

IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

COMMON LAW AND EQUITY DIVISION

Claim No. 2025/CLE/gen/00080

B E T W E E N

ANTONIO ALBURY

Claimant

AND

SCOTIABANK (BAHAMAS) LIMITED

Defendant

Before: The Honourable Madam Justice Camille Darville Gomez

Appearances: Mr. Osman Johnson for the Claimant
Ms Nerissa Greene for the Defendant

Hearing Date: On the papers

Submissions: 21 May, 2026, 8 September, 2026 and 22 September, 2026

Civil Procedure – Consolidation of actions – Active case management – Overriding objective – CPR 2022, Parts 1 and 25 – Common questions of law or fact – Related proceedings concerning same property – Mortgage enforcement action and insurance claim – Whether sufficient substantive overlap to justify consolidation – Coordinated case management ordered instead

DARVILLE-GOMEZ, J

- [1.] I delivered my ruling to the parties on 20 October, 2026 and promised to reduce my reasons into writing, I do so now.
- [2.] The Bank applied by Notice of Application filed on 28 October, 2025 for inter alia, an order pursuant to Part 26.1(2)(b) of the Supreme Court Civil Procedure Rules, 2022 (“CPR”) to consolidate the instant action with action 2024/CLE/gen/01069 which will be referred to as the Mortgage Action. The instant action will be referred to as the Insurance Action. Both actions were commenced in New Providence.

[3.] The ground relied upon in support of the consolidation was expressed in the application as follows:

- ii. Pursuant to Part 26.1(2)(b) of the CPR, the Court may consolidate the actions, the Defendant brought a claim against the Claimant in the Mortgage Action under Part 62 of the CPR. Further, the Claimant's cause of action in the Insurance Action is nexus and/or one and the same to action in the Mortgage Action, commenced by the Defendant.

[4.] The Court's power to consolidate proceedings is contained in CPR Part 26, which governs the Court's case management powers. CPR 26.1 provides:

"(1) The list of powers in this rule is in addition to any powers given to the Court by any other rule, practice direction or any enactment.

*(2) Except where these Rules provide otherwise, the Court may -
(b) consolidate proceedings."*

[5.] The exercise of that power must be guided by the overriding objective contained in CPR Part 1. Rule 1.1 provides that the overriding objective of the Rules is to enable the Court to deal with cases justly and at proportionate cost. Rule 1.2 places the Court under a duty to seek to give effect to the overriding objective whenever it exercises any power under the Rules or interprets any rule. The Court must therefore consider whether consolidation would further the just, efficient and proportionate determination of the proceedings.

[6.] The Bank commenced the Mortgage Action against Antonio Stanley Albury and Lisa Albury (the "Alburys") on 22 November, 2024 pursuant to Part 62 of the CPR. In that action, the Bank seeks:

- (a) An Order Vacant Possession of the Mortgaged Property being ALL THAT pieces parcels or lots of land being Lot Numbered Forty (40) and Forty-two (42) being a portion of Tract "B-88" called and known as "THE JOHN SWEETING TRACT" situate near the settlement of Marsh Harbour on the Island of Great Abaco one of the Islands in the Commonwealth of The Bahamas.
- (b) That the Mortgagor deliver up possession of the Mortgaged Property to the Mortgagee within 28 days of the Order;
- (c) An Order that the Claimant is entitled to exercise its power of sale of the Mortgaged Property;
- (d) Judgement for the outstanding sum of \$393,821.98 due and owing under the Mortgage dated 17th day of August, A.D, 2006 and Further Charger dated the 28th day of March, A.D., 2009 respectively, which represents:-
 - a. The principal sum of \$184,553.12, Accrued Interest in the sum of \$49,614.90, Late Fees in the sum of \$1,160.00, Total Life/HCP premium due in the sum of \$534.40 and additional Interest Charges in the sum of \$7,584.00 under loan numbered 1679308BS;
 - b. The principal sum of \$53,803.11, Add on Charges in the sum of \$36,930.81; Accrued Interest in the sum of \$19,105.47, Interest on Add-On Charges in the sum of \$25,568.49 and Late Fees in the sum of \$1,460.00 and additional Interest Charges in the sum of \$8,037.00 under loan numbered 1679929BS

- (e) Interest at the rate of 6.25% per centum per annum on the outstanding principal sum of \$184,553.12 from August 6, 2024 to the date of payment of Judgment and thereafter at the statutory rate pursuant to the Civil Procedure (Award of Interest) Act from the date of judgment until payment;
- (f) Interest at the rate of 7.75% per centum per annum on the outstanding principal sum of \$53,803.11 from August 6, 2024 to the date of payment or Judgment and thereafter at the statutory rate pursuant to the Civil Procedure (Award of Interest) Act from the date of judgment until payment;
- (g) Such further or other relief as the Court deems just; and
- (h) Costs”

[7.] Antonio Albury subsequently commenced the Insurance Action against the Bank on 3 February, 2025. In that action, he seeks:

- (a) Damages for breach of contract;
- (b) Damages for breach of fiduciary duty;
- (c) Damages for the Tort of Negligence;
- (d) An Order directing the Defendant to pay the Claimant the sum and/or sums due under the Policy of Insurance;
- (e) An Order from the Court for Specific Performance as against the Defendant;
- (f) An Order prohibiting any sale of the mortgaged property pending the adjudication of this action;
- (g) Interest pursuant to the Civil Procedure (Award of Interest) Act 1992 at the statutory rate of 5% calculated from September 1st 2019 to the present;
- (h) Amount claimed \$(to be assessed and continuing)
- (i) Court fees \$300.00
- (j) Legal practitioner’s fixed costs on issue \$(to be assessed and continuing)
- (k) Together with interest from September 1st 2019
- (l) (Daily rate of interest thereafter = \$(to be assessed and continuing)
- (m) Total claim \$(to be assessed and continuing)

[8.] In the Mortgage Action, the Alburys made two applications before the Honourable Justice Mrs. Cheryl Bazard. The applications raised two issues for determination: (i) whether the Fixed Date Claim and Statement of Claim should be struck out because the G10 form was not served with them; and (ii) whether the proceedings should be transferred to the Northern Region on the ground that they had been commenced in the wrong jurisdiction.

[9.] By ruling dated 8 May 2026, the Honourable Justice Bazard dismissed both applications and ordered the Alburys to serve their Defence within 21 days. On 20 May 2026, the Alburys filed an application for leave to appeal the ruling and sought a stay of the substantive proceedings. They filed their Defence on 27 May 2026.

[10.] The application for leave to appeal is pending and has not been heard.

- [11.] The Bank's position was that the Insurance Action arose from the same mortgage transaction and/or identical parties; the same property; the same factual matrix, the same loss event (Hurricane Dorian); overlapping and/or related proceedings in multiple jurisdictions (Freeport and Nassau).
- [12.] Mr. Albury opposed consolidation, seeking dismissal of the application or, alternatively, deferral pending the appellate process, joint management without consolidation, or priority for this action with a stay of the Mortgage Action.
- [13.] The Court was helpfully provided with a plethora of cases to consider and determine these issues and I thank them for their submissions.

Analysis and Disposition

- [14.] In determining whether to exercise its discretion to consolidate, the Court must therefore consider not only whether there is a sufficient connection between the proceedings, but also whether consolidation would advance the overriding objective by saving expense, dealing with the cases expeditiously and fairly, ensuring that judicial resources are used appropriately, and avoiding unnecessary duplication while preserving fairness to all parties.
- [15.] It was against that statutory and procedural framework that I considered: (i) whether the Court should order consolidation; (ii) what issues genuinely required determination in both actions; (iii) whether consolidation would provide procedural advantages outweighing any prejudice or delay; and (iv) whether coordinated case management would adequately address the connections between the proceedings.
- [16.] In considering whether consolidation ought to be ordered, I was guided by the decision of Justice Andrew Forbes in **Western Air Ltd. v Ashton Wells and Donald Pinder (2024/CLE/gen/FP/00206)**, where he observed that, in applying the overriding objective, the Court must consider whether there is a common question of law and whether the reliefs claimed arise out of the same transaction or series of transactions. In that case, consolidation was found desirable as a matter of law and fact because the claims arose from the same contractual lending arrangement and involved substantially overlapping issues.
- [17.] In the present case, while both proceedings relate to the same property and arise out of a broader banking relationship between the parties, the causes of action and matters requiring determination are materially different. The Mortgage Action concerns the Bank's entitlement to enforce its mortgage security, obtain possession, exercise its power of sale and recover the indebtedness alleged to be due under the mortgage and further charge. The Insurance Action concerns allegations that the Bank assumed responsibility for maintaining insurance coverage on the

mortgaged property, that the insurance lapsed, and that losses were sustained following Hurricane Dorian.

- [18.] As to the issues genuinely requiring determination in both actions, there is some overlap concerning the property itself, the mortgage relationship between the parties, and the relief sought in relation to any proposed sale of the property. However, the alleged insurance breach had not been pleaded in the Mortgage Action as a defence, set-off, or counterclaim. The principal issues concerning the existence and extent of the mortgage indebtedness, compliance with the mortgage terms, and the Bank's enforcement rights remain distinct from the questions arising in the Insurance Action regarding insurance obligations, causation, and damages.
- [19.] I next considered whether consolidation would provide procedural advantages outweighing any prejudice or delay. While a consolidated action may avoid some duplication of evidence and documentation, I was not satisfied on the material before me that the extent of common issues had been sufficiently identified. There is a risk that consolidation would broaden the scope of the Mortgage Action by introducing issues that are presently confined to the Insurance Action and thereby complicate and delay the resolution of both proceedings. I therefore found that the additional benefit of full consolidation over coordinated management had not been demonstrated.
- [20.] Finally, I considered whether the connections between the proceedings could be adequately addressed through coordinated case management. In my judgment, they could. Common directions concerning disclosure, documentary evidence, witness management and hearing timetables can be addressed jointly while preserving the separate identity of each action. Such an approach permits the Court to manage any genuine overlap efficiently and consistently without requiring a single consolidated trial at this stage.
- [21.] Having considered each of these factors and bearing in mind the Court's duty under Parts 1 and 26 of the CPR to deal with cases justly and at proportionate cost, I concluded that while the connection between the proceedings justifies common judicial supervision, it does not establish the degree of substantive overlap necessary to warrant full consolidation. The Bank has therefore failed to demonstrate that consolidation is presently necessary or desirable. Coordinated case management will better serve the overriding objective by preserving the separate issues for determination while allowing the Court to manage any overlap efficiently.
- [22.] Accordingly, the application for consolidation is refused.
- [23.] Although the Bank has not obtained its primary relief of consolidation, both parties ultimately advocated for some form of coordinated management of the proceedings. In those circumstances, I do not consider it just to make a costs order against either party.

- [24.] Given that the application for leave to appeal remains extant, upon its determination by the Honourable Madam Justice Cheryl Bazard, I will request that the file of the Mortgage Action be transferred to my Court.
- [25.] Following the transfer of the Mortgage Action, the parties shall attend a joint case management hearing at which issues relating to common documents, witnesses, disclosure, and future directions may be considered and managed consistently across both proceedings. I have not included this provision in my Order given that the Mortgage Action is not presently before my Court.
- [26.] Accordingly, I make the following orders:
- (i) I direct that the Mortgage Action and the Insurance Action remain separate proceedings but be subject to coordinated case management before me.
 - (ii) I make no order as to costs.

Dated the 22nd day of October, 2026

[Original signed]

Camille Darville Gomez
Justice