In The Supreme Court of Bermuda

CIVIL JURISDICTION
2023: 50

BETWEEN:-

TICOE WILLIAMS

Plaintiff

- and -

BERMUDA HOSPITALS BOARD

Defendant

RULING

Date of Hearing: **5 August 2026**
Ruling Delivered: **23 October 2026**

Appearances: ***Bruce Swan*** **of Bruce Swan & Associates for the Applicant**
Paul Harshaw **of Canterbury Law for the Defendant**

HEADNOTE

Introduction

1. On 26 May 2025 the Plaintiff applied by way of a summons for the time for service of an amended writ of summons to be enlarged. This judgment sets out my conclusions regarding that application.

2. I thank the parties for the assistance I have received with that matter.

Factual background

3. On 10 February 2023 the Plaintiff issued a specially endorsed writ of summons. This essentially alleged a breach of an employment contract in light of the manner in which the Defendant responded to a campaign of bullying and harassment directed towards the Plaintiff. The period in issue appears to have been between 30 November 2016 and 1 March 2019 when the Plaintiff was dismissed. The Plaintiff claimed loss of wages and other monetary relief.

4. On 24 February 2023 the Defendant entered an appearance and served a request for further and better particulars. A supplemental request for further and better particulars was served on 16 March 2023. A reply purporting to serve further and better particulars was served by the Plaintiff on 4 April 2023. A request for further and better particulars of the further and better particulars was served on 4 April 2023. A reply was filed by the Plaintiff on 15 June 2023.

5. The Defendant filed a provisional defence on 29 September 2023. At several points it was stated that there was a lack of particulars in the Plaintiff's writ.

6. On 8 December 2023 the Plaintiff filed a summons seeking:

> *... an order that the Plaintiff do provide proper responses (providing accurate particulars) to the requests for further and better particulars ...*

7. The summons was heard on 11 January 2024 and it was ordered, among other things, that the Plaintiff should on or before 24 January 2024 serve the further and better particulars requested.

8. On 25 January 2024 the Plaintiff filed his amended reply to the request for further and better particulars.

9. The Defendant filed an application for strike out on 26 January 2024. This argued the amended reply to the request for further and better particulars was inadequate.

10. Acting Justice Cratonia Thompson ruled on 20 December 2024 that an amended writ should be served within 21 days ([2024] SC (Bda) 76 Civ). Thompson AJ's judgment stated, among other matters, that:

> *I agree that the Plaintiff's responses to the Defendant's Requests were lacking in some respects. ... That said, I do not accept that the Plaintiff is in breach of the Order to Compel as so robustly argued by the Defendant. In some instances, that Plaintiff did provide the further particulars that were sought, and in fact, went as far as setting out material facts that should have been in pleaded in the Writ.* [43]

11. The Plaintiff argues that on 1 January 2025 his attorney did not have a 2025 practising certificate. That was not obtained until on or about 24 January. This appears to be relied upon as the first reason why the order of Thompson AJ was not complied with. The Defendant argues that the Plaintiff's attorney continued to practise. That does not appear to be disputed.

12. On 24 January 2025 the Plaintiff's attorney was involved in a motorcycle accident and was off work until 7 February 2025. This is the second reason why the order of Thompson AJ was not complied with.

13. On 21 February 2025 an amended writ was served and filed. However, no application was made to extend time. The Plaintiff's attorney only subsequently recognised that an application was needed. A summons was issued on 26 May 2025 to extend time.

14. The amended statement of claim endorsed on the writ of summons contains significant additional detail. The additional detail includes the following:
    a. Particulars of the alleged conduct that was said to amount to bullying and harassment. This was said to have commenced on about 30 November 2016 and then continued on a weekly basis.
    b. The names of individuals employed by the Defendant who the Plaintiff alleges he complained to.
    c. An allegation that either the Plaintiff or the harasser should have been moved to a different position to separate them. It is also pleaded that the Plaintiff requested a move.

d. A claim that the alleged harasser had instigated a fight with the Plaintiff on 5 January 2019.
e. A claim that the Defendant had a bullying and incivility policy that provided for zero tolerance that was breached.

One issue that I will need to consider is whether that additional detail is sufficient.

Law

15. Order 1A, rule 1 of the Rules of the Supreme Court 1985 (GN/1985) ('the Rules') provides that:

> *(1) These Rules shall have the overriding objective of enabling the court to deal with cases justly.*
>
> *(2) Dealing with a case justly includes, so far as is practicable—*
>
> *(a) ensuring that the parties are on an equal footing;*
>
> *(b) saving expense;*
>
> *(c) dealing with the case in ways which are proportionate—*
>
> *(i) to the amount of money involved;*
>
> *(ii) to the importance of the case;*
>
> *(iii) to the complexity of the issues; and*
>
> *(iv) to the financial position of each party;*
>
> *(d) ensuring that it is dealt with expeditiously and fairly; and*
>
> *(e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.*

16. Order 3, rule 5 of the Rules provides that:

> *(1) The Court may on such terms as it thinks just, by order extend or abridge the period within which a person is required or authorised by these rules, or by any judgment, order or direction, to do any act in any proceedings.*
>
> *(2) The Court may extend any such period as is referred to in paragraph (1) although the application for extension is not made until after the expiration of that period.*
>
> *(3) The period within which a person is required by these rules, or by any order or direction, to serve, file or amend any pleading or other document may be extended by consent (given in writing) without an order of the Court being made for that purpose.*

17. In *Erskine v Worthington, The Times*, 8 July 1991, the English Court of Appeal considered the approach to be adopted to failures to comply with time limits. It held that:

> *The rules are an indispensable framework for the orderly administration of justice. But they are no more. They should not be a prison restricting the free exercise by the court of its powers to conduct the litigation brought before it in whatever way, consistently with the rules, seems most fair in the circumstances of the individual case. ...*
>
> *The appellants' next proposition ... is to the effect that a plaintiff who is late in tendering a statement of claim must furnish a convincing excuse for the delay if his application for an extension of time is to succeed. I do not agree. I go this far with the appellants that the reference to an "excuse" in Prince v Dannimac must have meant "an acceptable explanation", not a mere assertion that the person in charge of the action forgot the statement of claim or was too busy to get on with it. I also accept, what is obvious, that the tendering of an acceptable excuse, such as illness, will prompt a more sympathetic response to the application than if the omission was caused by neglect. Furthermore, there is no doubt, as I have already said, that the party guilty of inexcusable delay in complying with the rules, rather than his opponent, has to make the running when the court is asked to exercise a discretion. ... But it would be absurd to say that every instance of overstepping the time limit without excuse, however short and however lacking in harmful consequence to the defendant, should be punished by the loss of the action. ...*

18. Order 18 rule 7 of the Rules provides that:

> *(1) Subject to the provisions of this rule, and rules 7A, 10, 11 and 12, every pleading must contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which those facts are to be proved, and the statement must be as brief as the nature of the case admits.*
>
> *(2) Without prejudice to paragraph (1), the effect of any document or the purport of any conversation referred to in the pleading must, if material, be*

briefly stated, and the precise words of the document or conversation shall not be stated, except in so far as those words are themselves material.

19. The Supreme Court Practice 1999 ('the White Book') states that:

> *It cannot be too often stated that the relevant matters must be stated briefly, succinctly, and in strict chronological order. Pleadings should be as brief as the nature of the case will admit.*[18/7/11]
>
> *It is essential that a pleading, if it is not to be embarrassing, should state those facts which will put those against whom it is directed on their guard, and tell them what is the case which they will have to meet* [18/7/11]

20. Section 10(1) of the Trade Union and Labour Relations (Consolidation) Act 2021 ('section 10(1)') appears within a section entitled '[w]hen trade union contracts unenforceable'. Section 10(1) states that:

> *Subject to this Act, the courts shall not have power to entertain any legal proceedings instituted with the object of directly enforcing or recovering damages for, the breach of any of the following agreements, namely - ...*
>
> *(e) any collective agreement between a trade union and an employer or group of employers*

21. Section 10B of the Employment Act 2000 ('section 10B') essentially requires employers to adopt a policy statement against bullying and sexual harassment. This appears to have become effective on 1 June 2021.

Submissions of parties

22. I was assisted in determining this application by the written and oral submissions of the parties. I have considered those submissions with care. I have briefly summarised the submissions below. I have also engaged with a number of the submissions when setting out my reasoning. If I have not addressed any particular submission in my reasoning, it does not mean that I have not considered it. I have simply summarised the arguments to the extent needed to understand my reasoning.

23. In summary, the Plaintiff argues that he has explained the delay. He also argues that his pleadings may not be perfect but are adequate. In particular they have now made clear what the Defendant needs to reply to.

24. In summary, the Defendant's arguments focused on the pleadings. Although they do not concede good reason for delay, they accept that, if the pleadings are adequate, that will weigh heavily in favour of extending time.

Reasoning

25. It appears to me that I should start my consideration of the issues by considering whether the Plaintiff's amended statement of claim addresses the deficits identified by Thompson AJ and is now sufficient.

26. As the Plaintiff realistically accepts, the latest iteration of the writ is far from perfect. That is despite the fact that the Plaintiff has had considerable time to improve it. One could argue that the requests for further and better particulars, which started on 24 February 2023, should have caused the Plaintiff to consider the adequacy of his pleadings. However, I also have to recognise that pleading a case is far from a precise science. While detail is required, excessive detail is unwelcome. This means that perfection is highly unlikely to be achieved. Parties have to balance the need for detail against the need for concision.

27. I am also not convinced that the amended writ addresses the concerns of Thompson AJ in the manner anticipated. For example, Thompson AJ noted at para 43:

> *For instance, the Plaintiff has failed to set out any dates whatsover (or even an approximate time period) on which the alleged incidents of bullying and harassment occurred.* [43]

The amended writ now provides an approximate start date for the incidents of bullying, it estimates their frequency and it records who received complaints about them. It is also reasonable to assume that the allegations of bullying and harassment must end when the Plaintiff lost his job. What this demonstrates is that additional details have been provided but there remain no precise dates for each incident.

28. I have considered carefully the matters set out in paragraph 27. As noted above, the White Book states that if a pleading is not to be embarrassing, it should state those facts which will put the other side on their guard. Applying that approach, it appears to me that sufficient particulars have been provided of the incidents of bullying and harassment. It appears to me that the key point made is that there were a series of complaints. As pleaded, it is difficult to see how the Defendant could be liable if there had been no complaints. The names given and the approximate start date will allow the Defendant to investigate whether those complaints were made and how they were determined.

29. It appears to me that the Defendant's oral submissions focused on paragraph 13 of the amended statement of claim. This now states that:

> *That the Bermuda Hospital's Board has a bulling [sic] and incivility policy which state there is a zero tolerance for fighting on the workplace. This is also noted in the Collective bargaining Agreement which governed the Plaintiff terms of employment while employed by the Defendant.*

I struggle to see how this paragraph can be said to be inadequately pleaded. The Defendant's skeleton argument argues that the policy is 'un-defined'. However, it appears to me that this is insufficient to demonstrate that the writ is inadequately particularised. The Plaintiff has alleged that there was a policy that was adopted and incorporated into the employment contract. The Defendant must know what policies it adopted and whether it believes that they were incorporated into the employment contract. If it wishes to argue that there is no relevant policy, that would be a defence. Alternatively, it presumably knows the terms of policy and can argue that it was complied with or any failure to comply with it does not give rise to a claim.

30. The Defendant argues that the duty to adopt policies imposed by section 10B was only effective from 1 June 2021. That is said to be significant as the conduct in issue was said to have ended on 1 March 2019. It appears to me that that does not assist the Defendant. Even if (as appears to be the case) the Defendant was not required to adopt a policy during the period in issue, the writ alleges that the Defendant did in fact adopt a policy and made it part of the contract of employment. Section 10B was not required to enable a contractual agreement to be reached providing for the adoption of a policy. The absence of section 10B did not prevent this.

31. The Defendant also argues that section 10(1)(e) prevents this claim. Section 10(1)(e) prevents proceedings with 'the object of directly enforcing or recovering damages' for breaches of collective agreements [Emphasis added]. It appears to me that the word 'directly' is important. That would appear to make it clear that section 10(1)(e) is intended to have narrow effect. It would appear to prevent the parties to a collective agreement (i.e. the trade union and an employer/employer groups) suing to enforce the agreement. However, in this case the Plaintiff is suing to enforce his employment contract that is said to incorporate a collective agreement. It appears to me that this is not directly enforcing the agreement. That conclusion is consistent with the title of section 10(1), which references 'trade union contracts'. What is in issue in this case is a contract between the Plaintiff and his employer. That is not a trade union contract.

32. I should add that the interpretation in paragraph **Error! Reference source not found.** above is supported by section 6 of the Bermuda Constitution (enacted by schedule 2 to the Bermuda Constitution Order (BX182/1968)). Section 6 seeks to safeguard the right of access to the court. There would clearly be an issue with the right of access to the court if aspects of an employment contract could not be enforced in the courts of Bermuda.

33. The Defendant also takes issue with paragraph 18 of the writ. This states that:

> *The Plaintiff reasonably believes that both he and [the harasser] should have been dismissed under the Collective Bargaining Agreement as there was a fight between employees on the property.*

34. I accept that the Plaintiff's beliefs are irrelevant. However:
    a. The paragraph in question makes clear that there is an issue as to whether both the Plaintiff and the harasser should have been dismissed.
    b. It does not appear to me that the writ is defective if paragraph 18 of the writ is omitted. There is a claim without it.

35. Taking account of the overriding objective set out in order 1A, rule 1 of the Rules, it appears to me that paragraph 18 of the writ is not a reason to find that the pleading should be rejected as being fundamentally defective. Assuming that I am willing to extend time, it appears to me that the Plaintiff should be given 14 days to either delete paragraph 18

or positively assert that both the Plaintiff and the harasser should have been dismissed. A similar election appears to me to be required in relation to paragraph 19 of the writ as that also references a subjective belief.

36. Orally it was submitted by the Defendant that the Plaintiff was arguing in the writ that the victim of violence should have been dismissed. I am not sure that is a defence to the claims of a failure to address bullying and harassment. In any event, paragraph 11 alleges that the harasser 'instigated the fight'. It also appears to allege that the Plaintiff acted in self-defence.

37. In light of matters above, I have concluded that the writ contains sufficient particulars as there is an adequate case for the Defendant to respond to. The writ is not perfect and it appears to me that the claims of belief in the writ need to be addressed (see paragraph 35 above). However, it appears to me that the state of the writ is not a reason to refuse to extend time. The Defendant accepts that this is a highly relevant factor.

38. In principle it appears to me that the Plaintiff's attorney could not be expected to take steps without a practising certificate. That would be unlawful. I accept that the attorney did in fact take steps in a number of cases. However, it appears to me that it would be wrong in principle for a court to hold that the attorney should have acted unlawfully. What is more significant is that no explanation has been provided for the failure to obtain a practising certificate.

39. There appears to be no dispute that the Plaintiff's attorney was subsequently injured as claimed. It appears that following recovery, the amended writ was served reasonably quickly.

40. Taking the matters in paragraphs 38 and 39 together, it appears to me that the excuse for delay is far from perfect. In particular, the Plaintiff's attorney should have had the necessary practising certificate to avoid any delay. In light of the matters above, it appears to me that the explanation for the delay cannot be described as 'acceptable'. However, it does provide some mitigation. What is most significant is that the explanation demonstrates that the Plaintiff was not personally responsible.

41. The fact that the Plaintiff was not personally responsible appears to me to be significant. It appears to me that this litigation is likely to be important from the Plaintiff's point of view. He is alleging that there was a failure to protect from bullying and harassment. If that allegation is true, the Plaintiff is likely to want to establish that.

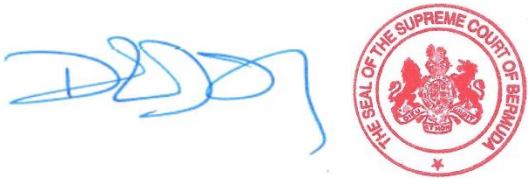
42. Taking account of all of the matters above, it appears to me that time should be extended providing that within 14 days the statements of belief in paragraphs 18 and 19 of the writ are addressed.

Conclusion

43. It appears to me that the performance of the Plaintiff's lawyer has been far from perfect. There has been considerable delay in amending the writ so that it is satisfactory. The writ is still far from perfect. However, taking account of the need to ensure this case is dealt with justly, it appears to me that time should be extended.

44. It appears to me that this matter has already been delayed for a significant period. I will expect the parties to have proposals to progress this matter when judgment is delivered. I should also warn the Plaintiff that further failures to comply with orders may well result in sanctions. The Court has been tolerant so far but that will not continue indefinitely.

Dated this 23rd day of October 2026



HUGH SOUTHEY KC
ASSISTANT JUSTICE