

ST. CHRISTOPHER AND NEVIS
NEVIS

IN THE HIGH COURT OF JUSTICE

CLAIM NO. NEVHCV2025/0006
BETWEEN:

THE NAUTILUS CLUB NEVIS LIMITED

Claimant

AND

ST. KITTS-NEVIS-ANGUILLA NATIONAL BANK LIMITED

Defendant

Appearances:

Ms. Barbara Hardtman for the Claimant

Mr. Michael Hylton KC with him Sundiata Gibbs and Midge Morton instructed by Victor Elliott-Hamilton for the Defendant

2025: September 29
November 10

JUDGMENT

- [1] **SAUNDERS, M:** The Claimant's ("*Nautilus*") claim is in breach of a written agreement between it and the Defendant ("*the Bank*") dated 9 April 2021 ("*the Agreement*") regarding the financing of a marina. Nautilus claims that the Bank, without lawful justification, ceased financing the project causing it to stall and inflicting severe financial losses. Nautilus alleges that the Bank's conduct amounts to a fundamental breach of contract, bad faith, professional negligence, and an attempt to unjustly enrich itself at Nautilus' expense. The Bank contends that Nautilus was in breach of conditions precedent to the Agreement which caused it to halt funding the project.

- [2] Nautilus issued an Application for Summary Judgment on the Claim and Counterclaim on 25 March 2025 (*“the SJ Application”*) and the Bank issued an Application to Strike Out, among other things, aspects of the Statement of Claim and the Reply and Defence to Counterclaim on 16 May 2025 (*“the SO Application”*). The two applications concern competing arguments that the pleadings of the corresponding party are unsustainable and so I heard them together on 29 September 2025. Having heard and considered the parties’ submissions, I have decided to dismiss the SJ Application and have granted most of the relief sought in the SO Application. I have set out below the full reasons for my decision.

The SJ Application

- [3] This application is premised, in summary, on the grounds that:
- a. The Defence has no real prospect of success as Nautilus’ case is proved by:
 - i. Admissions at 9, 11 and 24 of the Defence which confirm the Bank’s refusal to fund the project;
 - ii. The Bank’s failure to supply evidence of alleged defaults; and
 - iii. The Bank’s contradiction of their own correspondence, specifically, a letter dated 18 September 2024 which allegedly offered continued financing.
 - b. The counterclaim is frivolous insofar as the Bank:
 - i. Unlawfully accelerated the loan in reliance upon allegedly baseless conditions precedent; and
 - ii. Admits ceasing funding.
- [4] The Bank admits discontinuing funding on 12 February 2023 (the admissions on which Nautilus relies), however, it alleges that Nautilus was in breach of conditions precedent under the Agreement. The alleged breached conditions include the following:
- a. Draft financial statements were to be provided three (3) months after each fiscal year;
 - b. Audited financial statements with an audit report were to be provided two months after the draft statements;
 - c. Quarterly in-house financial statements were to be provided within 30 days of each quarter;
 - d. The debt-to-equity, current and debt service coverage ratios were to be annually provided;
 - e. The security provided was to be perfected and remain valid; and

- f. Nautilus was to procure a lease of the seabed for mortgage to the Bank which it is alleged Nautilus botched, among other ways, by proposing the Nevis Island Administration (“*the NIA*”) as the third party lessor;

The Law

- [5] The Court’s role on an application for summary judgment is well known and because there was no dispute regarding that role, it is sufficient to say that granting summary judgment is a discretionary exercise in which the Court considers whether to summarily dispose of cases or issues because they do not require a trial due to the absence of genuine disputes of fact¹.

- [6] As regards whether a term is a condition precedent, see the decision of the England and Wales Court of Appeal **Tata Consultancy Services Ltd v Disclosure and Barring Service** [2025] 4 WLR 42 in which it was stressed that, whether a term is a condition precedent depends as much on the other clauses in the agreement as it does on the factual background or context:

“18. Speaking for myself, I did not find these cases very helpful in the present context. The clauses were different; the contracts were different; and their background and context were different too. As Leggatt J (as he then was) said in Tartsinis v Navona Management Co [2015] EWHC 57 (Comm) at para 62 it is:

‘... seldom, if ever, helpful in deciding how to interpret particular contractual provisions to refer to a case in which a court has interpreted different provisions of a differently worded contract made in a different factual context.’”

Analysis

- [7] The Bank has argued that a lender’s failure to provide the agreed security is a breach of a condition precedent relying on the decision **Pinneys Hotel Development Limited v St. Kitts Nevis and Anguilla National Bank Limited** SKBHCV2022/0121 (24 July 2024). In that regard, the Bank contends that the SJ Application has no merit as one of its main defences arises from Nautilus’ failure to procure a valid lease of the seabed for mortgage by the Bank. While I agree that **Pinneys Hotel Development Limited** is relevant to whether one of the defences to the claim is a valid one, the SJ Application appears to go further than that as it is also argued that the Bank’s allegations of breaches of conditions precedent are not borne out by undisputed facts.

¹ Bank of Nevis International Trust Services Inc v Belmont Holdings SKN Limited NEVHCVAP2023/0018; at [34]

[8] Having reviewed the affidavit evidence provided by the parties, however, the SJ Application should fail because deciding the issues of alleged breaches of conditions precedent cannot be done without conducting a mini trial as this Court ought not to do. In other words, the facts which Nautilus suggests are undisputed are hotly in contest and require determination at trial. I rely on the following:

- a. There are several factual disputes regarding whether Nautilus provided audited, draft and quarterly financial statements (“*the Statements*”), as the Bank alleges it failed to do and which financial statements it alleges were conditions precedent to the loan. Nautilus’ Reply denies that production of the statements were conditions precedent and has asserted that they were in fact provided. This dispute plays out in the pleadings and the affidavit evidence, among other ways, as follows:
 - i. The Bank giving affidavit evidence of a request for the Statements in February 2023;
 - ii. Nautilus saying in the Reply at [18] that the Statements were provided in 2021 (Exhibit KGDH9 of the Affidavit in Support of Statement of Claim); and
 - iii. Gregory Hardtman, Nautilus’ representative, swearing in his affidavit of 14 July 2025 (at [10]) that the Statements were provided to the Bank in March 2023. That date, notably, is later than the date that the Bank first refused to make a disbursement (12 February 2023).

It is relevant that the Agreement does require Nautilus to provide audited, draft and quarterly financial statements. In my view, given the inconsistent evidence between the parties regarding whether the statements were provided, it is not possible to make a summary determination of whether Nautilus complied with the relevant term of the Agreement.

- b. The other core dispute concerns whether Nautilus failed to provide security for the loan. On that basis the Bank contends that Nautilus did not confirm the identity of the correct lessor for the seabed lease and that their failure to do so was in breach of a condition precedent. The Bank raised this issue in its letter of 9 August 2023 (Exhibit NR-5), noting that the Nevis Air and Sea Ports Authority (“*NASPA*”) Act suggested NASPA, not the NIA, was the correct lessor. Nautilus’ Reply did not, at least to the Bank’s satisfaction, provide that clarification (Exhibit NR-6) and the Bank’s rejoinder reiterated the request on 31 August 2023 (Exhibit NR-7). Nautilus frames the issue in its pleadings and its Written Submissions differently. It says that the seabed lease from the NIA, as lessor,

had been accepted by the Bank as a valid security prior to the execution of the Agreement and therefore the Bank, seeking to reopen the issue in August 2023, was a breach. The Agreement does not resolve the matter as it only notes that a mortgage of the seabed lease would be provided. It is clear that the issue is one for determination at trial.

[9] To the extent that Nautilus contends that the terms in the Agreement relating to the production of the Statements were, in any event not conditions precedent, I do not believe such a conclusion can be drawn without a trial of the issue. As discussed in **Tata Consultancy Services Ltd**, the contractual significance of a term cannot be properly weighed unless the Court is apprised of the full factual context of the dispute. In respect of Nautilus' argument that the provision of security was not a condition precedent, as I have said, I agree with the Bank that my decision in **Pinneys Hotel Development Limited** is relevant. A valid defence to a claim for breach of a loan agreement may be the failure on the borrower's part to provide the agreed security.

[10] Insofar as Nautilus also contends that the Bank's letter of 18 September 2024 is an admission of the whole of the claim, in my view, the letter was written in the course of, or, with a view to the settlement of the dispute. The letter is therefore equivocal as a party may seek a compromise for a host of economic and other reasons which have little to do with the merits of the matter. I have also decided below in this Judgment that the letter is privileged correspondence and any attempt to rely on it in the proceedings should be forbidden.

Conclusion

[11] There have been hundreds of pages of affidavit evidence submitted by the parties in the SJ Application. That fact alone, on its face, is sufficient to warrant grave concern in presuming, at this stage, to make a final ruling regarding the viability of the Bank's defence of breaches of conditions precedent. More importantly, however, the major issues in dispute, those identified at "[8]" above, make it clear that the factual context relevant to the alleged breaches warrants exploration at trial and that a finding that the Bank has a realistic prospect of success on its Defence is merited. For that same reason the Bank also has a realistic prospect of success on its Counterclaim, it being premised in large part, on the alleged breaches of conditions precedent identified in the Defence.

The SO Application

- [12] Rule 26.3 of the CPR gives the Court the discretion to strike out a statement of case or any part thereof if:
- (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;
 - (c) the statement of case or the part to be struck out is an abuse of the process of the court or is likely to obstruct the just disposal of the proceedings; or
 - (d) the statement of case or the part to be struck out is prolix or does not comply with the requirements of Part 8 or 10.
- [13] The SO Application seeks to remove significant portions of Nautilus' affidavits and pleadings, arguing that they do not amount to a justiciable cause of action or that they are improper, or, irrelevant. I have dealt serially with the material sought to be struck out below.

The affidavit of Kirtley Hardtman filed 13 January 2025 Affidavit ("the 13 January Affidavit")

- [14] Nautilus filed the 13 January Affidavit together with its Claim and Statement of Claim. Rule 8.1 of the CPR provides that a claimant starts proceedings by filing a claim form and a statement of claim or alternatively, an affidavit or other document if any rule or practice direction so requires. The 13 January Affidavit, in my view, was irregularly filed as the particulars of the claim are already set out in the Statement of Claim and there is therefore no further need to rely on a supplemental affidavit.
- [15] Nautilus, at [5] of the Reply and in its Written Submissions, has suggested that the 13 January Affidavit was filed to evidence the allegations in the Statement of Claim. It is well settled that evidence in support of the statement of claim should be reserved for the witness statements (see e.g. **East Caribbean Flour Mills v Ormiston Ken Boyea** Civil Appeal Civil Appeal No. 12 of 2006). There was therefore no reason for Nautilus to supplement its Statement of Claim in the way it has. There is also the decision in **Maria Agard v Mia Motley et al** CV 1753 of 2015 (Barbados High Court, December 29, 2017), with which I agree, to strike out an affidavit in support filed together with a fixed date claim where only an ordinary claim was prescribed. Presently, the 13 January Affidavit cannot be considered part of the pleadings and its value in the proceedings going forward is therefore nugatory.

- [16] Insofar as the Bank has also sought to strike out paragraphs of the Reply and Defence to Counterclaim (1,5,12 and 43) which only refer to content in the 13 January 2025 Affidavit, I agree that those paragraphs should be struck.

Paragraphs 27 to 34 of the affidavit in support of the Claimant's Notice of Application to Strike Out Ancillary Claim issued 25 March 2025 ("the NASAC")

- [17] I have reserved dealing with this portion of the SO Application for the hearing of the NASAC as that application was issued prior and was not heard on 29 September 2025.

Paragraphs 27-24 of the SJ Application

- [18] Because I have dismissed the SJ Application, it is unnecessary to also consider this portion of the SO Application.

Paragraphs 18, 35(c) and 35(e) of the Statement of Claim issued 13 January 2025

- [19] The Bank has sought to strike-out paragraphs 18, 35(c) and 35(e) of the Statement of Claim as referring to privileged communication in relation to "18" and for there being no cause of action pleaded in relation to the relief sought at "35(c)" and "35(e)". I have set out below, in tabular form, my decision together with my reasons in relation to this portion of the SO Application.

Paragraph	My Decision
18	This paragraph alleges that the Defendant contacted the Claimant with a view to settling the matter. In the Court's view, the paragraph should be struck out as it contains a discussion of correspondence which was made in the course of or with a view to the settlement of the dispute. In that regard, I refer to the decision Boitnott v Coconut Bay Management Limited SLUHCV2018/0194 (Saint Lucia High Court, October 18, 2021) and Ofulue and another v Bossert [2008] 3 WLR 1253 where the principle is discussed. I do not accept Nautilus' argument that the correspondence regarding the settlement discussions is necessary for or relevant to Nautilus' causes of action. The alleged discussions are equivocal to the causes of action as a party may entertain settlement discussions for a host of economic and other reasons which have nothing to do with the merit of the claim
35(c)	I agree that <u>the claim for breach of fiduciary duty</u> should be struck from this paragraph. The relationship between the parties is contractual (Financial Institutions Services Ltd v Negril, Negril Holdings Ltd and another (2004) 65 W.I.R. 227) and therefore this claim cannot arise on the facts pleaded as they do not include any alleged agreement by the Bank to assume a fiduciary role.

35(e)	I agree that this paragraph should be struck out as it contains a claim for exemplary damages. Such an award is unavailable for breach of contract (see Addis v Gramophone Co Ltd [1909] AC 488 (HL)). Furthermore, the facts of the claim in tort do not come close to bringing it within the exceptions in Rookes v Barnard [1964] A.C. 1129 as applied by Gordon JA in Keith Mitchell v Steve Fassihi Civil Appeal No. 22 of 2003 22 November 2004 (Grenada). Far less is the relief available where the Claimant's claim also includes relief for restitution (see the discussion of Lord Scott at [64] in Kuddus v Chief Constable of Leicestershire [2002] 2 AC 122 (HL)).
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Paragraphs 1, 2, 5, 7, 9, 12, 30, 31, 43, 45, 48, 51, 52, 62, 63 and 65 of the Reply and Defence to Counterclaim filed 15 March 2025

[20] The Bank has sought to strike out several paragraphs of the Reply and Defence to Counterclaim on the basis that they either refer to privileged information, or, that they do not amount to appropriate particulars of a Reply. A Reply should only address matters specifically raised in the Defence and should not be used to introduce new claims, causes of action, or allegations that go beyond what is necessary to respond to the defence. This Court has on several prior occasions (**Lennox Linton et al v Anthony Astaphan et al** claim no DOMHCV2008J0436, **Mitch Christopher v The Attorney General of the Virgin Islands et al** BVIHCV2019/0056), approved the following statement in Blackstone's Civil Practise 2006 regarding the appropriate content of a Reply:

"CONTENTS OF A REPLY

Conventionally a reply may respond to any matter raised in the defence which were not, and which should not have been, dealt with in the particulars of claim, and exists solely for the purpose of dealing disjunctively with matters which could not properly have been dealt with in the particulars of claim, but which requires a response once they have been raised in the defence. It has always been a cardinal principle of pleading (which has certainly not been altered by CPR) that a claim should not anticipate a potential defence (popularly known as 'jumping the stile'). Once, however a defence has been raised which requires a response so that the issues between the parties can be defined, a reply becomes necessary for the purpose of setting out the claimant's case on that point. The reply is, however, neither an opportunity to restate the claim, nor should it be drafted a defence to a defence. Where the defence takes issue with a fact set out in the particulars of the claim, and the claimant accepts that the fact is incorrect, the proper course should be for the claimant to seek to amend his statement of case accordingly ', and not to deal with the matter in the reply." (Emphasis supplied)

[21] I have set out below my decision and reasons in relation to the relief sought in the SO Application concerning the contents of the Reply and Defence to Counterclaim.

Paragraph of Reply and Defence to Counterclaim	My Decision
1	See [14-[16] above
2	I agree. The purport of [2] of the Reply is that the corresponding paragraph of the Defence is untrue. Insofar as there is an implied joinder of issue by a claimant with the averments in a defence, there is no need for a claimant to specifically say that they intend to negative a factual allegation contained in a Defence (see Duncan v Baird (2014) 86 WIR 271). The paragraph is not the proper subject of a Reply consistent with Mayfair Knitting Mills .
5	See [14-[16] above
7	I agree. The paragraph should be struck out as it discusses correspondence which was made in the course of, or, with a view to the settlement of the dispute. In that regard, I refer to the decision Boitnott v Coconut Bay Management Limited SLUHCV2018/0194 (Saint Lucia High Court, October 18, 2021) and Ofulue and another v Bossert [2008] 3 WLR 1253 where the principle is discussed in full. Insofar as Claimant's counsel made submissions that the without prejudice correspondence was necessary or instrumental to their cause of action, in the Court's view the correspondence is equivocal in that regard as a party may entertain settlement discussions for a host of economic and other reasons which have nothing to do with the merit of the claim.
9	I agree. The paragraph does not purport to respond to anything specifically said in the Defence
12	See [14-[16] above
30-31	I agree, for the same reasons as those set out above regarding the striking out of [7] of the Reply and Defence to Counterclaim.
43	I agree, the paragraph is not the proper subject of a Reply as it simply seeks to negative the Bank's corresponding allegations and for the same reasons as those set out above regarding the striking out of [7] of the Reply and Defence to Counterclaim.
45	I agree, the paragraph is not the proper subject of a Reply as it simply seeks to negative the Bank' corresponding allegations and for the same reasons as those set out above regarding the striking out of [7] of the Reply and Defence to Counterclaim.
48	I agree, the whole of [48] seeks to raise matters which are not appropriate subject matter of a Reply. Insofar as there is a suggestion of "evidence of bad faith" in [48], Nautilus has alleged ([23] and [27] of the Statement of Claim) that there was bad faith by the Bank and

	its representatives because they colluded to delay the completion of its development. None of the elements of alleged bad faith relied upon in [48] of the Reply are at all relevant to those paragraphs ([23] and [27] of the Statement of Claim).
51-52, 62-63	I agree. These paragraphs are not the proper subject of a Reply as they do not purport to respond to any new matter arising from the Defence and Counterclaim.
65	I agree. This paragraph is not the proper subject of a Reply and is not relevant to the Claimant's causes of action

My Order

[22] For all the reasons set out above my order is as follows:

1. The Application for Summary Judgment issued 25 March 2025 is dismissed.
2. The Affidavit of Kirtley Hardtman filed 13 January 2025 is struck out.
3. The Claimant shall file an amended Reply and Defence to Counterclaim striking out paragraphs: 1, 2, 5, 7, 9, 30, 31, 43, 45, 48, 51, 52, 62, 63 and 65 of the Reply and Defence to Counterclaim on or before 10 December 2025;
4. The Claimant shall file an amended Statement of Claim striking out the following paragraphs of the Statement of Claim:
 - i. Paragraphs 18 and 35(e); and
 - ii. The claim for breach of fiduciary duty only in 35(c).
5. The portion of the Application to Strike Out regarding the striking out of paragraphs 27 to 34 of the affidavit in support of the Claimant's Notice of Application to Strike Out Ancillary Claim issued 25 March 2025, is reserved for the hearing concerning that application.
6. The costs of the Application to Strike Out are reserved consequent upon paragraph "5" directly above.
7. Cost in the cause of the Summary Judgment Application.

Yuri Saunders
Master

Registrar