

**IN THE COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
Common Law and Equity Division  
2024/CLE/gen/00588**

**B E T W E E N:**

**EXECUTIVE MARINE MANAGEMENT SERVICES LIMITED**

**Claimant**

**AND**

**FOWLCO MARITIME & PROJECT SERVICES LIMITED**

**First Defendant**

**AND**

**CAMPBELL SHIPPING COMPANY LIMITED**

**Second Defendant**

**AND**

**CAMPBELL MARINE LIMITED**

**Third Defendant**

**Before:** Acting Registrar Renaldo Toote

**Appearances:** R. Dawson Malone with Syneisha Bootle of Counsel for the Plaintiff  
Keith O. Major Jr. of Counsel for the First Defendant

**Hearing date(s):** 5<sup>th</sup> February 2025

Civil Procedure Rules- Request for Information- Rule 34 – procedural requirements for defence by counterclaim – Breach of Contract to transport a barge- Damages – Originating Application – requirements of evidence pursuant to Rule 8.24 – Extension of time to serve defence.

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**RULING**

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***Toote, Registrar (Acting)***

[1.] The Claimant initiated these proceedings by Notice of Application filed on 24 September 2024, seeking an Order of the Court pursuant to Rule 34 of the Supreme Court (Civil Procedure Rules) 2022 ("CPR") to compel the First Defendant to disclose the information requested in the Claimant's letter dated 17 September 2024. The Claimant asserts that this information is integral to the resolution of the issues in dispute.

[2.] Further, the Claimant seeks leave of the Court under Rule 10.9 and/or Rule 18 of the CPR to extend the time within which the Claimant must file a Reply and defence to the First Defendant's defence and Counterclaim, which was filed on 9 September 2024 and served on the Claimant on 10 September 2024.

***Background***

[3.] To fully appreciate the context of this claim, it is necessary to outline the relevant factual background, which has been drawn from the Amended Statement of Claim filed on 9 August 2024, as well as the pleadings submitted by both parties.

[4.] On or about 19 March 2024, the Claimant was engaged to transport 2,000 tons of sand and 1,000 tons of stones from Freeport Harbour to Bakers Bay, Abaco ("the cargo"). In fulfillment of this contract, the Claimant engaged the First Defendant for the use of its tugboat to tow the Claimant's barge, which contained both a crane and the cargo.

[5.] The First Defendant, in turn, subcontracted the Second and/or Third Defendants to manage, operate, and crew the tugboat for the purpose of executing the transport operation.

[6.] On the night of 26 March 2024, the crew lost control of the tow, leading to the grounding of both the barge and the tugboat on a reef near Man-O-War Cay, Abaco. The Claimant contends that, as of the date of filing, both vessels remain stranded on the reef.

[7.] As a consequence, the Claimant commenced these proceedings, citing failure to deliver the cargo and damage to its barge, and is seeking compensation for total losses amounting to \$104,500.00.

[8.] Following this incident, the Port Department issued a formal demand on 24 May 2024, requiring both the Claimant and the First Defendant to "remove the tugboat and the barge from its sunken position."

[9.] In an effort to mitigate additional legal disputes, the Claimant asserts that it was compelled to reimburse its client for the undelivered goods and services.

[10.] The Claimant contends that as a direct result of the Defendants' negligence and breach of contract, it has suffered losses for which it is entitled to recover damages as follows:

- i. **Special Damages:** \$3,593,363.94
- ii. **Loss of Future Income:** \$1,554,075.00

*Pleadings*

[11.] Following the filing of the Standard of Claim form, the First Defendant submitted a completed Acknowledgment of Service on 18 July 2024. Subsequently, the Claimant amended its Statement of Claim.

[12.] On 9 September 2024, the First Defendant filed its defence and Counterclaim, serving the Claimant the following day.

[13.] By letter dated 17 September 2024, the Claimant formally requested information from the First Defendant pursuant to Rule 34.2. The letter stipulated that if the requested information was not provided by 19 September 2024, the Claimant would have no choice but to seek an Order from the Court compelling disclosure. The relevant portions of the letter read as follows:

*“Therefore, in order for us to be in a position to provide a full and proper Reply to the Defence and Defence (sic) to Counterclaim, we write to request the following additional information, in order of paragraphs outlined in your Defence:*

*Paragraph 4:*

- 1. Kindly provide a copy of the management agreement between the First and Third Defendant.*
- 2. Kindly provide evidence and particulars of Mr. Paul Mellor's request to be placed in direct contact with Capt. Venkat Kesav, the Captain of the crew managing the Tugboat.*
- 3. Kindly provide evidence and particulars confirming that Mr. Algernon Morley advised Mr. Paul Mellor that Campbell Marine Limited was manning, managing, and operating the Heroic I.*
- 4. Kindly provide evidence and particulars supporting the assertion that Mr. Paul Mellor requested/insisted that Capt. Venkat Kesav deploy the Tugboat on 25 March 2024.*

[14.] In response, on 17 September 2024, Counsel for the First Defendant acknowledged receipt of the Claimant's request and sought an extension until Tuesday, 8 October 2024, to provide the requested information. The Claimant rejected this request outright without proposing an alternative deadline.

[15.] On 1 October 2024, the Claimant emailed the First Defendant requesting mutually agreeable dates for the hearing of the instant application before the Court. The application sought:

1. An Order compelling disclosure of the requested information.
2. Leave for an extension of time to file a Reply and defence to the Counterclaim.

[16.] Through multiple email exchanges between Counsel for both parties, the First Defendant reiterated its request for an extension until 8 October 2024 to respond to the request for further and better particulars. However, this request was again rejected by the Claimant, which asserted that any delay in providing the information would place them at a disadvantage, as time was of the essence in filing their defence.

### *Analysis*

[17.] The procedural framework governing a request for information is explicitly outlined in Rule 34.2, which mandates:

- (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.

[18.] The Claimant contends that invoking Rule 34.2 was both appropriate and necessary to achieve two crucial objectives: (i) to obtain clarity on the First Defendant's position and (ii) to secure pertinent information that the First Defendant has relied upon since its pleadings were filed.

[19.] The First Defendant, however, disputes this assertion and argues that the Claimant's request dated 17 September 2024 constitutes an improper attempt to solicit evidence rather than mere information.

[20.] The First Defendant characterizes this request as an unwarranted bid for premature discovery, in direct contravention of the Civil Procedure Rules (CPR).

[21.] The First Defendant further asserts that expedited discovery at this stage is inappropriate, given that the Case Management Conference (CMC) has yet to be scheduled. On behalf of the First Defendant, Mr. Major of FOWLCO emphasized that the pleadings phase remains open and, under the CPR, discovery and disclosure are properly conducted during case management under the supervision of the assigned Supreme Court judge.

[22.] In support of this position, Mr. Major referred the Court to Rule 10.5(6) of the CPR, which stipulates that a Defendant's only obligation when filing a defence is to either: (i) identify relevant documents or (ii) annex such documents where necessary.

[23.] Rule 10.5(6) states:

"(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."

[24.] Mr. Major further argued that the First Defendant has met its obligations under Rule 10.5(6) by identifying all necessary documents and referencing information already within the Claimant's knowledge.

[25.] I find this argument persuasive. During oral arguments, Mr. Major challenged the Claimant's reliance on Rule 8.24, arguing that it was misapplied and incorrectly used to justify an attempt at early evidence-gathering rather than proper procedural disclosure.

[26.] In *McPhilemy v. Times Newspapers*, Lord Woolf underscored the diminishing need for extensive pleadings in light of modern procedural reforms, stating at 792-793:

*"The requirement that witness statements be exchanged reduces the necessity for exhaustive pleadings and particulars. In most proceedings, the identification of documents relied upon, coupled with the exchange of witness statements, ensures that each party understands the case they must meet. While pleadings remain critical in delineating the issues and defining the parameters of the dispute, they need only set out the general nature of the claim."*

[27.] Rule 8.7 of the CPR imposes an obligation on the Claimant to plead all material facts relied upon, but not the evidence required to substantiate those facts. It states:

"(1) The claimant must include in the claim form or in the statement of claim a statement of all the facts on which the claimant relies. (2) The statement must be as short as practicable. (3) The claim form or the statement of claim must identify any document which the claimant considers to be necessary to his or her case. (4) If the claimant seeks recovery of any property, the claimant's estimate of the value of that property must be stated. (5) The statement of claim must include a certificate of truth in accordance with Rule 3.8."

[28.] The First Defendant supported its position by citing *Dawson-Damer v. Grampian Trust Company Limited* [2017] 2 BHS J. No. 126 and *Donald J Urgo & Associates LLC*

*v. Sunset Equities Limited* 2017/CLE/gen/00967 (unreported, delivered on 24 March 2023). These decisions establish a clear judicial distinction between legitimate requests for further particulars and improper attempts to circumvent procedural rules to obtain evidence prematurely.

[29.] It is undisputed that the Claimant's correspondence expressly referenced "evidence" in its request for further information. The Claimant now attempts to justify this request under Rule 8.24, which states:

"(1) The claimant must file any written evidence on which he intends to rely when he files his claim form. (2) The claimant's evidence must be served on the defendant with the claim form."

[30.] In this regard, Mr. Major's objection to the reliance Rule 8.24 is correctly applied. Thus Rule 8.24 is to be applied exclusively to cases commenced by an originating application procedure, rather than by standard claim form. I concur .

[31.] Rule 8.24 must be read in conjunction with Rule 8.15, which clarifies the limited scope of the alternative originating application procedure. For context, Rule 8.15 states:

"(1) The alternative procedure of an originating application form is intended for use where: (a) the Court's decision is sought on a question unlikely to involve a substantial dispute of fact; or (b) a statute, rule, or practice direction requires or permits the use of this procedure for commencing specified proceedings."

[32.] In *Donald J. Urgo, Stewart J.* rejected a request for further and better particulars, ruling that it was an improper attempt to obtain evidence that should properly be provided through witness statements or interrogatories.

[33.] Similarly, in *Dawson-Damer, Winder J.* (as he then was) reaffirmed that:

*"Evidence is the means by which facts and matters are proved and may be adduced through documents or the oral evidence of witnesses."*

[34.] Given that these proceedings were initiated via standard claim form rather than an originating application, the Claimant's reliance on Rule 8.24 is misplaced. The Claimant's request for information improperly seeks to extract evidence outside the proper procedural framework. As such, I find that the information sought is more appropriately addressed during the discovery process and not at this juncture. Furthermore, even if the First Defendant intended to oblige the Claimant with the information, Rule 34.2 provides that a party has up to 14 days to respond to such a request. The Claimant's demand for a response within two days was therefore unreasonable, inconsistent with the procedural rules, and deprived the First Defendant of the full period afforded for compliance.

[35.] In conclusion, it is appropriate to reference ***Klein J.***'s remarks in ***Alpha Aviation et al v. Randy Larry Butler et al*** [2021/CLE/gen/01128] regarding Order 18 Rule 6 and the standard for requests for further and better particulars:

*“This rule imposes a general obligation on a claimant to plead his case with sufficient clarity and particularity so that his opponent is not taken by surprise and knows exactly the case he has to meet at trial (see e.g., Spedding v. Fitzpatrick (1888) 38 Ch. D. 410, CA; Bruce v. Odhams Press Ltd.). However, it does not require the claimant to overload his statement of facts upon which the cause of action is framed. Additional details may be supplied at later stages in the case, such as through the submission of witness statements and the process of discovery and disclosure.” [underlined for emphasis]*

[36.] This principle reinforces the First Defendant’s position that the Claimant’s request for information is premature and should be addressed in accordance with the proper procedural mechanisms outlined in the CPR.

#### *Extension of Time to file Defence*

[37.] In the alternative to its request for information, the Claimant, as Defendant by Counterclaim, seeks leave to extend the time in which to serve a defence.

[38.] Pursuant to Rule 10.3(8), a defendant may apply for an order extending the time for filing a defence. Further, Rule 10.9(1)(b) provides that a claimant may file and serve a reply to a defence at any time with the permission of the Court.

[39.] Mr. Malone argues on behalf of the Claimant, that the First Defendant’s pleadings are evasive and hinder the ability of the Claimant to respond effectively to the counterclaim. He contends that this lack of clarity will ultimately impede the Court’s efficient management of the case. As a result, the Claimant acted expeditiously in seeking an Order to extend time in compliance with the overriding objective of the CPR.

[40.] Notwithstanding its procedural missteps, I accept that the Claimant has made all reasonable efforts to advance this matter.

[41.] Counsel for the Claimant further relied on the Court’s discretionary powers under Rule 26.1(2)(k) of the CPR, which states:

“Except where these rules provide otherwise, the Court may –  
(k) extend or shorten the time for compliance with any rule, practice direction, order or direction of the Court even if the application for an extension is made after the time for compliance has passed.”

[42.] The Court has a duty to further the overriding objective by actively managing its cases. While the Court encourages cooperation between parties, its authority to make appropriate orders is not constrained by the parties' consent.

[43.] This principle is instructive particularly as I find that the Claimant's request to extend the time may be unnecessary having regard to the fact that I also find the First Defendant's counterclaim to be deficient due to the absence of specific factual allegations supporting its assertion of negligence as against the Claimant [as a Defendant] on counterclaim .

[44.] Although the Court may permit amendments to pleadings in the interest of justice, the First Defendant bears the obligation of properly pleading its Counterclaim in accordance with established legal principles.

[45.] The First Defendant's Counterclaim alleges that the incident was caused by the negligence and/or breach of contract by the Third Defendant, acting directly and through its employees and agents. Additionally, the First Defendant contends that the Claimant, through its employees or agents, contributed to the incident in whole or in part and is therefore jointly and severally liable.

[46.] However, upon review, it is evident that the First Defendant's counterclaim fails to establish a specific cause of action against the Claimant. The particulars concerning the Claimant's alleged negligence are drafted as a defence and does not assert a cause of action. The assertions are unsupported by particularized facts or evidence. In civil litigation, a counterclaim, much like an original claim, must meet the threshold of clarity and specificity required to put the opposing party on proper notice of the case they are to answer.

[47.] The principle requiring clarity in pleadings applies equally to a Claimant by counterclaim. As articulated in **Alpha Aviation et al v. Randy Larry Butler et al** [2021/CLE/gen/01128], the burden of specificity is not limited to claimants initiating proceedings **but extends to counterclaimants as well**. A party advancing a counterclaim must plead its case with sufficient detail to ensure that the opposing party is not taken by surprise and has an adequate opportunity to respond.

[48.] The First Defendant's failure to plead material facts supporting its allegations of negligence against the Claimant renders its counterclaim defective. It is trite law that bare assertions of liability are insufficient to sustain a claim; rather, particulars must be provided to substantiate allegations. The absence of specificity in this instance suggests that the counterclaim is speculative rather than properly pleaded.



[49.] Consequently, the First Defendant's Counterclaim, to the extent that it purports to hold the Claimant jointly and severally liable, lacks the requisite legal and factual foundation and should not be entertained without a proper cause of action.

### *Conclusion*

[50.] Prior to the delivery of this ruling, the Court petitioned the parties concerned as to whether or not a Defendant to an action can counterclaim against another Defendant in the same action.

[51.] In my view, Rule 18.5 prohibits a Defendant from counterclaiming against any person other than the Claimant. Any intention to counterclaim against a party other than the Claimant must be by way of a without notice application to add that party as an additional party.

[52.] Rule 18.5 provides:

“18.5 Counterclaim against a person other than the claimant. (1) A defendant who wishes to counterclaim against a person other than the claimant must apply to the Court for an order that that person be added as an additional party.

[53.] Where the intended Counterclaim is against any other party to the action, Rule 18.6 requires the Defendant to make an application for an additional claim for contribution or indemnity against the existing party. Therefore, the First Defendant's Counterclaim, which is primarily against the Third Defendant but seeks to hold the Claimant liable with the Third Defendant jointly and severally, is in breach of Rules 18.5 and 18.6.

[54.] Rule 18.6 provides:

“18.6 Defendant's additional claim for contribution or indemnity from another party. (1) A defendant who has filed an acknowledgement of service or a defence may make an additional claim for contribution or indemnity against a person who is already a party to the proceedings by — (a) filing a notice in Form G12 containing a statement of the nature and grounds of his additional claim; and (b) serving the notice on that party. (2) A defendant may file and serve a notice under this rule — (a) without the court's permission, if he files and serves it — (i) with his defence; or (ii) if his additional claim for contribution or indemnity is against a party added to the claim later, within twenty-eight days after that party files his defence; or (b) at any other time with the Court's permission.”

[55.] The First Defendant's breach of Rules 18.5 and Rule 18.6 along with its failure to satisfy the Court that there was a reasonable cause of action against the Claimant, invokes this Court's jurisdiction to give effect to the overriding objective to, *inter alia*, secure the

just, most expeditious and least expensive determination of every cause or matter on its merits as set out by Rule 1.2 of the CPR.

[56.] In furthering the overriding objective, this Court has the jurisdiction, pursuant to Rule 26.3 to strike out a statement of case if it appears 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.

[57.] The First Defendant's failure to comply with Rules 18.5 and 18.6 coupled with its failure to prove to the Court that there is a reasonable ground for bringing or defending a claim as seen by its deficient counterclaim is a prime case for the Court to exercise its discretion to enforce compliance with the rules as allotted for by Rule 1.1 (2) (f) of the CPR.

[58.] I adopt the findings of *Conteh CJ* (as he then was) in **Belize Telemedia Limited v Magistrate Usher** (2008) 75 WIR 138 where he stated:

*"15. An objective of litigation is the resolution of disputes by the Courts through trial and admissible evidence. Rules of Court control the process. These provide for pre-trial and the trial itself. The rules therefore provide that where a party advances a groundless claim or defence, or no defence, it would be pointless and wasteful to put the particular case through such processes, since the outcome is a foregoing conclusion."*

[59.] In the circumstances, the Claimant's request for an order for further information is hereby denied. Further, I find that there is no cause of action as against the Claimant by counterclaim for which leave to file a defence *albeit* out of time is necessary. The right to strike out the First Defendant's Counterclaim is reserved.

[60.] I am aware that there must be a balancing act to ensure that each party is treated justly and fairly before the Court.

[61.] Costs of this application is to be in the cause.

**Dated this 19<sup>th</sup> day of March A.D. 2025**

*[Original signed and sealed]*

**Renaldo Toote  
Registrar (Actg.)**