IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law & Equity Division

2022/CLE/gen/01794

Between

JASON ROLLE

Claimant

AND

(1) ST. FRANCIS RESORT & MARINA LIMITED

(2) SIDNEY "SYD" SLOME

Defendants

Before:	The Honourable Madam Justice Simone I. Fitzcharles
Appearances:	Mr. D. Halson Moultrie for the Claimant
	Mr. Mark A. Rolle with Ms. Samantha Meadows and Ms. Alicia Bodie for the Defendants
Hearing Date:	On the papers

RULING

FITZCHARLES J:

Introduction

[1.] This is a ruling concerning two applications brought by St. Francis Resort & Marina Limited (the "First Defendant") and Sidney "Syd" Slome (the "Second Defendant"), respectively, in relation to an employment law claim made against them by Jason Rolle (the "Claimant").

[2.] The Second Defendant filed a Notice of Application on 1 July 2024 (the "Second Defendant's Application"), by which he seeks the following relief –

i. in accordance with Rule 19.2(1)(a) of the Supreme Court Civil Procedure Rules, 2022 (as amended) ("the CPR"), the Second Defendant requests permission to be removed as a party to these proceedings; and

ii. in accordance with Rule 19.2(5) of the CPR, the Second Defendant seeks an Order to have himself removed as a party to these proceedings as it is not desirable for the Second Defendant to be a party to these proceedings.

[3.] The grounds for the Second Defendant's application are, that –

i. the crux of the issue of these proceedings involves employment law, the Second Defendant is not an employer in The Bahamas;

ii. the Second Defendant does not hold any shares or any beneficial interest in the First Defendant nor does he hold any Directorship or Officer position in the First Defendant as evidenced by a copy of the corporate registers filed in the Registry of Records in Nassau, The Bahamas attached to the Affidavit of Arthur Lee Hamel;

iii. the Second Defendant does not have a personal or contractual relationship with the Claimant;

iv. the Second Defendant's communication with the Claimant was strictly under the direction and instruction of the beneficial owner of the First Defendant, Arthur Hamel;

v. the removal of the Second Defendant as a party to these proceedings will not affect the progression of these proceedings; and

vi. the continuance of having the Second Defendant as a party to these proceedings goes against two of the overriding objectives of the CPR, namely –

(a) to ensure that the parties are on an equal footing - the First Defendant is a limited liability company and the Second Defendant is a natural person; and/or

(b) to ensure that matters are dealt with fairly – it would be unfair for the Second Defendant to remain as a party to these proceedings, as in the event the matter is decided in favour of the Claimant, the Second Defendant would be personally liable.

[4.] The Second Defendant's application is supported by the following evidence –

i. the Affidavit of Sidney "Syd" Slome filed on 28 June 2024 (the "Slome Affidavit"); and

ii. the Affidavit of Arthur Lee Hamel filed on 1 July 2024 (the "Hamel Affidavit").

[5.] The First Defendant filed a Notice of Application on 9 August 2024 (the "First Defendant's Application"), which sought the following relief –

i. the First Defendant seeks to invoke the Court's power pursuant to Rule 29.5(2) of the CPR for various statements, namely, paragraphs 24, 33, 37, 47, 48, 58, 59, 60, 61, 67, 71, 73, 75, 78, 80, 81, 83, 108 and part of paragraphs 29, 44, 45, 46, 52, 68, 70, 72 and 79 contained in the Claimant's Witness Statement filed on 18 June 2024, to be struck out as they are contrary to Rule 29.5(1)(e) of the CPR and sections 37 – 39 of the Evidence Act, Chapter 65, being inadmissible, scandalous, irrelevant, or otherwise oppressive statements.

[6.] The grounds for the First Defendant's application to strike out the identified paragraphs or part paragraphs from the Claimant's Witness Statement filed on 18 June 2024 are that the identified paragraphs or part paragraphs –

i. attempt to introduce material which is not pleaded;

ii. contain material that is commentary or submissions;

iii. contain material that is irrelevant to the Claimant's claim; and/or

iv. contain material that is inadmissible, scandalous, or otherwise oppressive.

[7.] The First Defendant's application is supported by the following evidence –

i. the Affidavit of Arthur Lee Hamel filed on 12 August 2024 (the "Second Hamel Affidavit").

[8.] The Claimant did not file any evidence in opposition to the Second Defendant's application or the First Defendant's application, but resists the Defendants' respective applications.

[9.] In this ruling, where the Court refers to each application individually, the particular application may be referred to as (i) the Second Defendant's application; and (ii) the First Defendant's application. Conversely, where the Court refers to the two applications collectively, they may be referred to as the applications.

Factual Background

[10.] On 29 December 2022, the Claimant, by way of a Specially Endorsed Writ of Summons, filed the present claim against the Defendants alleging constructive, wrongful, and/or unfair dismissal. The Claimant seeks the following relief, namely –

i. damages (inclusive of payment for certain benefits to which the Claimant was purportedly entitled under his contract of employment with the First Defendant);
ii. interest;
iii. costs; and
iv. such further relief and other relief as the Court deems just.

[11.] On 19 January 2023, the Defendants entered an appearance to the present claim.

[12.] On 31 January 2023, the Defendants filed a defence in which they, *inter alia,* denied the claim put forth by the Claimant in its entirety and put the Claimant to strict proof to prove the claim.

[13.] On 21 February 2023, the Claimant filed a reply to the Defendants' defence.

Issues

[14.] Two questions must be considered for the just disposal of the applications. They are –

i. whether it is desirable for the Second Defendant to remain as a party in the present claim; and

ii. whether the identified paragraphs or part paragraphs in the Claimant's Witness Statement filed on 18 June 2024 ought to be struck out as containing inadmissible, scandalous, irrelevant or otherwise oppressive material as alleged.

The Second Defendant's Application

Evidence

[15.] The Second Defendant's application is supported by the Slome Affidavit and Hamel Affidavit. The salient portions of the Slome Affidavit are as follows –

i. Mr. Sidney "Syd" Slome ("Mr. Slome") is a businessman and personal consultant to Arthur Lee Hamel ("Mr. Hamel"), the beneficial owner of St. Francis Resort & Marina Limited ("the Resort"), the First Defendant.

ii. Mr. Slome was engaged by Mr. Hamel personally to provide consultancy services for the Resort. Mr. Slome's responsibilities included, but were not limited to, advising the Resort on business strategies to grow the Resort, on financial affairs which also included the preparation of financial forecast statements and other matters, as well as communication with management personnel of the Resort situate on Stocking Island, The Bahamas. All of Mr. Slome's duties were carried out from an offshore base and were always conducted under the direction, instruction, and approval of Mr. Hamel.

iii. Mr. Slome is not a director, officer, or shareholder of the Resort.

iv. Mr. Slome does not have a personal relationship nor a contractual relationship with the Claimant in this action. Mr. Slome's only nexus with

the Claimant was through his consultancy services as indicated in paragraph (ii) above.

[16.] The salient portions of the Hamel Affidavit are set out as follows –

i. The Second Defendant is not a director, officer, or shareholder of the First Defendant. Mr. Hamel is a director, officer, and beneficial owner of the First Defendant.

ii. Mr. Hamel is the beneficial owner of the First Defendant having received approval from The Bahamas Investment Authority to own shares in the First Defendant.

iii. The Second Defendant does not have a contractual relationship with the Claimant as, at all material times, the Second Defendant communicated with the Claimant under Mr. Hamel's direction and instructions as his personal consultant and intermediary with the staff of the First Defendant.

iv. The Claimant does not have a reasonable action against the Second Defendant.

v. The Second Defendant is not a proper party to this action.

Submissions

[17.] The Second Defendant and the Claimant laid over written submissions in support of and in opposition, respectively, to the Second Defendant's application. While those submissions will not be reproduced in detail, they have been fully considered.

The Second Defendant's Argument

[18.] The foundation of the Second Defendant's case rests in the fact that no contractual relationship existed between the Second Defendant and the Claimant. The Claimant's claim for constructive, wrongful and/or unfair dismissal hinges on the premise that a contract of services existed between the parties. The Claimant's contract of service existed between the Claimant and the First Defendant; not between the Claimant, First Defendant, and Second Defendant. The Second Defendant argues that he is neither a member, officer, nor shareholder of the First Defendant. Further, he asserts that he is not an employer in The Bahamas. Consequently, the Second Defendant contends that he ought to be removed as a party in the present claim as, in the language of the CPR, it is not desirable for him to remain a party in the present claim.

[19.] Counsel for the Second Defendant, Mr. Mark A. Rolle, directed the Court's attention to **CPR 19.2**. Mr. Rolle stated that the Court has the discretion to add, substitute, and/or remove a party to proceedings where it is necessary to advance the efficient resolution of the matters in dispute. He argued that the Court's discretion relative thereto is in line with the Court's active case

management powers. Mr. Rolle further stated that the Court, in determining whether it is desirable to remove a party to proceedings, must seek to give effect to the overriding objective in **Part 1 of the CPR**.

[20.] Mr. Rolle highlighted that the First Defendant is a limited liability company duly incorporated under the laws of The Bahamas. He underscored that it is undoubted that a company is a separate legal personality and can sue and be sued in its own name. He stated that there can be no suggestion that the First Defendant, if found liable in the present claim, would be unable to satisfy any judgment made against it. In contrast, the Second Defendant was merely a servant of the First Defendant and is not in the position, as compared to the First Defendant, to satisfy any judgment, if any, that may be made against him in the present claim.

[21.] Mr. Rolle conceded that the corporate veil protecting the members, officers and/or shareholders of a company from personal liability may be lifted or pierced in appropriate circumstances. Mr. Rolle directed the Court to **section 280(2)(c) of the Companies Act, Chapter 308**. However, he acknowledged that there exist no circumstances in the present claim to lift or pierce the corporate veil of the First Defendant. Mr. Rolle maintained that the Second Defendant is not the proper party to the present claim as the Second Defendant is not a director, officer, or shareholder of the First Defendant.

[22.] Mr. Rolle identified several reasons why it is not desirable for the Second Defendant to remain a party in the present claim, namely –

(i) The contract of service was between the First Defendant and the Claimant, not the Second Defendant.

(ii) The First Defendant is a separate legal entity with its own personality and can sue and be sued in its own name.

(iii) The Second Defendant has no beneficial interest, is not the controlling mind of the First Defendant, nor does the Second Defendant hold any corporate position in the First Defendant.

(iv) The Second Defendant has no legal interest or equitable interest in the assets or profits of the First Defendant.

(v) The Second Defendant would be personally liable should judgment be awarded in favour of the Claimant.

(vi) The removal of the Second Defendant as a party to the present claim would not prejudice the Claimant's claim or the efficient progress in determining the present claim as the Second Defendant is a witness to the present claim, and will still be available for cross-examination by the Claimant's attorney and questions by the Court, if necessary. In other words, the Court's procedure would not be impacted by the removal of the Second Defendant as a party to the present claim.

[23.] Mr. Rolle ultimately concluded that the present claim against the Second Defendant is groundless, is an abuse of the Court's process and goes against the overriding objective of the CPR. The First Defendant would be liable for any acts or omissions committed by the Second Defendant, if any, as the actions and/or omissions were delegated to the Second Defendant by the First Defendant. The Second Defendant at all material times acted as a representative on behalf of, and for, the First Defendant. Therefore, the Second Defendant cannot be held personally liable to the Claimant and ought not to be held personally liable to the Claimant. Mr. Rolle drew support for the latter contentions from the authorities of **Scott and Others v Davis [2000] 5 LRC 288** and **West Island Properties Limited v Sabre Investment Limited and Others [2012] 3 BHS J No. 57**.

The Claimant's Response

[24.] The Claimant's case as to why it is desirable for the Second Defendant to remain a party in the present claim may be summarized as follows –

(i) Mr. Hamel is repeatedly referred to as the beneficial owner of the First Defendant. A beneficial owner in the world of corporate finance is anyone with an interest or stake of 25% or more in a legal entity or company/corporation. Beneficial owners can also be considered with a significant role in the management or direction of those entities, and most certainly the Second Defendant qualifies.

(ii) The Second Defendant has held himself out to the world as an owner of the First Defendant.

(iii) The Second Defendant has acted on and offsite as the "Directing Mind" of the First Defendant – and even Mr. Hamel can testify as to what was discussed by the Second Defendant with the Claimant.

(iv) Mr. Hamel admitted to enlisting the Second Defendant as a consultant to assist in managing and running the First Defendant and for the Claimant to communicate exclusively with the Second Defendant.

(v) The Claimant received his instructions, job description, and scope of work, and negotiated his contract with the Second Defendant.

(vi) Contrary to the assertions, the Second Defendant was frequently working and meeting with the Claimant and other employees of the First Defendant in Exuma, The Bahamas.

[25.] Counsel for the Claimant, Mr. D. Halson Moultrie, ultimately contended that in the circumstances, the Court ought to reject and dismiss the Second Defendant's application to remove the Second Defendant as a party to the present claim.

Law and Discussion

[26.] It is undisputed that the Court has the discretion to add, substitute, and/or remove a party after proceedings have commenced. This discretion may be exercised on application by a party or without an application. With reference to the Court's discretion to add, substitute, and/or remove a party after proceedings have commenced, **CPR 19.2** is instructive, which provides (insofar as relevant to the Second Defendant's application) –

> "**19.2 Change of Parties.**
>
> (1) **The Court may add, substitute, or remove a party** –
> (a) **on application by a party; or**
> (b) **without an application.**
> ...
> (5) **The Court may by order remove any party if it considers that it is not desirable for that person to be a party to the proceedings.**
> ...
> (7) The Court may add, remove, or substitute a party at the case management conference."
>
> [Emphasis added]

[27.] The procedure to add, substitute, and/or remove a party after proceedings have commenced is expressed in **CPR 19.3**. **CPR 19.3** (insofar as relevant to the Second Defendant's application) provides –

> "**19.3 Procedure for adding, and substituting, or removing parties.**
>
> (1) An application for permission to add, substitute, or remove a party may be made by –
> (a) an existing party; or
> (b) a person who wishes to become a party.
> ...
> (4) An order for the addition, substitution or removal of a party must be served on –
> (a) all parties to the proceedings;
> (b) any party added or substituted; and
> (c) any other person affected by the order.
> (5) If the Court makes an order for the removal, addition or substitution of a party, it must consider to give consequential directions about –
> (a) filing and serving the claim form and any statements of case on any new defendant;
> (b) serving relevant documents on the new party; and
> (c) the management of the proceedings
> and subject to such direction rule 19.2(2) applies."

[28.] The Court in exercising its discretion under **CPR 19.2** must seek to give effect to the overriding objective of the CPR. Therefore, the Court must take into account the principles of equality, proportionality, and justice: **see CPR 1.3** and **Shobha Narine Dookeran v Winston**

[29.] In assessing whether it is desirable for the Second Defendant to remain as a party to the present claim, the Court has to consider whether the Second Defendant is a proper and/or necessary party to the present claim; whether the Second Defendant is needed to justly and conveniently determine any issue or matter relative to the present claim: **see Shobha Narine Dookeran (supra).**

[30.] The main claim in this case as outlined in pleadings by the Claimant involves issues of constructive, wrongful, and/or unfair dismissal. Claims for constructive, wrongful, and/or unfair dismissal are not novel in The Bahamas. The law on such claims is well-established by courts in The Bahamas. Claims for constructive, wrongful, and/or unfair dismissal are preconditioned on the premise that there must have existed the relationship of employer and employee between the parties. There must have existed a contract of services, whether written or oral, between the parties.

[31.] The Claimant claims that he was constructively, wrongfully, and/or unfairly dismissed as the First Defendant's General Manager. He further claims that the Second Defendant was the principal shareholder and/or directing mind of the First Defendant. If not, the Second Defendant held himself out to the world as the principal shareholder and/or directing mind of the First Defendant.

[32.] The First Defendant is a limited liability company duly incorporated under the statute laws of The Bahamas. Therefore, in order to determine the Second Defendant's application, the Court must have regard to **section 24(1) of the Companies Act, Chapter 308**, which provides –

> "24. (1) Subject to this Act, a company incorporated under this Act has the capacity and all the rights, powers, and privileges of an individual of full capacity."

[33.] It is a cardinal principle of company law that a company has a separate legal personality distinct from its members, officers, and/or shareholders. A company has the legal capacity to own land or other property, *inter alia*, enter into contracts, employ persons, sue, and/or be sued in its own name. This separate legal personality principle was established in the *locus classicus*, the English House of Lords decision of **Salomon v Salomon [1897] AC 22.**

[34.] The company's members, officers, and/or shareholders are generally protected from personal liability for *bona fide* acts or omissions carried out for and on behalf of the company. However, there may exist extraordinary circumstances where the Court may have to perform a judicial act known as lifting or piercing the corporate veil to hold the company's members, officers, and/or shareholders personally liable for acts or omissions carried out for and on behalf of the company. This judicial act is not performed lightly. Even when performed, the Court does so with great caution. The burden and standard of proof needed for the Court to lift or pierce the corporate veil of a company is high; though not to the criminal burden and standard of proof. There must exist cogent and independent evidence that the act or omission carried out for and on behalf of the

company was not *bona fide* or involved some wrongdoing by the company's members, officers, and/or shareholders.

[35.] The interpretation of **section 24(1) of the Companies Act, Chapter 308** (which is equivalent to section 17(1) of the Barbadian Companies Act, Cap 308) was discussed in the Barbadian High Court decision in **Nanette Annelise Hollis v Alexis Anthony Leach BB 2021 HC 039**.

[36.] In **Nanette Annelise Hollis (supra)**, the court had to determine whether the proper parties to the claim were before the court. Here, two companies had executed a written loan agreement whereby Company C loaned a sum of money to Company W to buy a property in Barbados. The agreement had been entered into for and on behalf of the companies through their respective directors. The agreement provided for a payment plan and specified that should Company W default in any of its payments, the entire loan would immediately become due. Company W eventually defaulted on the loan payment and a formal demand for payment was rendered. The demand was not honoured. The claimant, a director of Company C subsequently commenced the claim in her personal capacity against the defendant as the director of Company W in his personal capacity. The claimant applied for summary judgment for the entire loan amount, interest, and costs. The claimant claimed that the defendant fraudulently induced her to lend Company W the funds from Company C, and the defendant prepared the agreement to that effect. The defendant challenged the summary judgment application and applied to strike out the statement of case indicating that the proper parties to the claim were the companies that entered into the contract and not the directors.

[37.] Carrington J ultimately struck out the claimant's statement of case in its entirety as it disclosed no reasonable ground for bringing the claim against the defendant in his personal capacity. The learned judge adjudged that the agreement was entered into by the two companies through their respective officers. All of the requisites to enable the two companies to enter into the contract and be bound were present. There was no hint or suggestion that the agreement was between the claimant and defendant in their personal capacities which would result in them being proper parties to the agreement. The claim ought properly to be between Company C and Company W. The defendant therefore presented a real prospect of success on the strike out application as the wrong parties were before the court. Moreover, there was no basis existing for the court to lift the corporate veil and fix liability on the defendant.

[38.] The Court finds helpful the words of Carrington J in **Nanette Annelise Hollis (supra)** wherein it was pronounced at paragraph 29 –

> "[29.] **The cases point to the fact that a company is a separate legal entity from its officers and shareholders and where therefore, a company enters into an agreement with another company, the proper parties to the action are the companies themselves. Put differently, any cause of action must be between the contracting parties and not their respective directors in their personal capacity**." [Emphasis added]

[39.] The Court, having regard to the circumstances involving the Second Defendant's application, including the evidence presented and the relevant law, is satisfied that it is not desirable for the Second Defendant to remain as a party in the present claim. The Second Defendant is neither the proper and/or necessary party for the Court to justly and conveniently determine any issue or matter relative to the present claim. Moreover, the Second Defendant's removal would not disrupt and/or impact any issue or matter relative to the present claim. The Court, as a part of its active case management powers, must ensure that only the proper and/or necessary parties to a claim are before the Court. This gives effect to the overriding objective of the CPR for the Court to deal with cases justly and at a proportionate cost.

[40.] On the face of the pleadings, the proper and/or necessary parties to the present claim are the Claimant and the First Defendant. It is between the Claimant and the First Defendant that the employment contract existed and the genuine claim lies. The First Defendant is a limited liability company duly incorporated under the statute laws of The Bahamas. The First Defendant is a separate legal personality separate and apart from its members, officers, and/or shareholders. The First Defendant has the legal capacity to own land or other property, *inter alia*, enter into contracts, employ persons, sue, and/or be sued in its own name.

[41.] Apart from the bare claims made by the Claimant that the Second Defendant is the principal shareholder and directing mind of the First Defendant or that he held himself out to the world as such, the Claimant has adduced no cogent and independent evidence to prove such claims made against the Second Defendant. On the other hand, the First Defendant has led cogent evidence which contradicts the Claimant's allegations made against the Second Defendant as to his capacity in the First Defendant.

[42.] In any event, whether the Second Defendant is a member, officer, and/or shareholder is not the key issue. The present claim is for constructive, wrongful, and/or unfair dismissal. Such claims are preconditioned on the existence of an employer and employee relationship. These claims are not sustainable against an employee, member, officer, and/or shareholder of the employer, which is a limited liability company. There has been no evidence led that the Second Defendant employed the Claimant to work for him and that in such context the claims arose.

[43.] The Claimant is bound by his pleadings. These do not reveal a cogent claim against the Second Defendant personally.

[44.] The Court is of the view, therefore, that the Second Defendant ought not to have been named as a party to the present claim. There exists no reasonable ground for the Claimant to bring the present claim against the Second Defendant, and the Claimant has no real prospect of succeeding on the present claim against the Second Defendant. In my judgment, the continuance of the Second Defendant as a party to the present claim amounts to an abuse of the process of the Court and most certainly does not align with the overriding objective of the CPR.

The First Defendant's Application

Evidence

[45.] The First Defendant's application is supported by the Second Hamel Affidavit, which identifies in detail the paragraphs or part paragraphs from the Claimant's Witness Statement that the First Defendant contends ought to be struck out, and the reasons for such. The Court does not find it expedient and/or appropriate to repeat any part of the Second Hamel Affidavit in this ruling. However, the Second Hamel Affidavit has been fully considered.

Submissions

[46.] The First Defendant and the Claimant laid over their respective written submissions in relation to the First Defendant's application. While those submissions will not be reproduced in detail, they have been fully considered.

Argument of the First Defendant (the Applicant)

[47.] The gravamen of the First Defendant's application is that the identified paragraphs and/or part paragraphs in the Claimant's Witness Statement filed on 18 June 2024 ought to be struck out as they contain material which is irrelevant to the Claimant's claim, inadmissible, scandalous, or otherwise oppressive. It is argued that the identified paragraphs or part paragraphs also introduce material which is not pleaded and/or contain material that is commentary. The First Defendant identified the paragraphs or part paragraphs as follows –

(i) **Material that is irrelevant to the Claimant's claims**

Paragraphs 33 and 37
Parts of Paragraph 29

(ii) **Material that is inadmissible, scandalous, or otherwise oppressive**

Paragraphs 24, 48, and 79
Parts of Paragraphs 45, 46, 68 and 70

(iii) **Attempts to introduce material that is not pleaded**

Paragraphs 47, 58, 59, 60 and 61

(iv) **Material that is commentary**

Paragraphs 67, 80, 81 and 83
Parts of Paragraph 52

[48.] Counsel for the First Defendant, Mr. Mark A. Rolle, contended that **CPR 29.5(2)** empowers the Court to strike out of any witness statement any inadmissible, scandalous, irrelevant or otherwise oppressive material. Mr. Rolle acknowledged that **CPR 29.5(2)** did not displace the Court's inherent jurisdiction to strike out of any witness statement material in other circumstances, that is, where the material attempts to introduce material not pleaded or material that may be genuinely considered, on its face, as commentary. However, Mr. Rolle conceded that the Court should only deploy such strike out power in plain and obvious cases since striking out is a draconian measure. The identified paragraph or part paragraphs, he contended, meets the threshold for the Court to deploy its strike out power. Mr. Rolle contended that the identified paragraphs or part paragraphs contain material that is scandalous, vexatious, and/or imputes allegations of bad faith, dishonesty, or improper conduct on the part of the First Defendant and its attorneys. Counsel for the Defendants relied on the following authorities, namely, **John W Russell (In his capacity as Administrator of the Estate of William Russell) v Bahamas Agricultural and Industrial Corporation 2019/CLE/gen/00093**, and **Etienne Farquharson II v Morton Bahamas Limited 2022/CLE/gen/00233** to buttress the First Defendant's (the Applicant's) case.

[49.] Mr. Rolle ultimately submits that it would be prudent for the Court to deal with the identified paragraphs or part paragraphs at the interlocutory stage, thus giving effect to the overriding objective of CPR. The course of justice would not be thwarted nor would the Claimant be driven from the judgment seat given that those identified paragraphs or part paragraphs are irrelevant, scandalous, inadmissible, and/or commentary. Counsel submits that the identified paragraphs or part paragraphs are so incurably bad or irregular that they cannot be resuscitated by cross-examination or any other means available to the Court or the parties at the trial.

Argument of the Claimant (the Respondent)

[50.] The Claimant's resistance to the First Defendant's application rests on the premise that the identified paragraphs or part paragraphs complained of contain the truth and facts relevant to the issue(s) before the Court. The identified paragraphs or part paragraphs are in the manner in which the party serving the witness statement wishes to tender his evidence-in-chief. It is argued that the Claimant's witness statement, including the identified paragraphs or part paragraphs complained of, is concise in the circumstances, is set out as permitted in law and contains no inadmissible, or irrelevant material. They do not provide commentary on documents in the trial bundle, or set out quotations from such documents, or engage in matters of argument.

[51.] Counsel for the Claimant, Mr. D. Halson Moultrie, contends that the First Defendant's application at best is biased, disproportionate, fatally flawed, and an abuse of the CPR. Mr. Moultrie states that the First Defendant's application seeks, at the interlocutory stage, to strip the Claimant's evidence and destroy the substratum of the present claim by applying to the Court to exercise its discretion to strike out evidence and passages that provide in his own words, factual and relevant information of the Claimant's actual experiences and knowledge as an employee of the First Defendant.

[52.] Mr. Moultrie submits that the attorneys for the First Defendant are conflicted in their attempt to defend their own decisions, legal advice and opinions having immersed themselves in the present claim by issuing the Claimant's letter of termination and no doubt advised on the option of redundancy.

[53.] Counsel for the Claimant contends that the Court ought always to be cognizant that the provisions of the CPR as to witness statements and their contents are not rigid rules. It is conceivable that in particular circumstances, the rules may be properly relaxed to achieve the overriding objective of the CPR: for the Court to deal with cases justly and at an appropriate cost. Mr. Moultrie seeks to fortify his argument by relying on the English High Court decision of **Wilkinson v West Coast Capital [2005] EWHC 1606 (Ch)**.

[54.] Mr. Moultrie further contends that he who comes to equity must come with clean hands. Counsel submits that the First Defendant's witness statements may also fall in the category of being inadmissible, scandalous, irrelevant, or otherwise oppressive. However, the Claimant, instead of making an unnecessary interlocutory application, will rely upon cross-examination to dispense with the irregularities in the First Defendant's witness statements at the trial of the present claim. Counsel argues that if the First Defendant is so aggrieved by the identified paragraphs or part paragraphs, they could easily be considered and, if necessary, dispensed with during cross-examination at the trial of the present claim.

[55.] Mr. Moultrie ultimately argues that while a party may make an application to strike out inadmissible or irrelevant material in a witness statement, the acceptable procedure for the party opposing the material in the witness statement is to notify the other party of their objection(s) within 28 days after service of the witness statement and the parties should seek to resolve the matter. The First Defendant prepared a schedule of the identified paragraphs or part paragraphs that they intend to strike out at the eleventh hour. It is submitted that this strategy seeking to be deployed by the First Defendant at the interlocutory stage does three things: (1) it seeks to diffuse the Claimant's evidence on an interlocutory application, (2) to frustrate and delay the trial of the present claim, and to drive the Claimant from the seat of justice. Mr. Moultrie contends that the various reasons advanced by the First Defendant to strike out the identified paragraphs or part paragraphs are all petty and a waste of the Court's time.

Law and Discussion

[56.] The learned authors in the **Civil Court Practice 2024 ("The Green Book")** define a witness statement as a signed document in civil proceedings that sets out in writing the evidence-in-chief of a witness intended to be used at trial. The evidence contained in a witness statement should be in relation to any issue of fact to be decided at the trial. A witness statement is likened to a witness' oral evidence had he or she been permitted to give oral evidence at trial without providing the witness statement. A witness statement informs the parties and the Court of the

evidence a party intends to rely on at trial, thus seeking to give effect to the overriding objective of the CPR in helping the Court to deal with cases justly, and at an appropriate cost.

[57.] **CPR 29.1** provides the Court with the power to control evidence to be given at any trial or hearing. The Court may control such evidence by giving appropriate directions, at a case management conference or by other means, as to – (a) any issue on which it requires evidence; and (b) the way in which any matter is to be proved.

[58.] It is the Court that is seized with the ultimate discretion as to the admissibility of any evidence to be given at any trial or hearing and the weight, if any, to be given to the evidence. This discretion is to be exercised judiciously and not capriciously.

[59.] **CPR 29.4** places the requirement on a party to serve any other party with the statement of the evidence of any witness upon which the first party intends to rely in relation to any issue of fact to be decided at the trial (a witness statement). This requirement is independent of any other party's obligation to serve such a statement. The Court may give directions as to – (a) the order in which the witness statement is to be served; and (b) when the witness statement is to be served.

[60.] The learned authors in the **Caribbean Civil Court Practice 3rd Edition, April 2024** articulated that the Court, both under the CPR and under its inherent jurisdiction, has the power to strike out any inadmissible, scandalous, irrelevant, or otherwise oppressive matter. This is irrespective of whether the matter is contained in an affidavit or witness statement.

[61.] The prescribed form of witness statement is pellucidly expressed in **CPR 29.5**. This prescribed form is mandatory and not discretionary. Any witness statement that is not produced in the prescribed form may be subject to a legal and/or evidentiary challenge. **CPR 29.5 (1)(e) and (2)** expressly provides –

> "**29.5 Form of witness statements**.
>
> (1) **A witness statement must** –
>
> ...
>
> (e) **not include any matters of information, or belief which are not admissible** or, where admissible, must state the source of any matters of information or belief;
>
> ...
>
> (2) **The Court may order that any inadmissible, scandalous, irrelevant, or otherwise oppressive matter be struck out of any witness statement**."
>
> [Emphasis added]

[62.] **Section 37** of the **Evidence Act, Chapter 65** provides that evidence seeking to be relied upon in any proceedings shall, in all cases, be direct evidence. In other words, it must be evidence within the personal knowledge of the witness who tenders the evidence.

[63.] **Section 38** of the **Evidence Act, Chapter 65** prohibits the use of hearsay evidence in any proceedings provided the evidence does not fall within one of the exceptions listed under **section 39** of the **Act**. Hearsay evidence refers to any statement that was made by another person other than the witness or any statement that is contained or recorded in any book, document, or other record.

[64.] In any event, even where hearsay evidence is admitted into any proceedings, the witness who seeks to rely on the evidence must state the source of the evidence.

[65.] In **Wilkinson v West Coast Capital and others [2005] EWHC 1606 (Ch)**, Mann J posited that the Court must exercise care when approached at the interlocutory stage with an evidentiary challenge to the entirety or parts of a witness statement. The Court should only exercise its power to control evidence and strike out the entirety or parts of a witness statement if it is quite clear that no matter how the proceedings may look at trial, the evidence will never appear to be either relevant or, if relevant, will never be sufficiently helpful to make it right to allow the party in question to adduce it. This is because, at the interlocutory stage, the Court is less likely to have a full overall picture of the issue in the case and of the evidence which is going to be adduced in support of it. The Court should be much more careful in forming the view, at this stage, that the evidence is going to be irrelevant, or if relevant, unhelpful and/or disproportionate. Notwithstanding the careful approach adopted, Mann J struck out, at the interlocutory stage, paragraphs of a challenged witness statement where it was sufficiently clear that the material contained therein was inadmissible as evidence to be relied upon at trial.

[66.] While the Court is not bound by the *dicta* of Mann J in **Wilkinson (supra)**, it is much persuaded by the approach taken by that court regarding legal and/or evidentiary challenges to witness statements at the interlocutory stage. The decision of **Wilkinson (supra)** was approved in this jurisdiction in the decision of **Etienne Farquharson II v Morton Bahamas Limited 2022/CLE/gen/00233**. In that case, Darville-Gomez J was approached with an interlocutory application by the defendant to strike out paragraphs in three of the claimant's witness statements. Darville-Gomez J, while cognizant of the care that ought to be taken regarding such applications at the interlocutory stage, exercised the Court's discretion and struck out the challenged paragraphs of the witness statements.

[67.] Notably, in **Etienne Farquharson II (supra)**, the defendant had notified the claimant of its objection to the paragraphs of the three witness statements only one day before the trial. The trial did not proceed due to the inability of the sole defence witness to attend and was rescheduled. The defendant was ordered to file any interlocutory application by a specified date. The claim was then transferred to Darville-Gomez J and first came on for a hearing ten days before the trial had

been scheduled. On that date, the trial date was vacated and the strike out application was set down for a hearing.

[68.] In **Vardy v Rooney [2022] EWHC 946 (QB)**, Steyn DBE J at paragraph 96 cited with approval the *dicta* of Sedley LJ in **William Wandsworth LBC [2006] EWCA Civ 535** at paragraph 80, which provides –

> "96... **"witness statements are a proper vehicle for relevant and admissible evidence going to the issue before the court and for nothing else. Argument is for advocates. Innuendo has no place at all."**
>
> [Emphasis added]

[69.] Steyn DBE J at paragraph 97 further cited with approval the *dicta* of Sir Terence Etherton C in **JD Wetherspoon plc v Harris (Practice Note) [2013] 1 WLR 3296** at paragraphs 39 and 40, as follows –

> "39. Mr. Goldberger would not be allowed at trial to give oral evidence which merely recites relevant events, of which he does not have direct knowledge, by reference to documents he had read. Nor would he be permitted at trial to advance arguments and make submissions which might be expected of an advocate rather than a witness of fact. These points are made clear in paragraph 7 of Appendix 9 to the Chancery Guide 7th ed (2013), which is as follows:
>
> "A witness statement should simply cover those issues, but only those issues, on which the party serving the statement wishes that witness to give evidence in chief. Thus it is not, for example, the function of a witness statement to provide commentary on the documents in the trial bundle, nor set out quotations from such documents, nor to engage in matters of argument. Witness statements should not deal with other matters merely because they may arise in the course of the trial."
>
> 41. I recognize, of course, that these rules as to witness statements and their contents are not rigid statutes. It is conceivable that in particular circumstances they may properly be relaxed in order to achieve the overriding objective in CPR r 1 of dealing with cases justly. I can see no good reason, however, why they should not apply to Mr. Goldberger's witness statement in the present proceedings.

[70.] It is also noteworthy that Steyn DBE J in **Vardy (supra)**, while cognizant of and receptive to the careful approach adopted by Mann J in **Wilkinson (supra)** regarding the Court's power to strike out the entirety or parts of a witness statement at the interlocutory stage, exercised her discretion and struck out a substantial portion or paragraphs of the challenged witness statement.

[71.] In **John W. Russell (in his capacity as Administrator of the Estate of William Russell) v Bahamas Agricultural and Industrial Corporation 2019/CLE/gen/FP/00093**, Hanna-Adderley J provided guidance on the meaning of the terms scandalous, frivolous, or vexatious and/or abuse of the process of the Court. The instant case dealt with a strike out application under **Order 18 Rule 19 of the Rules of the Supreme Court, Chapter 53 ("the RSC")**. While the RSC was repealed and replaced by the CPR, the terms scandalous, frivolous, or vexatious and/or abuse

of the process of the Court remain relevant grounds for a strike out application under **CPR 26.3**. At paragraphs 23 and 24, Hanna-Adderley J stated as follows –

> "23. Allegations in a pleading are scandalous if they impute dishonesty, bad faith, or other misconduct against another party or anyone else and they are immaterial or irrelevant. Whether a pleading is frivolous or vexatious depends "on all the circumstances of the case; the categories are not closed and the considerations of public policy and the interest of justice may be very material." **See Ashmore v British Coal Corp [1990] 2 QB 338**...
>
> 24. ... This ground confers upon the Court in express terms powers which the Court has hitherto exercised under its inherent jurisdiction where there appears to be an abuse of the process of the Court. This term connotes that the process of the Court must be used bona fide and properly and must not be abused. The Court will prevent the improper use of its machinery, and will, in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation. **(Commentary at 18/19/18 on page 352 of the Supreme Court Practice 1, 1999 Castro v Murray (1875) 10 Ex. 213).**"

[72.] The issue to be determined at the trial of the present claim is whether the Claimant was constructively, wrongfully, and/or unfairly dismissed by the First Defendant, entitling him to the relief sought. It is with this perspective that the Court considered the First Defendant's application to strike out the identified paragraphs or part paragraphs in the Claimant's Witness Statement.

[73.] There is no dispute as to the legal principles that the Court must apply in determining whether the identified paragraphs or part paragraphs of the Claimant's Witness Statement ought to be struck out. The issue that arises is how the legal principles relative thereto ought to be applied.

[74.] As aforementioned, the Claimant's Witness Statement was filed on 18 June 2024. The Claimant's Witness Statement runs to some 113 paragraphs covering 47 pages. The First Defendant by letter dated 2 July 2024 notified the Claimant of its objections to some 18 paragraphs or part paragraphs of the Claimant's Witness Statement. On 2 July 2024, the parties appeared before the Court for a pre-trial review and the First Defendant informed the Court that it foreshadowed the present application. The Court expressed to the parties to try and resolve the matter, if possible, thus making the possibility of any formal application unnecessary. Notwithstanding, the Court scheduled 22 August 2024 for the hearing of the Defendants' respective applications, if necessary.

[75.] The Claimant by letter dated 16 July 2024 (which he purports was received by the First Defendant on 26 July 2024) responded to and resisted the First Defendant's objections. The Claimant contended that the identified paragraphs or part paragraphs could easily be considered and if necessary, dispensed with during cross-examination at the trial of the present claim. The First Defendant by letter dated 25 July 2024 notified the Claimant of its objection

to some 8 additional paragraphs or part paragraphs of the Claimant's Witness Statement. The parties were unable to resolve the matter.

[76.] The Court, having regard to the applicable legal principles, evidence presented herein, submissions of Counsel for First Defendant and the Claimant, and the circumstances of the First Defendant's application, is sufficiently satisfied that the following paragraphs or part paragraphs from the Claimant's Witness Statement filed on 18 June 2024 contained material that is inadmissible, scandalous, irrelevant, or otherwise oppressive. The Court is further satisfied that some of the following paragraphs or part paragraphs contained material that may be considered as argument or not pleaded. I find the following action appropriate with respect to the below paragraphs or part paragraphs –

(i) The first three sentences of paragraph 24, which pertain to a purported stop and desist action taken against the First Defendant by The Bahamas Port Department, Exuma Branch, are struck out. The material contained therein is not relevant to the issue to be determined by the Court at the trial of the present claim. Further, the material contained therein was not in the Claimant's first-hand knowledge. The Claimant was not on Stocking Island and did not witness the matters concerning the activities of the First Defendant in 2023. The material is considered hearsay and no exception to the hearsay rule applies.

(ii) The fifth and sixth sentences of paragraph 29, which pertain to the Claimant's consultation with the First Defendant's Human Resources Manager, Requella Smith, and a purported smuggling operation by Mr. Hamel and Mr. Slome, are struck out. The material contained therein is not relevant to the issue to be determined by the Court at the trial of the present claim. The material also levies unsubstantiated or irrelevant criminal allegations against Mr. Hamel and Mr. Slome.

(iii) The part of the sixth sentence of paragraph 33, which pertains to the age of Mr. Slome is struck out. The age of Mr. Slome is not relevant to the issue to be determined by the Court at the trial of the present claim.

(iv) Paragraph 37 is struck out in its entirety. The material contained therein is not relevant to the issue to be determined by the Court at the trial of the present claim. The Claimant was not at the First Defendant's Resort at the material time. The Claimant had no idea of knowing what first-hand instructions, if any, were provided to any employee or person at the First Defendant's Resort at the material time.

(v) The last three sentences of paragraph 45, which pertain to a purported vendetta on the part of the First Defendant's attorneys against the Claimant and the purported actions and/or omissions of the First Defendant's attorneys, are struck out. The material contained in the above sentences is scandalous as it contains allegations

that impute dishonesty, bad faith or other misconduct on the part of the First Defendant's attorneys. The Claimant provided no basis to substantiate the scandalous allegations.

(vi) The last five sentences of paragraphs of 46, which pertain to a purported "white collar crime" on the part of the First Defendant and the First Defendant's attorneys' purported involvement in enabling the First Defendant to carry out such "white collar crime" are struck out. The material contained therein levies serious and scandalous criminal allegations, particularly, against the First Defendant's attorneys, which do not advance the Claimant's claim. The material is not relevant to the issue to be determined by the Court at the trial of the present claim.

(vii) Paragraph 47 is struck out in its entirety. The material contained therein is not relevant to the issue to be determined by the Court at the trial of the present claim. Allegations of fraud are not to be lightly made and must be specifically pleaded. The Claimant did not plead fraud. Therefore, the Claimant is bound by his pleadings.

(viii) Paragraph 48 is struck out in its entirety. The material contained therein is scandalous as it contains allegations that impute dishonesty, bad faith, or other misconduct on the part of the First Defendant, its officers, employees, and attorneys. The Claimant provided no basis to substantiate the scandalous allegations. The above paragraph also contains material, which is reasonably regarded as commentary, submissions, and/or hearsay.

(ix) The last sentence of paragraph 52, which pertains to the First Defendant's wealth, ego, and attorney's law firm is struck out. The material contained therein is unnecessary and not relevant to the issue to be determined by the Court at the trial of the present claim.

(x) Paragraphs 58, 59, 60, and 61 are struck out in their entirety. The above paragraphs attempt to introduce material that was not pleaded. The Claimant is bound by his pleadings. More fundamentally, the materials contained therein are not relevant to the issue to be determined by the Court at the trial of the present claim.

(xi) Paragraph 67 is struck out in its entirety. The material contained therein relates to material that is not pleaded and is not necessary nor relevant to the issue to be determined by the Court at the trial of the present claim.

(xii) The last three sentences of paragraph 68, which pertain to commentary on the First Defendant's attorneys and the state of the First Defendant's resort are struck out. The material contained therein is not necessary nor relevant to the issue to be determined by the Court at the trial of the present claim. The material is also

scandalous as it contains allegations that impute dishonesty, bad faith, or other misconduct on the part of the First Defendant's attorneys.

(xiii) The last seven sentences of paragraph 70, which pertain to the purported knowledge of the First Defendant's attorneys, and the age of Mr. Slome are struck out. The material contained therein is not necessary nor relevant to the issue to be determined by the Court at the trial of the present claim. The material is also scandalous as it contains allegations that impute dishonesty, bad faith, or other misconduct on the part of the First Defendant's attorneys.

(xiv) Paragraph 71 is struck out in its entirety. The material contained therein is not necessary nor relevant to the issue to be determined by the Court at the trial of the present claim.

(xv) Paragraph 72 is struck out in its entirety as it contains material that is irrelevant, scandalous, inadmissible, or otherwise oppressive. The material contained therein is not necessary nor relevant to the issue to be determined by the Court at the trial of the present claim. The Claimant's claim for constructive, wrongful, and/or unfair dismissal ought to have been made against the First Defendant and not Mr. Slome. This of course has been dealt with in the earlier part of this ruling.

(xvi) Paragraphs 73 and 75 are struck out in their entirety. The material contained therein is not necessary nor relevant to the issue to be determined by the Court at the trial of the present claim.

(xvii) The sixth sentence of paragraph 78, which pertains to the purported enablement by the First Defendant's attorneys and Human Resources representatives and the purported stature of the First Defendant's attorneys, is struck out. The material is not necessary nor relevant to the issue to be determined by the Court at the trial of the present claim.

(xviii) The second, third and fifth sentences of paragraph 80, which pertain to commentary regarding the First Defendant's attorneys are struck out. The material contained therein is not necessary nor relevant to the issue to be determined by the Court at the trial of the present claim.

(xix) The eighth and tenth sentences of paragraph 83, which pertain to commentary regarding the purported actions, omissions and/or stature of the First Defendant's attorneys, are struck out. The material contained therein is not necessary nor relevant to the issue to be determined by the Court at the trial of the present claim.

(xx) Paragraphs 81, and 83 are struck out in their entirety. The material contained therein is not necessary nor relevant to the issue to be determined by the Court at the trial of the present claim.

(xxi) The last three sentences of paragraph 108 are struck out. The material contained therein is not necessary nor relevant to the issue to be determined by the Court at the trial of the present claim.

[77.] For any avoidance of doubt, the Claimant has successfully resisted the First Defendant's objections to the identified parts of paragraphs 44 and 79.

Conclusion

[78.] For the reasons set out above in this ruling, the Court hereby makes the following orders –

(i) the Second Defendant shall be removed as party to the present claim as it is not desirable for the Second Defendant to remain a party;

(ii) the identified paragraphs or part paragraphs in paragraph 76 (i) to (xxi) of this ruling shall stand as struck out;

(iii) the Defendants shall have the costs of and occasioned by their respective applications to be paid to them by the Claimant. Such costs are to be assessed by the Court, if not sooner agreed by the parties; and

(iv) if costs are not sooner agreed by the parties, the Court shall hear the parties on the appropriate quantum of costs to be made in relation to the respective applications. A pro forma bill of costs shall be laid over to the Court (and served on the Claimant) within 21 days from the date of this ruling.

Dated this 19th day of May 2025

Simone I. Fitzcharles
Justice