

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE
(CIVIL DIVISION)

CLAIM NO. ANUHCV2020/0239

BETWEEN:

AIDAN CANNONIER

Claimant

and

[1] IRVIN BAPTISTE

[2] KRYSTAL MARIS

Defendants

Appearances:

Mr. Sherfield Bowen and Ms. Rosheda Plummer, Counsel for the Claimant
Ms. Carlita Benjamin, Counsel for the Defendants

2026: February 11th, 16th.

DECISION

- [1] **MICHEL, M.:** Before the Court is an application filed by the Defendants on 17th November, 2025 to strike out the Claimant's claim pursuant to rule 26.3(1)(c) of the Civil Procedure Rules (Revised Edition) 2023 ("**CPR 2023**"). The Defendants state in their application that the Claimant has failed to take any step to prosecute this matter since the filing of an amended defence by the 2nd Defendant on 20th July, 2021, resulting in inordinate and inexcusable delay amounting to an abuse of the process of the Court.
- [2] The Defendants' strike out application is supported by the affidavit of Deidre Shaw, Legal Clerk in the Chambers of Counsel for the Defendants.
- [3] The grounds of the Defendants' application as set out in their notice of application are:-
- (a) The Claimant has taken no step in this matter since the filing of the Amended Defence on 20th July, 2021.
 - (b) The matter has been dormant for over five (5) years and the delay is inordinate and inexcusable.

- (c) The Counsel on record for the Defendants failed to appear and provide good and sufficient reasons for the abandoned claim.
 - (d) The delay has caused prejudice to the Defendants and is contrary to the overriding objective of the Rules.
 - (e) Pursuant to Rule 26.3(1)(c), the Court may strike out a Statement of Case which constitutes an abuse of the process of the Court or is likely to obstruct the just disposal of the proceedings.
- [4] The Defendants' application is opposed by the Claimant and the affidavit of Patricia Nicholas, Legal Clerk in the Chambers of Counsel for the Claimant was filed on behalf of the Claimant on 26th January, 2026 in opposition to the Defendants' application. The affidavit of Mersha Jackson, Executive Legal Clerk in the chambers of Counsel for the Defendants was filed on behalf of the Defendants on 4th February, 2026 in reply to the affidavit filed on behalf of the Claimant.
- [5] Before going further, it is important to set out the procedural background to this matter to place the Defendants' application into its proper context.

Background

- [6] The Claimant commenced these proceedings against the Defendants by claim form and statement of claim filed on 15th July, 2020 seeking damages for negligence. The Claimant alleged in his claim that on 14th February, 2018 he was cycling along the road, when the 2nd Defendant, driving a vehicle owned by the 1st Defendant, with the consent and permission of the 1st Defendant, negligently drove the vehicle and ran over the Claimant resulting in him suffering personal injuries, loss and damages.
- [7] The claim was duly served on the Defendants on 4th January, 2021 and each Defendant filed a defence on 29th January, 2021 denying the Claimant's claim. The 2nd Defendant subsequently filed an amended defence on 20th July, 2021. It appears that nothing else transpired in relation to the Claimant's claim until the Court Office issued a notice of hearing dated 29th July, 2025 scheduling the claim for its first case management conference on 6th November, 2025.
- [8] The matter came on for first case management on 6th November, 2025. The case management conference was attended by Counsel for both the Parties and the 2nd Defendant. Counsel for the Defendants on that occasion invited the Court to strike out the Claimant's claim. The Court declined to entertain the Defendants' oral request. The Defendants subsequently filed the present application to strike out the Claimant's claim as an abuse of process on 17th November, 2025.

Striking Out as an Abuse of Process

- [9] The Court is empowered by CPR 26.3(1)(c) to strike out statement of case as an abuse of process. This is an exceptional power which should be exercised cautiously by the Court. Striking out a claim as an abuse of process was explained by the Court of Appeal in **Myrna Norde v Jacqueline Mannix**.¹

“[5] In *Citco Global Custody NV v Y2K Finance Inc*,³ [BVIHCVAP2008/0022 at para. 14] this Court emphasised that the jurisdiction to strike out should be used sparingly and in *Tawney Assets v East Pine Management Limited et al*⁴ [BVIHCVAP2012/0007 at para. 22] striking out was described as a drastic step which is only to be taken in exceptional cases. This is more so where the ground for striking out is that the claim is an abuse of the process of the Court, which is an extremely serious allegation in light of the general right to access to justice. In *Hunter v Chief Constable of the West Midlands Police*,⁵ [[1982] ac 529] Lord Diplock described the power to strike out on this ground, which existed prior to the implementation of CPR, as part of the inherent jurisdiction of the court and under the Rules of the Supreme Court as a power “which any court of justice must possess to prevent misuse of its procedure in a way in which, although not inconsistent with the literal application of its procedural rules, would nevertheless be manifestly unfair to a party to litigation before it, or would otherwise bring the administration of justice into disrepute among right-thinking people”.⁶ [At p. 536] In *Attorney General v Paul Evan John Barker*,⁷ [[2000] EWHC 453.] Lord Bingham described an abuse of the court’s process as “a use of the court process for a purpose or in a way which is significantly different from the ordinary and proper use of the court process”.⁸

- [6] The question here to be determined applying a broad merits based approach⁹ is whether the impugned party’s conduct in bringing the claim or prosecuting it amounts to an abuse of process..”

- [10] In **St. Nevis Anguilla National Bank Limited v Caribbean 6/49 Limited**,² Barrow JA listed ‘starting a case with no intention of pursuing it further’ as one of the textbook examples of abuse of process.

¹ ANUHCv2015/0034 (delivered 16th February 2017, unreported) at para. 5.

² Saint Christopher and Nevis Civil Appeal no. 6 of 2002 (delivered 31st March 2003, unreported).

- [11] Finally, in deciding whether a claim should be struck out as an abuse of process, the case of Cable v Liverpool Victoria Insurance Co. Ltd³ is instructive. The English Court of Appeal held:-

“the correct approach to an application to strike out a claim for an abuse of process was a two-stage test, that, first, the court had to determine whether the Applicant’s conduct was an abuse of process; that, secondly, if it was, the court had to exercise its discretion as to whether or not to strike out the claim.”

The Parties’ Positions

- [12] The Defendants’ evidence in support of the strike out application as set out in the affidavit in support of the application is that since the filing of the claim, the Claimant has shown no interest in the matter and the matter has therefore remained dormant for more than five years, which constitutes an inordinate and inexcusable delay contrary to the overriding objective of CPR 2023 to deal with cases justly, expeditious and at a proportionate cost.

- [13] Ms. Shaw deposed in her affidavit in support of the Defendants’ application that this prolonged inactivity has caused prejudice to the Defendants, including but not limited to:-

- (a) the strain on the Defendants due to the 2nd Defendant’s increasing debilitating ailment as she made herself available to the Court, whereas, the Defendant nor his Counsel on record has made an appearance before the Court,
- (b) the unavailability of certain witnesses due to the passage of time,
- (c) difficulty retrieving documents and records,
- (d) the accumulation of unnecessary costs to defend an abandoned claim and
- (e) continued uncertainty arising from a stale claim.

- [14] As it relates to the 2nd Defendant’s ailment, the Defendants’ evidence is that the 2nd Defendant suffers from a significant neurological impairment. A medical report of the Defendant was exhibited to the affidavit of Mersha Jackson. The report indicates that the 2nd Defendant is a 39 year old woman with a history of a certain neurological condition since age 14. The doctor notes complaints reported by the 2nd Defendant including that she feels herself getting progressively worse and a complaint of worsening memory. The doctor gives his present clinical impressions of the Claimant and noted that when the 2nd Defendant was asked about her memory, she indicated that she is unable to assess because she no longer works but thinks she has some memory issues.

³ [2021] 2 All ER 121 at para. 63.

The doctor went on to give his assessment of the 2nd Defendant indicating differential diagnoses. No further comments are made in the report by the doctor about the memory of the 2nd Defendant or the progression of her condition.

- [15] The Defendants' further evidence is that as a consequence of the 2nd Defendant's illness, she can no longer make herself available to the Court to give viva voce evidence or properly instruct Counsel. The Defendants contend that had the matter been prosecuted diligently and without abusive delay, the matter would have been heard and determined at a time when the 2nd Defendant was medically capable of defending herself.
- [16] Ms. Jackson further deposed in her affidavit on behalf of the Defendants that due to the passage of time since the filing of the claim in 2020, witnesses who would have been available to give material evidence are no longer available. Further, that any eyewitness has made themselves scarce and all reasonable efforts to locate and contact them at this late time will be futile. Ms. Jackson states that this loss of witness availability has severely impaired the Defendants' ability to properly present their case.
- [17] Ms. Jackson states that the delay in this matter is not accidental but abusive and inexcusable, and is attributable solely to the Claimant and his attorney as it was not the Court that initiated this claim but the Claimant who invoked the Court's jurisdiction and bore the responsibility to advance it.
- [18] She further deposed that she has been informed and verily believes that given the debilitating medical condition of the 2nd Defendant; the loss of material witnesses; the passage of over five years; and the accumulated financial and medical burden, the Defendants can no longer receive a fair and just trial.

The Evidence on Behalf of the Claimant

- [19] The evidence on behalf of the Claimant as set out in the affidavit of Ms. Nichols is that at the time of the filing of the claim the Claimant was only 19 years old and had recently attained the age of maturity and had no prior experience or familiarity with court proceedings. Ms. Nicholas stated in the affidavit that shortly after the close of proceedings, the Claimant relocated to the United States to attend school and further his education. She stated that during his time abroad the Claimant's primary focus was on his academic obligations in the United States and he reasonably believed that his attorneys would continue to manage the procedural aspects of the matter pending trial.
- [20] Further, Ms. Nicholas deposed that she has been advised by Counsel for the Claimant that pursuant to the Civil Procedure Rules, once pleadings are

closed, the court is empowered and expected to actively manage matters and to fix a date for the case management conference hearing. She stated that after the filing of the amended defence in July 2021, no case management conference was fixed by the Court for several years and no notice of any case management conference was served on the Claimant or his attorneys. Therefore, the Claimant was not solely responsible for progressing the matter and the absence of judicial case management significantly contributed to the delay.

- [21] Ms. Nicholas further deposed that she has been advised by the Claimant and verily believes that the Claimant has always intended to pursue his claim and has recently re-established full communication with counsel with instructions to move the matter forward. She stated that the delay in progressing the matter was therefore neither willful nor abusive but arose from a combination of personal circumstances and procedural factors beyond the Claimant's exclusive control.

The Defendants' Submissions

- [22] Learned Counsel for the Parties did not file written submissions for the hearing of the Defendants' strike out application, but made oral submissions to the Court.
- [23] Learned Counsel for the Defendants urged the Court to strike out the Claimant's claim and submitted that the Claimant and his Counsel failed to do anything to progress the matter since the filing of the claim in 2020 and this has caused prejudice to the Defendants. Learned Counsel for the Defendants further submitted that the Defendants have suffered irreparable prejudice as the 2nd Defendant's medical condition means that the 2nd Defendant cannot meaningfully participate in these proceedings.
- [24] Learned Counsel for the Defendants submitted that this is not the Court's matter, but the Claimant's matter. She submitted that if the Claimant's claim had such substantial merit the Claimant should have advanced his case. Learned Counsel for the Defendants submitted that the conduct by the Claimant and his Counsel in failing to progress this claim is a clear abuse of process of the Court.
- [25] Learned Counsel for the Defendants submitted to the Court the Court of Appeal judgment in **First Domestic Insurance Co. Ltd. v Industrial Enterprises Ltd. et al**⁴ ("FDIC") and the Trinidad and Tobago High Court

⁴ DOMHCVAP2014/0024 (delivered 27th May 2020, unreported).

decision in **Forde v Public Transport Service Corporation**⁵ in support of the Defendants' argument that the Claimant's claim should be struck out.

The Claimant's Submissions

- [26] Learned Counsel for the Claimant reminded the Court that the Court has a duty under the Civil Procedure Rules to manage cases and that the Claimant cannot bear the full blame for the delay in the listing of the claim for case management. He further submitted that the Defendants themselves took no steps to see the matter advance. Learned Counsel for the Claimant submitted that there is a heavy burden to be satisfied to strike out a claim. He submitted that it is a draconian remedy and ought not to be readily resorted to and should only be exercised when all other avenues are futile. Learned Counsel for the Claimant submitted that though time has passed, the Courts favour matters being determined on their merits and that the objective of the rules is fairness to all litigants and the matter should therefore be allowed to progress and allow the Court to hear both sides on the substantive claim.

Discussion

- [27] I will first consider the cases referred to the Court by learned Counsel for the Defendants.
- [28] **FDIC** concerned an application to strike out a notice of appeal in circumstances where there was a failure of the appellant to file the record of appeal and skeleton arguments within the time stipulated by the Civil Procedure Rules 2000.
- [29] The Court of Appeal found that in view of all the circumstances of the case including the appellant's consistent failure to observe the rules, the dormancy and delay in prosecuting the appeal, no good and substantial reason for the grossly inordinate delay, the prejudice to respondent and the prospect of the appeal, together with the failure to apply for an extension of time, it was evident that there was only one conclusion to which the Court could have arrived at in exercising its discretion; namely, to entertain the application and strike out the notice of appeal. The Court found that in the circumstances of the appeal, to exercise this Court's discretion otherwise would neither further the overriding objective nor do justice between the Parties.
- [30] The Trinidad and Tobago case of **Forde** concerned an application by a defendant to strike out a claim as an abuse of process. The first limb of the application was that the claimant had failed to effectively prosecute her claim through her undue delays between necessary steps in the litigation and the

⁵ TT 2014 HC 212.

second limb, having received an interim award for an avowed specified purpose, the claimant misapplied and or misappropriated same and failed to use the sums for the purpose for which it was disbursed

- [31] In **Forde**, the matter was in the case management phase. At a case management conference, the defendant agreed to make an interim payment to the claimant. The matter was given a long adjournment to allow the claimant to undergo surgery and rehabilitation. When the matter came back on for further case management, counsel for the claimant indicated to the court that the claimant did not undertake the surgery. Counsel for the claimant subsequently filed an application to cease to act for the claimant and a lengthy adjournment was granted to facilitate the claimant's change of attorney. The claimant nor counsel for the claimant attended the next case management conference and at a further case management conference counsel from the legal aid authority appeared on behalf of the claimant indicating that they had received no instructions from the claimant despite many requests for same. There was eventually some movement in the matter by way of negotiations between the parties but the negotiations broke down. The claimant further failed to comply with a subsequent order of the court.
- [32] The defendant applied to strike out the claim on the two aforementioned grounds. In relation to the abuse of process limb of the application, the court held that a claimant has a duty to prosecute his/her claim with diligence and that it was not evident in the claim. The court found that there was an inordinate delay which could not be supported further.
- [33] The court also considered the second limb of the application, the claimant's conduct in relation to her misapplication of the interim payment made by the defendant. The court ultimately acceded to the defendant's application to strike out the claimant's claim.
- [34] To my mind, both **FDIC** and **Forde** are distinguishable from the present case. In **FDIC**, there had been a failure by the appellant to comply with rules 62.11 and 62.12 of CPR 2000 and the Court of Appeal, considering the extension of time principles, ultimately found it was fit to strike out the appeal.
- [35] In **Forde**, the Parties were in active case management, and the claimant had developed a pattern of abusive behavior – misapplying an interim payment and failing to progress her claim despite the Court granting lengthy adjournments to the claimant. In both these matters, the proceedings were in train, and the parties whose cases were struck out had failed to comply with rules or orders of the court. In the present claim, the matter had come on for first case management when the strike out application was made.

[36] Recognizing that at its core, the Defendants were seeking to strike out the Claimant's claim for want of prosecution, I pointed out to the Parties the recent judgment of the Court of Appeal in **Ultramarine (Antigua) Limited v Peter Cochran**.⁶ In the judgment, the Court of Appeal made reference to the judgment of the Privy Council in **Icebird Ltd v Winegardner**⁷ for guidance on striking out proceedings for want of prosecution. Cottle JA [Ag.], delivering the judgment of the Court stated:-

"The approach to be taken by the court in dismissing and striking out proceedings for want of prosecution is to be gleaned from the dicta of the Privy Council in **Icebird Ltd v Winegardner**.³ [[2009] UKPC 24, [2009] All ER (D) 41 (Nov) at [8].]

"[8] Birkett v James [1978] AC 297, [1977] 2 All ER 801, [1977] 3 WLR 38 remains, in their Lordships' opinion, the leading authority for the approach to be taken to an application to strike-out an action for want of prosecution. The House of Lords endorsed the principles set out in the then current Supreme Court Practice, namely, that the power to strike-out should be exercised only where the court was satisfied –

'...either (1) that the default has been intentional and contumelious e.g. disobedience to a peremptory order of the court or conduct amounting to an abuse of the court, or (2)(a) that there has been inordinate and inexcusable delay on the part of the plaintiff or his lawyers, and (b) that such delay will give rise to a substantial risk that it is not possible to have a fair trial of the issues in the action or is such as is likely to cause or to have caused serious prejudice to the Defendants either as between themselves and the plaintiff or between them and a third party" (per Lord Diplock at 318)."

[37] Considering the abuse of process point, the essence of the Defendants' argument is that the Claimant's claim is an abuse of process because of an inordinate delay in the progress of the claim since filing. After the claim was filed in 2020 and the amended defence thereafter in January 2021, the matter did not come on for case management until November 2025 when it was first listed by the Court Office.

⁶ ANUHCVP2025/0005 (delivered 13th January 2026, unreported) at para. 14.

⁷ 2009] UKPC 24, [2009] All ER (D) 41.

[38] This claim commenced under CPR 2000. Rule 27.3 of CPR 2000 which provides:-

“Case management conference

27.3 (1) The general rule is that the court office must fix a case management conference immediately upon the filing of a defence to a claim other than a fixed date claim.

(2) If the defendant files a defence and also an admission of a specified sum of money, the case management conference is not to be fixed until the claimant gives notice under rule 14.7(3) that the claim is to continue.

(3) The case management conference must take place not less than 4 weeks nor more than 8 weeks after the defence is filed (or notice is given under rule 14.7(3)) unless any rule or practice direction prescribes a shorter or longer period or the case is urgent.

(4) Notwithstanding paragraph (3) a party may apply to the court to fix a case management conference before a defence is filed.

(5) The application may be without notice but must state the reasons for the application.

(6) The court office must give all parties not less than 14 days notice of the date, time and place of the case management conference.

(7) The court may with or without an application direct that shorter notice be given –

- (a) if the parties agree; or
- (b) in urgent cases.”

[39] It is clear from the rule that it is the Court Office which has the responsibility for listing a claim for case management. The rule mandates the Court Office to list a matter for a case management conference upon the filing of a defence. It is obvious that this was not done in the present case. Whilst I agree with learned Counsel for the Defendants that the Claimant or his Counsel could have followed up with the Court Office on the listing of the matter, the fact that he

could have does not make the Claimant's conduct abusive and further that the Claimant should be sanctioned by striking out his claim. The power to list claims lies solely with the Court. Thus, it cannot be said that the Claimant is wholly responsible for the delay in progressing his matter. Thus the delay in the progress of the matter whilst unsatisfactory, without more does not lead me to conclude that the Claimant's conduct is abusive.

[40] I should also reiterate that the circumstances of this case are not like Forde where the matter had reached case management and there was undue delay on the part of the claimant in taking the requisite steps to progress the matter through case management at scheduled hearings. And, unlike Forde and FDIC, the Claimant was not in breach of any court orders or rules of court when the Defendants sought to strike out the claim.

[41] The Defendants' further argument is that not only has there been an inordinate delay by the Claimant in progressing his claim, but the delay has caused prejudice to the Defendants. The Defendants contend that they are prejudiced because the 2nd Defendant is suffering from a debilitating illness which will prevent her from properly defending the case and that key witnesses for the Defendants are no longer available.

[42] As it relates to the 2nd Defendant's illness, there is no medical evidence before the Court which states that the 2nd Defendant's illness will prevent her from participating in these proceedings. Further, there is no evidence before the Court from the 2nd Defendant's doctor that the 2nd Defendant's illness is progressively worse now than when these proceedings were commenced in 2020. Without more, I am unable to conclude that because the 2nd Defendant is suffering from a medical condition that she has been unduly prejudiced by the delay in the progress of the Claimant's claim.

[43] As it relates to the availability of witnesses, the Defendants' evidence is vague and lacks cogency. The Defendants do not identify the witnesses or explain what efforts have been made to contact them. There is no indication that witnesses were previously identified to give evidence and are now no longer available. The lack of specificity makes it difficult to conclude that the Defendants are now prejudiced due to unavailability of witnesses.

[44] Looking at the matter as a whole, I am not persuaded by the Defendants' contention that the Claimant's claim is an abuse of process. I am not satisfied that the Defendants have demonstrated that the Claimant has misused the Court's procedure or has used the Court's procedure in a way which is manifestly unfair to the Defendants.

- [45] Considering the matter in light of the principles set out in Ultramarine, I am unable to hold that the delay in the progress of this matter was intentional and contumelious. Further, for reasons already outlined, the Claimant could not be said to have run afoul of any orders of the Court, nor was his conduct abusive.
- [46] I accept that there has been a lengthy delay in the claim progressing to case management after having been filed and served; however, this delay was not solely attributed to the Claimant nor was it solely within the Claimant's control. Further, for reasons already stated above, I am not persuaded that the Defendants have demonstrated that this delay has led to a risk of the trial of the Claimant's claim being unfair or that it has caused serious prejudice to the Defendants.
- [47] My above conclusions are sufficient to dispose of the Defendants' application. I note, however, that when faced with an application to strike, the Court must consider whether there are other measures which will meet the interests of justice instead of the nuclear strike-out option. As Cable v Liverpool Victoria Insurance Co. Ltd which was cited above explains, the approach to striking out a claim as an abuse of process is a two-step procedure and where the Court makes a finding of abuse, the Court must still determine whether there is a more proportionate sanction. In my view, prejudice to the Defendants by any delay in the present case could also be addressed when the Court is considering costs on the claim or the award of any pre-judgment interest if the Claimant succeeds on his claim.⁸
- [48] Considering all of the above, I would refuse to strike out the claim. I would further order that the matter be listed for further case management and that the Parties consider whether an early trial is appropriate or resolution of the dispute out of Court by way of mediation or otherwise.

Costs

- [49] Given the nature of the Defendants' strike out application, although the Claimant has successfully resisted the application, I consider it appropriate for each party to bear their own costs of the application and I would therefore make no order as to costs.

Disposition

- [50] In light of the foregoing, I order as follows:-

⁸ See *Haynes Browne v Neil Sargeant* (as Executor of the Estate of Buell Carr, deceased, substituted for Lena Carr, deceased by her Executor Buell Carr) (delivered 20th June 2019, unreported) at para. 51.

1. The Defendants' application to strike out the Claimant's claim is refused.
2. There shall be no order as to costs.
3. The matter shall be listed for further case management on 9th March, 2026 for the Parties to consider an expedited trial of this matter or alternative dispute resolution.
4. The Defendants shall have carriage of this Order.

[51] I wish to thank learned Counsel on both sides for their assistance to the Court.

Carlos Cameron Michel
High Court Master

By the Court

Registrar