allegation to which it relates, the information already supplied and the benefit and burden of requiring further particulars. The orders below are confined to information which I consider necessary for the fair disposal of the claim or the saving of costs. I make no finding as to the Claimant’s financial resources in the absence of material addressing these.
29. The numbering below follows the Defendant’s request, which in turn identifies paragraphs in the Claimant’s Statement of Claim for which further particulars are sought.

Requests 1.2–1.4 in relation to paragraph 4 of the Statement of Claim: allowed in part. The Claimant is to (i) identify the participants who allegedly partly concluded the agreement orally and the material oral communications; (ii) identify the documents relied on as embodying the parties’ agreement; (iii) clarify whether the invoice supplies contractual terms or merely evidences the agreement or payment.

Request 2.2 in relation to paragraph 5 of the Statement of Claim: allowed. The Claimant is to state the date or approximate date on which he allegedly delivered his vessel to the Defendant’s premises.

Request 2.3 in relation to paragraph 5 of the Statement of Claim: allowed in part. The Claimant is to state when and how the cheque was delivered.

Requests 3.3–3.4 in relation to paragraph 6 of the Statement of Claim: allowed in part. The Claimant is to state (i) whether the three-week period referred to was a contractual deadline or an estimate, (ii) the date of commencement of the three-week period, and (iii) whether the three-week period was agreed in writing or orally.

Requests 4.2.1–4.5 in relation to paragraph 7 of the Statement of Claim: allowed in part. The Claimant is to state (i) the source of the obligation on the part of the Defendant to communicate with the Claimant to advise of the progress or status of the material vessel, and (ii) if the obligation was agreed to in writing or orally.

Requests 6.1.1–6.1.4 in relation to paragraph 9 of the Statement of Claim: allowed in part. The Claimant is to identify the statute and statutory provision relied upon (or withdraw the allegation of breach of statutory duty of care).

Requests 7.3.1–7.3.3, 7.4.2–7.4.4 and 7.5 in relation to paragraph 10 of the Statement of Claim: allowed in part. The Claimant is to (i) itemise losses claimed as special damages, provide the nature of general damages claimed and provide the calculation or rate in respect of damages for alleged loss of use, (ii) confirm his position as to the alleged fate of the material vessel, including if uncertain.

Requests 8.1.1–8.1.3 and 8.2.1–8.2.4 in relation to paragraph 10 of the Statement of Claim and particulars of negligence: allowed in part. The Claimant is to specify (i) what the Defendant did or did not do which is said to fall below the standard of reasonable skill and care, (ii) what the Defendant did or did not do in failing to allegedly exercise a reasonable degree of safety and security of the vessel.

Requests 9.1.2.1–9.1.2.3 in relation to paragraph 10 of the Statement of Claim and particulars of breach of contract: allowed in part. The Claimant is to identify (i) the source of the alleged implied term of good faith (e.g. contract, equity), (ii) the specific conduct alleged to constitute a breach of the same.

Request 9.2.7 in relation to particulars of breach of contract in Statement of Claim: allowed only as to the period the Defendant allegedly wrongly held or retained the Claimant's vessel.

Requests 9.3.2–9.5 in relation to particulars of breach of contract in Statement of Claim: allowed in part. The Claimant is to identify the source of the implied safeguarding obligation (e.g. contract, equity, bailment) and whether the same facts support its contractual and negligent breach.

30. All other requests for further particulars or information are refused. With the provision of the particulars ordered to be provided, the affirmative case to be met by the Defendant should be clear. In my view, the additional particulars sought are not necessary for the fair disposal of the claim or for the saving of costs and are excessive.
31. I would merely add that I do not regard it as necessary to require the Claimant to file an Amended Statement of Claim merely to consolidate material already substantially pleaded. This conclusion, however, does not authorise the introduction of an additional ground of claim through either the further particulars or the Reply. If the Claimant wishes to advance such a ground, he must pursue the applicable amendment procedure.
32. Nothing in this ruling determines the ultimate merits of any factual allegation in the Statement of Claim. Nor does it determine any defence or other objection which the Defendant may properly advance.

Costs

33. On the issue of costs, I note that the Defendant has obtained limited relief concerning the Reply and the provision of particulars. The Claimant's failure to respond formally to the request for further and better particulars also contributed to the need for the application. However, the breadth of the Defendant's requests and relief sought occasioned considerable unnecessary time and expense. Having considered the outcome as a whole and the parties' respective conduct, I therefore consider it appropriate that each party bear their own costs of this application.

Disposition

34. In view of the foregoing, it is ordered:

- (i) Paragraph 13 of the Claimant's Reply is struck out in its entirety. The limited deletions specified in paragraph 27 of this ruling shall also be made. The application to strike out any other passage of the Reply is refused.
- (ii) Within 21 days of this order, the Claimant shall file and serve the further particulars specified in paragraph 29 of this ruling, verified by a statement of truth. Failure to provide the particulars within the stated period shall result in the Claimant's Statement of Claim being struck out automatically. All other requests for further and better particulars are refused.
- (iii) The application to strike out the Statement of Claim, in whole or in part, and the application for a general debarring order under CPR 8.8 are refused.
- (iv) The Defendant has permission, if so advised, to file and serve an Amended Defence within 21 days after service of the particulars required by paragraph (ii).
- (v) Each side shall bear their own costs of the application.
- (vi) Further case management directions will be issued separately.

L. Farquharson

Farquharson, J.
15 October 2026

