In The Supreme Court of Bermuda

CIVIL JURISDICTION

2026 No 88

BETWEEN:	**BENTLEY FRIENDLY SOCIETY**	**PLAINTIFF**
	- AND-	
	BANK OF NT BUTTERFIELD & SON LTD	**DEFENDANT**

Application to strike out the writ and statement of claim under RSC Order 18 rule 19 (1) (a) (b) and (d) as disclosing no reasonable cause of action, as being frivolous and vexatious or otherwise as an abuse of the process of the court

REASONS FOR ORDER

MARTIN J IN CHAMBERS

Appearances

Oliver MacKay and *Mahogany Bean* of Carey Olsen Bermuda Limited for the defendant on the application to strike out the claim.

Mr Craig Walls in person in his capacity as "trustee" of the plaintiff[1].

Date of Hearing and Order: 5 August 2026

Date of Reasons: 10 August 2026

[1] The question of representation is addressed below briefly in these Reasons. The parties were content to proceed on the basis that the court should hear Mr Walls *de bene esse* pending formal determination of his legal capacity to do so in other proceedings pending before the court.

Introduction

1. On 5 August 2026 the court granted the defendant's application to strike out the writ and statement of claim in this action on the grounds that (i) it discloses no reasonable cause of action (ii) it is frivolous and vexatious, and (iii) it is otherwise an abuse of the process of the court. The court also awarded the costs of the action to the defendant to be taxed on the indemnity scale if not agreed. The court explained at the time that the essential basis for these decisions was that the claim in this action is the very same claim that the court dismissed in **Bentley Friendly Society v HSBC Bank Bermuda Limited**[2] on the precisely the same grounds in June of this year. The court indicated that it would give brief supplemental reasons for its decision and these are those reasons.

Brief background

2. The plaintiff ("BFS") is a friendly society registered under the Friendly Societies Act 1868. BFS is an unincorporated association and has no independent corporate personality of its own but operates according to the rules of the friendly society that have been adopted by its members.

3. BFS offers insurance to its members on the mutual insurance theory, namely it collects 'premiums' from its membership and issues certificates to its members evidencing the BFS obligation to meet claims in respect of different classes of risk, including motor insurance liability and property risks. In this case the class of risk relates to property insurance. A member who has contributed to the fund and holds a certificate is entitled to claim on the insurance certificates issued by BFS to them in relation to the property which is 'insured' in respect of those covered risks.

4. BFS is not governed by the provisions of the Insurance Act 1978 in respect of the 'policies' it issues to its members by virtue of an exemption under section 57. BFS therefore does not maintain statutory capital or meet the solvency and liquidity margins required of an insurer licensed under the Insurance Act 1978.

5. The rights of the members as between themselves are governed by the rules of the society. A member's right to claim for indemnity under the insurance certificate is governed by the terms of the contract between the individual member and BFS.

6. The defendant in this case (to which I will refer as "NTB") has refused to accept insurance certificates issued by BFS as satisfactory evidence of insurance in respect of property over which NTB holds a mortgage. NTB has indicated it will consider accepting certificates from BFS as satisfactory proof of insurance coverage from its mortgagor customers if and when BFS becomes licensed as an insurer under the Insurance Act 1978.

7. This is precisely the same situation as has been described in the case decided in relation to HSBC Bank Bermuda Limited referred to above (to which I will refer as the "HSBC case" for short in these Reasons).

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[2] [2026] SC (Bda) 60 civ (17 June 2026)

8. BFS accepts that there is no contractual or other legal relationship between NTB and BFS[3]. However, BFS says that in the past NTB has accepted certificates issued by BFS to its members as being satisfactory to meet the member's requirement to provide proof of insurance of property over which the Bank holds a mortgage interest. BFS says that NTB has done so for a period of 10 years[4]. BFS says that NTB has now refused to accept certificates of insurance issued by BFS and BFS complains that NTB is not entitled to do so and seeks declaratory relief to that effect.

BFS's claims

9. The legal basis on which BFS puts its claims for declaratory relief is not easy to follow. The pleading does not follow the conventional format of setting out the facts upon which the claims are based. The essence of the claim is that BFS claims that it is entitled to write insurance business for its members and it is to be inferred that BFS is claiming that it is entitled to be treated on the same footing as if it is an insurer licensed under the Insurance Act 1978 by virtue of the exemption contained in section 57.

10. In summary, BFS says (i) that by its course of conduct NTB is estopped from refusing its certificates (ii) NTB's refusal to accept its certificates is an unlawful interference with the contractual relations between BFS and its members and amounts to (an unlawful) restraint of trade (iii) NTB has abused its position of market dominance and made its decision to refuse to accept BFS's certificates in bad faith (iv) NTB's decision to refuse to accept BFS' insurance certificates is irrational and arbitrary and (v) NTB's decision is an unlawful violation of the members' constitutional rights of freedom of association. These are the very same claims that BFS asserted in the HSBC case, word for word.

11. The only different feature of the present case from the HSBC case on the pleadings is that NTB is alleged to have accepted BFS insurance certificates for a period of ten years, whereas that allegation was not made in the HSBC case.

12. NTB applied to strike out the writ and statement of claim on the grounds that the pleaded claims do not state a reasonable cause of action namely one that is justiciable or could ever lead to liability on the part of NTB. In addition, in light of the fact that this court has already considered in detail the very same claims made against a different bank in the HSBC case, and has struck them out, the claims made in this case are frivolous and vexatious, in that NTB should not have to go to the time, trouble and expense of defending a claim which has already been determined to be hopeless. Furthermore, NTB says that bringing such a claim (which has already been struck out against another party) is an abuse of the process of the court and should be struck out accordingly.

Strike out principles

13. The court was reminded of the principles that guide the court in considering applications to strike out a claim that have been set out in numerous cases in Bermuda, applying well established principles derived from historic experience under equivalent rules in England & Wales upon which our own rules of procedure are based. These were summarised by Subair

[3] Paragraph 15 of the Statement of Claim.
[4] Paragraph 3 of the Statement of Claim

Williams J in **Fidelity National Title Insurance Co v Trott & Duncan Ltd**[5] and **Tucker v Hamilton Properties Limited**[6], which are so well known they do not need to be set out comprehensively here.

14. It will suffice to say for present purposes that the court will only strike out a claim as disclosing no reasonable cause of action when it is plain and obvious that the facts alleged could not result in the plaintiff establishing any legal liability against the defendant, assuming all the facts alleged are true and are capable of proof at trial. In order for a claim to be sustainable in law, the facts alleged must amount to a recognised cause of action: nothing less is sufficient.

15. The court's analysis is confined to the allegations of fact that have been made in the pleading and the legal consequences that flow from establishing those facts at trial. The court is not supposed to embark on a lengthy analysis of complex factual or legal matters or decide disputed propositions of law in a developing area when considering a strike out application[7].

16. The court also has a discretionary power to strike out a claim on the basis that it is frivolous or vexatious or an abuse of process and can receive evidence in support of that type of application. The court's summary powers of striking out a claim as an abuse are to be exercised only in plain and obvious cases or where it is necessary to protect the integrity of the court's own process.

NTB's submissions

No reasonable cause of action

17. Mr MacKay submitted on behalf of NTB that the only legally recognisable claim mentioned in the Statement of Claim was the claim that NTB was estopped from refusing to accept the insurance certificates issued by BFS to its members as sufficient evidence of insurance for NTB's residential mortgage customers because NTB had accepted BFS's certificates for a period of ten years. Mr MacKay submitted that this theory of claim is unsustainable either as a form of promissory estoppel by representation or an estoppel by convention.

18. Mr MacKay submitted that a promissory estoppel does not give rise to a claim but is only an equitable defence to a claim based on a representation which has been made by one party to another, upon which the representee has relied to his or her detriment, which prevents the representor from going back on his or her word and insisting upon performance of their full legal rights. It is a legal shield, not a sword.

19. Mr MacKay referred to **Baird Textiles v Marks & Spencer plc**[8] (which was also cited in the HSBC case) for the legal principles that apply to an estoppel. In order to found a basis for a promissory estoppel the representee must show (i) that the obligation alleged is sufficiently certain to be capable of enforcement he case of a promissory estoppel (ii) that the promise was

[5] [2019] Bda LR 8.
[6] [2017] SC (Bda) 110 Civ.
[7] See also the general principles summarized in the Supreme Court Practice 1999.
[8] [2001] EWCA Civ 274.

made to the person who relied upon it[9]. The representation must also be intended to affect an existing legal relationship[10].

20. In this case no representation is alleged to have been made by NTB to BFS or to any of its members. Mr MacKay submitted that in order for the estoppel to arise at all the representation would have had to have been made to the particular member who had a certificate, not to BFS. Therefore, he submitted the essential ingredient to give rise to a promissory estoppel is entirely absent from BFS's Statement of Claim. In addition, Mr MacKay pointed out that BFS accepts that there is no legal relationship between BFS and NTB, so no estoppel could arise because there is no existing legal relationship to modify.

21. Mr MacKay submitted that in relation to an estoppel by convention, or course of dealing, the conduct must (i) be of sufficient clarity and (ii) must be intended to affect an existing legal relationship[11]. He repeated the same points summarised made above (none are alleged or could be alleged) and submitted that it therefore does not matter if NTB has in the past (which is not admitted) accepted certificates from BFS.

22. On this point Mr Walls accepted that the **Baird Textiles** case fairly represents the legal position, but reasserted that the ten-year history of accepting the certificates was nonetheless relevant.

Frivolous, vexatious and/or abuse of process

23. In relation to the remaining claims, Mr MacKay reiterated that these same claims were comprehensively rejected by the court in the HSBC case and went through the reasoning in that case and submitted that the same analysis must apply to the present case. It is not necessary to repeat the reasons given in the HSBC case in any detail: there is no factual or legal basis to assert a claim of interference with contractual relations by unlawful means or interference with contractual relations and claims about market dominance and breach of constitutional freedom to associate are obviously and incontestably bad.

24. In relation to the application that the claim should be struck out because it is frivolous and vexatious and/or an abuse of the process of the court, Mr MacKay submitted that it is obviously vexatious for NTB to defend an identical claim that has already been struck out as being unarguable, and that it is an abuse of process for BFS to re-litigate a claim it has already lost against another party by asserting exactly the same matters. Mr Walls did not respond to these submissions directly.

25. In answer to Mr MacKay, Mr Walls stood on his written submissions and added that the purpose of the Friendly Societies Act 1868 was to empower ordinary people to harness the power of their own resources. He submitted that the court should give effect to that policy of enlightened commercial independence and submitted that the court should not strike out the claim, but that it raised questions of important principle which should be determined at a trial.

The court's conclusions and decision

[9] Paragraph 38 in the judgment of Sir Andrew Morritt VC.
[10] Paragraph 92 in the judgment of Sir Andrew Morritt VC, citing earlier case law.
[11] Paragraph 91 of the judgment of Sir Andrew Morritt VC.

26. The court accepted Mr MacKay's submissions that the claims made in the Writ and Statement of Claim disclose no reasonable cause of action for the reasons he gave and which are summarised above. It is plain and obvious that this claim is unsustainable and is not legally recognisable as a form of claim for which there is available relief by way of declaration or otherwise. The claim is not capable of amendment to supply the want of particulars or additional averments. The court repeats and incorporates by reference the summary of the legal relationships involved which are set out in paragraphs 35 to 43 of the decision in the HSBC case. This case is equally unarguable for the same reasons.

27. The court also considers that it is a plain and obvious abuse of the court's process to bring a new set of proceedings which is a clone of an earlier claim made against another party which was struck out as disclosing no reasonable cause of action and an abuse of process. It is plainly abusive of the court's process to relitigate the same bad claim against successive parties[12].

28. Therefore, for those reasons the court made the order striking out the writ and statement of claim.

Costs

29. The court ordered that BFS is to pay NTB's costs of the proceedings to be taxed on the indemnity scale if not otherwise agreed. It is important to record that the award of indemnity costs is primarily intended to be compensatory not punitive[13]. While the court expresses its disapproval of a party misusing the court's process by prosecuting successive versions of the same bad claim, the principal purpose of an award of indemnity costs is to compensate the other party as fully as possible where the opposing party has conducted the proceedings in an unreasonable or oppressive manner or has deliberately increased the costs of the proceedings unnecessarily.

30. In this case BFS persisted in its pursuit of these proceedings after it had been unsuccessful in defending the strike out application in the HSBC which was word for word the same (except for one allegation which was irrelevant). This made the hearing of the present application entirely unnecessary and NTB incurred substantial preparation costs in relation to an application which ought to have been conceded. The court is required to discourage parties from conducting litigation otherwise than in a proportionate and reasonable manner and, in this case, the only way to encourage that is to compensate NTB for all the costs it has incurred in relation to defending the proceedings, which includes the application to strike them out.

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[12] See Lord Sumption JSC in **Virgin Atlantic Airways Ltd v Zodiac Seats UK Ltd** (formerly Contour Aerospace Ltd) [2013] UKSC 46 at paragraph 17: *"..where a cause of action has been held to exist or not to exist, that outcome may not be challenged by either party in subsequent proceedings…"*

[13] See Tomlinson J in **Three Rivers District Council & Ors v Bank of England** [2006] All ER (D) 175 at paragraph 14.

Representation

31. Mr Walls appeared as a litigant in person in his capacity as 'trustee' of BFS. The question of whether Mr Walls is entitled to act in person for BFS has been raised in other proceedings and this issue is to be determined formally. In order to avoid an adjournment of the present application to abide the outcome of that determination before hearing Mr Walls in this case, the parties agreed that the court should hear Mr Walls' submissions *de bene esse*.

Dated this 10th day of August 2026

SIGNED

THE HON. MR. JUSTICE ANDREW MARTIN

PUISNE JUDGE OF THE SUPREME COURT