

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

SAINT CHRISTOPHER AND NEVIS

SKBHCVAP2025/0009

BETWEEN:

CHERYL PAIGE

Appellant

and

O. D. BRISBANE & SONS (TRADING) LTD.

Respondent

Before:

The Hon. Mde. P. Nicola Byer
The Hon. Mr. Gerard St. C. Farara
The Hon. Mde. Gertel Thom

Justice of Appeal
Justice of Appeal [Ag.]
Justice of Appeal [Ag.]

Appearances:

Ms. Sherry-Ann Liburd-Charles and Mr. Leon Charles for the Appellant
Ms. Angelina Sookoo-Bobb for the Respondent

2026: April 23

Civil appeal – Summary judgment – Loss of future earnings – Personal injury claim – Whether the appellant has a real prospect of succeeding on a claim for future loss of earnings – Whether the Learned Master erred in granting summary judgment dismissing the claim for future loss of earnings – Part 15 of the Civil Procedure Rules (Revised Edition) 2023 – Proper approach to summary judgment applications – Whether the claim raised triable issues requiring oral evidence and expert assessment – Appellate interference with exercise of discretion

REASONS FOR DECISION

[1] **BYER JA:** On 23rd April 2026, this matter was heard and determined by the Court. The appeal against the decision of the Learned Master was allowed, and costs were awarded to the appellant to be assessed if not agreed within 21 days of the date of hearing. The Court on that date also indicated that written reasons for the decision would follow. These are the said reasons.

Background

- [2] The proceedings below concerned an order of Saunders M. dated 15th July 2025 granting summary judgment in favour of the respondent and dismissing the appellant's claim insofar as it related to loss of future earnings. The underlying claim arose from an alleged workplace accident said to have occurred on 16th March 2020, in which the appellant contended that she slipped and fell on fabric softener left on the floor of the respondent's warehouse, sustaining serious orthopaedic injuries and consequential financial loss, including past and future loss of income.

- [3] In her statement of claim filed on 29th November 2024, the appellant pleaded that she had been employed by the respondent as Assistant General Manager until the termination of her employment effective 30th June 2021, and that, because of the injuries allegedly sustained, she became disabled and unable to continue gainful employment. She claimed special damages for past and future loss of earnings, future medical expenses, general damages, interest and costs.

- [4] The respondent applied for summary judgment and/or strike out of the claim on 22nd January 2025 relating to the claims for future loss of earnings as pleaded within the body of the statement of claim. In substance, the respondent contended that the appellant had no real prospect of succeeding on the pleaded claim for loss of future earnings on two bases. Firstly, that there was no medical report attached to the statement of claim that substantiated the contention of the appellant that she was disabled or unable to provide for herself. Secondly, which was the lynchpin of the argument of the respondent, that the appellant had instead provided the most recent medical report authored by Dr. Duane Hendrickson which stated that the appellant has no specific disability and is capable of performing her daily chores whether at work or at home. The Learned Master accepted that contention and entered summary judgment dismissing that aspect of the claim.

- [5] The appellant, with the leave of this Court granted by a single judge on 23rd September 2025, appealed from that order.

- [6] The appellant duly filed a notice of appeal on 14th October 2025 in which she set out 38 grounds of appeal. From those grounds of appeal, the Court gleaned the following, all-encompassing issue for determination on this appeal:

“On the application of the principles governing the grant of summary judgment, whether the Learned Master was entitled to conclude that the appellant had no real prospect of succeeding on her claim for loss of future earnings.”

[7] In coming to its decision on the appeal, the Court considered the following:

- (1) the notice of appeal filed on 14th October 2025;
- (2) the judgment of Saunders M. dated 15th July 2025;
- (3) the interlocutory appeal bundle filed on 15th October 2025;
- (4) the appellant’s skeleton arguments and authorities in support of the interlocutory appeal filed on 15th October 2025;
- (5) the notice of opposition to the interlocutory appeal filed on 29th October 2025;
- (6) the respondent’s written submissions in opposition to the interlocutory appeal filed on 3rd November 2025;
- (7) the respondent’s bundle of documents filed on 3rd November 2025;
- (8) the appellant’s reply skeleton arguments and authorities filed on 10th April 2026;
- (9) the hearing bundle filed on 10th April 2026;

Discussion and Analysis

[8] The starting point for consideration of this issue is the law and principles in relation to summary judgment. Part 15 of the **Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023** (the “CPR”) creates a distinct and self-contained jurisdiction enabling the court to determine proceedings summarily without a trial. CPR 15.2 provides that the court may give summary judgment on the claim or on a particular issue if it considers that the claimant has no real prospect of succeeding on the claim or issue, or that the defendant has no real prospect of successfully defending the claim or issue. Thus, the test must be whether the impugned claim or issue has a real prospect of success.

[9] In considering the test, it therefore becomes necessary for the Court to consider the exact parameters of the same.

[10] The phrase “no real prospect of success” has received authoritative construction and its meaning is now well-settled. In **Swain v Hillman**,¹ Lord Woolf MR explained that the word “real” distinguishes fanciful prospects from those carrying some degree of conviction. Thus, the court

¹ [2001] 1 All ER 91.

does not ask whether success is merely arguable in the abstract. It asks whether the claim has a realistic prospect of success when tested against the available evidence and the applicable law. A claim or issue which is speculative, shadowy, inherently improbable or unsupported by evidence does not satisfy the test.

- [11] In **Three Rivers District Council v Governor of the Bank of England (No 3)**,² Lord Hope observed that the test is whether there is a “realistic” as opposed to a fanciful prospect of success. That formulation has been adopted in the CPR and repeatedly applied by this Court in several decisions concerned with summary judgment applications within the Eastern Caribbean Supreme Court. It follows that in applying this test, a court is not concerned with theoretical possibilities or ingenious pleading. The inquiry is therefore directed to practical reality.
- [12] In fact, the Judicial Committee of the Privy Council in **Sagicor Bank Jamaica Limited v Taylor-Wright**³ reaffirmed that summary judgment should not be regarded as an exceptional procedure. The correct approach is to examine whether the case truly requires a trial. If the critical facts are clear, the documents speak for themselves, and oral evidence would add nothing of substance, the Court should determine the matter summarily. If there is no real issue to be tried, the Court should say so.
- [13] Thus, a court or judge is required to conduct a careful and comprehensive evaluation of the pleadings and, importantly, the evidence that has been adduced in support of or in opposition to the summary judgment in determining whether the claim or the issue in the proceedings can be determined summarily. In doing so, the judge is not bound to accept every statement contained in a pleading or an affidavit.
- [14] In **Easyair Ltd (t/a Openair) v Opal Telecom Ltd**,⁴ Lewison J explained that the court must consider whether the respondent has a realistic case that carries some conviction, not one that is contradicted by contemporaneous documents or otherwise implausible. That approach accords with the CPR objective of dealing with cases justly and proportionately.
- [15] Therefore, a party resisting the summary judgment application cannot purport to rely on bare or bald assertions that something may “turn up” during the course of a trial or disclosure. As the

² [2001] UKHL 16; [2003] 2 AC 1.

³ [2018] UKPC 12.

⁴ [2009] EWHC 339 (Ch).

court in **Korea National Insurance Corp v Allianz Global Corporate & Specialty AG**⁵ considered and held, a litigant seeking to defer summary judgment on that basis must identify what material is expected, why it is more likely to exist and how it would materially affect the outcome. Mere hope is therefore materially insufficient.

- [16] However, the court must always be mindful that there should not be a mini-trial at the summary judgment hearing. It is therefore inherently inappropriate to grant summary judgment where the outcome depends upon sharply contested primary facts, credibility assessments, disputed expert evidence, or inferences that can only fairly be drawn after oral testimony and cross-examination. In such circumstances, fairness ordinarily requires such matters to be dealt with in the ordinary trial process. The caution expressed in **Sagicor Bank Jamaica Limited v Taylor-Wright** that the court may analyse the evidence but must not usurp the trial function where genuine factual controversy exists, is therefore paramount.
- [17] The power under CPR 15.6 is broad.⁶ Upon hearing the application, the court may give summary judgment on the whole claim, on a particular issue, strike out or dismiss all or part of the claim, dismiss the application, grant conditional permission to defend, or make case management directions. The rule therefore allows the court to tailor a proportionate order. If only one head of loss, one defence, or one discrete issue is unsustainable, judgment may be entered on that issue alone while the other issues will proceed to trial.
- [18] In the context of claims for damages, that power is of particular significance. If liability, as a whole is a triable issue but a pleaded head of special damage has no evidential or legal foundation, the court may summarily dismiss that head while allowing the remaining claim to proceed. Equally, if some aspect of quantum requires expert assessment or factual determination, the court should reserve that issue for trial while disposing summarily of the rest. Part 15 therefore accommodates issue-based adjudication, not merely all-or-nothing outcomes.
- [19] This was the nature of the particular summary judgment application before the Learned Master whereby the respondent sought to engage the Master's evaluative jurisdiction solely on the head of damages for loss of future earnings.

⁵ [2007] EWCA 1744 (Comm).

⁶ Part 15.6(1); "The court may give summary judgment on any issue of fact or law whether or not the judgment will bring the proceedings to an end. (2) if the proceedings are not brought to an end, the court must also treat the hearing as a case management conference."

- [20] In this Court's view and mindful of the cautionary limitation on appellate interference in a trial judge's exercise of discretion,⁷ it has found that the Learned Master had misdirected himself on the application and pleaded case that was before him, such that his decision on the summary judgment application ought to be set aside.
- [21] The appellant's pleaded case was that she slipped and fell on 16th March 2020 at the respondent's warehouse after encountering fabric softener left on the floor. She alleged that the accident caused serious orthopaedic injury, ongoing disability, and consequent loss of future earning capacity. She further pleaded that she remained employed until her employment was terminated effective 30th June 2021, and that thereafter she was unable to continue gainful employment. Those allegations, if established, are capable in law of founding a claim for past and future loss of earnings.
- [22] The issue before the Learned Master was therefore not whether the appellant would ultimately succeed, but whether the claim for loss of future earnings had a real prospect of success. That required consideration of whether the claim for damages for future loss of earnings was realistic, as opposed to fanciful, and whether there existed any compelling reason for the matter to proceed to trial.
- [23] The appellant's claim depended upon a number of factual questions which were materially disputed or inherently evaluative. These included the nature and extent of the injuries sustained, the degree of any continuing physical impairment, whether the injuries affected her capacity to perform her employment duties, whether the termination of employment was causally connected to the injuries, whether she remained capable of alternative employment thereafter, and the extent of any financial loss actually suffered. Those are not issues ordinarily capable of final resolution on affidavit evidence alone.
- [24] The presence of medical material in the bundle which seemed to suggest that there was no "specific disability and that she was capable of performing her daily chores"⁸ and upon which the respondent placed the entire rationale for the summary judgment application, was construed

⁷ Dufour and ors v Helenair Corporation Ltd and ors [1996] 52 WIR 188.

⁸ See: Medical Report of Dr. Duane Hendrickson dated 9th March 2023, Hearing Bundle at page 907.

by the Learned Master as fundamentally and fatally detrimental to the claim made for future loss of earnings.

[25] However, as this Court at the hearing was at pains to point out to counsel for the respondent, that report was not capable of being read with such certainty when one considered that the very same medical doctor in the very same report went on to say three important things. Firstly, that she continues to suffer pain; secondly, that he could not say if the appellant fell into the quoted 75% of the patients that self-healed from her injuries and, thirdly that her prognosis was “reserve (sic) depends (sic) on the conservative or surgical management of the patient.”⁹ Thus it was clear to the court that the very report relied on by the respondent was itself sufficient to demonstrate that the extent and resulting consequences of the injuries suffered and ongoing symptoms were live issues requiring further assessment and recommended surgery. Therefore, once there was evidence capable of supporting continuing impairment (whether partial, full or to what extent), the question whether such impairment would or could translate into future diminished earning capacity continued to be an issue for trial. It would require consideration not only of medical evidence, but also employment evidence, the appellant’s work history, her duties, remuneration, and any steps taken by way of mitigation.

[26] The Learned Master appears to have treated weaknesses in the appellant’s evidential case as equivalent to an absence of a real prospect of success. That was an error of approach. A claim may be imperfectly particularised, contested, or evidentially incomplete at the interlocutory stage, yet it may be one which plainly requires full and careful evaluation at a trial. The summary judgment jurisdiction is not intended to shut out claims which depend upon oral testimony, credibility findings, expert assessment, or inferential reasoning from primary facts. Indeed, at the time of the hearing before the Learned Master, the fact that the appellant had an extant application for further expert evidence to be given as it related to the medical evidence before the court, whether pursued at the hearing or not, should have signalled to the Learned Master that the medical evidence, as far as the appellant was concerned, had not been closed. Indeed, from the evidence that was before the Learned Master it was clear that the appellant was expected to undergo further surgery with respect to her injuries and that, at the most, the medical doctor could only give a reserved prognosis.¹⁰

⁹ Ibid at page 910.

¹⁰ See: Respondent’s Bundle of Documents, Hearing Bundle pp 191-194.

[27] Further, claims for loss of future earnings, constitute a discrete head of damage arising within a broader personal injury claim, and do not usually allow for exact quantification during the early stages of litigation as such claims commonly require careful consideration by reference to the claimant's earnings history, future contingencies such as surgeries or medical treatment, residual earning capacity, and mitigation. Those matters are seldom appropriate for summary determination unless the claim is wholly unsustainable as a matter of law or fact. This was not such a case.

[28] There was, at minimum, a compelling reason for trial within the meaning of Rule 15.2, namely that the loss of future earnings claim turned upon contested factual issues requiring proper evidential testing at a trial. Even if aspects of the claim appeared weak, the appropriate course was case management, disclosure, expert directions, and trial determination, rather than summary dismissal.

[29] In those circumstances, the Learned Master's order dismissing the appellant's claim for loss of earnings cannot stand. The claim was neither fanciful nor bound to fail. It raised genuine issues requiring adjudication at trial. The appeal was therefore allowed, and the order for summary judgment in relation to loss of earnings was set aside.

Disposition

[30] Accordingly, and for the reasons given above, it is hereby ordered that:

- (1) The appeal is allowed.
- (2) Costs to the appellant to be assessed if not agreed within 21 days of today's date.

I concur.
Gerard St. C. Farara
Justice of Appeal [Ag.]

I concur.
Gertel Thom
Justice of Appeal [Ag.]

By the Court

Deputy Chief Registrar