In The Supreme Court of Bermuda

Civil Jurisdiction 2026 No 50

BETWEEN **BENTLEY FRIENDLY SOCIETY** **PLAINTIFF**

AND

HSBC BANK BERMUDA LIMITED **DEFENDANT**

Application to strike out writ and statement of claim as disclosing no reasonable cause of action RSC Order 18 rule 19 (1) (a)

Date of hearing: 18 May 2026

Date of Ruling: 17 June 2026

Appearances

Mr Craig Walls in person in his capacity as a trustee of the plaintiff

Ben Adamson of Conyers Dill & Pearman Ltd for the defendant

MARTIN J

In Chambers

RULING ON STRIKE OUT APPLICATION

Introduction and disposition

1. This is the court's ruling on an application by the defendant to strike out the proceedings on the grounds that the pleaded claims do not disclose a reasonable cause of action pursuant to Order 18 rule 19 (1) (a) of the Rules of the Supreme Court of Bermuda ("the RSC").

2. For the reasons explained in the Ruling below, the court has concluded that the proceedings must be struck out as disclosing no reasonable cause of action because the pleadings do not set out any facts or claims based thereon that could, if they were established at trial, result in the defendant having any legal liability to the plaintiff.

Strike out principles

3. The principles that govern the exercise of the court's power to strike out a claim are well known and do not need to be set out comprehensively here. It will suffice to say 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. 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[1].

4. In this case, the plaintiff's claims relate to the defendant's refusal to accept certificates of insurance issued by the plaintiff to their members as satisfying a mortgagor's obligation to obtain adequate property insurance in relation to mortgaged property.

Background facts

5. The plaintiff ("BFS") is a friendly society registered under the Friendly Societies Act 1868. BFS holds itself out as providing unregulated motor and property insurance to its members on a mutual basis. As a friendly society, BFS is exempted from complying with the regulatory requirements imposed on commercial insurers under the Insurance Act 1978 by reason of section 57 (1) (a) which provides:

    "...insurance business carried on by a friendly society registered under the Friendly Societies Act 1868...being business in which risks of members of the friendly society...are insured...shall be deemed not to be insurance business within the meaning of this Act."

6. The effect of this provision is clear: a registered friendly society which provides insurance to its members is deemed not to be carrying on an activity which is regulated under the Insurance Act 1978. As a result of this exemption, registered friendly societies do not need (for example) to maintain a minimum amount of statutory capital or reserves against the liabilities they incur to their members, do not need to maintain minimum solvency margins, do not need to provide audited financial statements to the Bermuda Monetary Authority or comply with all the other detailed regulatory requirements of a licensed insurer. A friendly society is accountable only to its members according to the rules of the society.

[1] See the general principles summarized in the Supreme Court Practice 1999 and the convenient summary of the application of those principles in Bermuda in **Tucker v Hamilton Properties Limited** [2017] SC Bda 110 Civ by Mrs Registrar Subair Williams (as she then was) at paragraphs 11-20.

7. The defendant is a licensed bank ("the Bank") which offers a full range of financial services to its customers, including loan financing for the local residential property market. This activity involves lending money to customers to purchase property and involves taking security over Bermuda real estate as security for the repayment of the debt. One element of these standard loan financing arrangements is that the property over which the Bank takes a mortgage as security for the loan must be insured. The sum insured is usually required to be sufficient to repay the debt in the event of an insured event damaging the property (e.g. as a result of a fire or a hurricane). The beneficiary of the insurance policy is the Bank, not the mortgagor. This is so that the Bank can recover directly from the insurer sufficient monies to discharge the debt in the event that the property is destroyed or to repair the property if it is damaged by an insured event (for example, as a result of a fire or hurricane).

8. In this case, it is alleged that the BFS has issued "certificates of insurance" to certain of its members in relation to actual or prospective borrowings. The members referred to have not been identified, and it is not alleged that they are customers of the Bank, so the allegation is not directed at or connected to a particular factual circumstance. It is not alleged (for example) that any member has been refused a loan by the Bank on the basis that the Bank refused to accept a certificate of property insurance issued by BFS. The Bank has indicated that as a matter of business practice that it will not accept property insurance certificates from BFS unless BFS can provide evidence that it is authorised to sell property insurance policies under the Insurance Act 1978 by the Bermuda Monetary Authority ("the BMA").

9. BFS says that the exemption in section 57 of the Insurance Act 1978 means that BFS should not have to satisfy this 'additional' requirement by the Bank which BFS says is not provided for by the Insurance Act.

10. BFS has issued these proceedings to seek (i) a declaration from the court that the Bank's statement that they will not accept certificates of property insurance issued by BFS without confirmation from the BMA that BFS is authorised to sell insurance is unlawful (paragraph 35 a of the Statement of Claim) (ii) a mandatory injunction requiring the Bank to accept certificates of property insurance issued by BFS (paragraph 36 of the Statement of Claim) and (iii) damages for economic and reputational harm (paragraph 37 of the Statement of Claim). There are also some other grounds and prayers for relief which are to similar effect.

11. The Bank has applied to strike out the Writ and Statement of Claim as disclosing no reasonable cause of action because BFS has no legal ground on which to claim that the Bank must accept certificates of property insurance issued by BFS, or that the Bank's commercial policy is unlawful or in breach of any obligation in law. The Bank says it is entitled to decline to accept insurance certificates issued by BFS as being inadequate if it decides that it does not wish to accept certificated from an unlicensed insurer.

BFS' claims in detail

12. It is necessary to explain the claims made by BFS in a little more detail to examine the factual and legal basis on which BFS' claim is founded.

13. BFS is a friendly society registered under the Friendly Societies Act 1868 and provides mutual benefits including indemnity and "insurance type" protections to its members. BFS relies upon

section 57(1) (a) of the Insurance Act 1978 that states that a registered friendly society is exempted from complying with the requirements of the Insurance Act 1978 and is therefore not subject to regulation by the BMA.

14. BFS relies upon section 10 of Schedule 1 to the Bermuda Constitution Order 1968 ("the Constitution") for the proposition that all members of the BFS are entitled to enjoy the right of peaceful assembly and association, freedom to contract, including the right to form and belong to associations for the protection of their interests.

15. BFS says that many of its members hold residential mortgages with the Bank and that "insurance documentation" issued by BFS to its members provides coverage for risks customarily required under mortgages, including loss or damage to property.

16. BFS says the Bank has refused to accept BFS' "insurance documentation" unless BFS provides confirmation from the BMA that BFS is authorised to sell insurance in Bermuda and that BFS is regulated by the BMA.

17. BFS says it does not sell insurance to the public and is exempted from regulation by section 57 (1) (a) of the Insurance Act 1978 quoted above.

18. BFS says that the Bank's refusal to accept BFS' "insurance documentation" is causing or will cause harm to BFS and its members including (i) 'interference' with members' mortgage arrangements (ii) exposure to "forced-place" insurance[2] at additional cost (iii) reputational damage to BFS (iv) economic harm to members who have lawfully contracted with BFS for mutual insurance protection.

19. Based on these statements BFS asserts that it is entitled to the following relief:

    (i) A declaration that the Bank's refusal to accept BFS' certificates of insurance is unlawful, unreasonable and is contrary to the Friendly Societies Act 1868 and the Insurance Act 1978.
    (ii) A declaration that the Bank's stipulation that BFS must provide evidence from the BMA that BFS is authorised to sell insurance under the Insurance Act 1978 before it will accept certificates of insurance from BFS is not required by law and is inconsistent with the Insurance Act 1978 and is unlawful.
    (iii) A declaration that the Bank's refusal to accept property insurance certificates from BFS is an unjustified interference with the lawful contractual arrangements between BFS and its members.
    (iv) A declaration that the Bank's refusal to accept property insurance certificates for BFS amounts to a frustration of the intention of Parliament as expressed in Friendly Societies Act 1868.

[2] It is not clear precisely what this is intended to mean but the court has understood it to mean that the Bank's alleged refusal to accept certificates from BFS has meant that members must purchase property insurance from regulated insurance carriers.

20. As a result, BFS also seeks a mandatory injunction to require the Bank to accept property insurance certificates issued by BFS to its members and seeks damages as a result of the Bank's refusal to do so.

The Bank's submissions

21. Counsel for the Bank submitted quite simply that none of the matters alleged by BFS amount to a cause of action that is recognised in law. The Bank says that there is no contractual relationship between BFS and the Bank, and so no claim for breach of contract can be made. The Bank submits that, properly analysed, BFS' legal claim can only be understood as some form of equitable estoppel. This follows from BFS' claim that because some other bank(s) may have in the past accepted certificates of insurance issued by BFS, the Bank should not be permitted to refuse certificates issued by BFS as evidence of adequate property insurance. The Bank made four essential points which are summarised below.

22. First the Bank said it is nowhere alleged in the Statement of Claim that the Bank has ever accepted certificates of insurance issued by BFS. Even if it had done so, the Bank submitted that BFS cannot rely upon an alleged estoppel based on that because an estoppel does not ground a cause of action: it is an equitable defence and operates as a shield, not a sword.

23. The Bank relied upon the statement of law contained in **Baird Textile Holdings Limited v Marks & Spencer Limited**[3], which arose on much more compelling facts than the present case. In that case, there was an existing and long-standing arrangement whereby Marks & Spencer Limited had contracted with Baird Textiles for clothing supplies. Baird Textiles had based its business model on the expectation of a continuing arrangement and complained that it was unfair when Marks & Spencer Limited decided to use another supplier. It was alleged that Baird Textiles had a legitimate expectation that Marks & Spencer Limited would not terminate the relationship without notice. A claim was based on an equitable estoppel arising by a course of conduct or, alternatively, an implied term of a contract.

24. The English Court of Appeal rejected the idea that there was a claim or cause of action based on this expectation or that some estoppel had arisen that prevented Marks & Spencer Limited from contracting with another party[4]. In this case there is no contract or arrangement that has ever been in existence, and so the case must be put on the basis of a legitimate expectation or an equitable estoppel. There has never been (and it is not alleged that there was) an assurance given by the Bank that it would accept the insurance certificate issued by BFS so as to give rise to an equity that the Bank should not be permitted to resile from a representation on which BFS had relied to its detriment.

25. Second, the Bank submitted that the claims asserted by BFS as to an alleged abuse of a dominant market position do not exist under Bermuda law. These are statutory claims available in other jurisdictions. Moreover, the facts alleged by BFS could not support an economic tort claim because it is not alleged that the bank has used unlawful means (nor could it be so alleged) nor is it alleged the Bank interfered unlawfully with any contractual agreement between BFS

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[3] [2001] EWCA Civ 274.
[4] See in particular the passages at paragraph 38 in the judgment of Sir Andrew Morritt VC and paragraphs 91-2 of the judgment of Mance LJ (as he then was).

and its members with an intention to cause financial damage to BFS, (nor could it be so alleged, based on the facts in the Statement of Claim).

26. Third, the statutory exemption from insurance regulation granted to friendly societies does not confer the status of an insurer under the Insurance Act 1978, nor does that exemption impose on any third parties an obligation to accept certificates issued by a friendly society as being equivalent to insurance policies issued by regulated insurance carriers.

27. Fourth, the Bank submitted that it is entitled to choose with whom they wish to contract, or whom they are prepared accept as an insurer of the property risks of property over which they hold a mortgage. The Bank has not imposed a non-statutory requirement on BFS by asking for confirmation that BFS is authorised to sell insurance and/or is regulated by the BMA before accepting insurance "certificates" issued by BFS. It has simply made a business decision, and there is and can be no legal obligation on the Bank to accept insurance certificates from unlicensed and unregulated organisations if it chooses not to do so.

BFS' submissions

28. In answer, BFS says that the exemption in section 57 (1) (a) of the Insurance Act 1978 confers an equivalency on friendly societies to regulated insurers that has effect to require the Bank to accept certificates issued by BFS as being the same as certificates issued by regulated insurers.

29. BFS said the Bank has not given objective reasons for the refusal to accept BFS' certificates and has failed to give transparent underwriting criteria (for its decision not to accept insurance certificates issued by BFS).

30. BFS submitted that the Bank has acted capriciously and arbitrarily and has exercised its discretion unreasonably. BFS also submitted that the Bank has acted unconscionably and inequitably in refusing to accept insurance certificates from BFS.

31. BFS submitted that historical acceptance of insurance certificates issued by BFS by other banks constitutes a waiver of the Bank's right to refuse to accept insurance certificates from BFS. BFS argues that because mutual insurance is permitted in Bermuda the Bank's refusal to accept BFS' insurance certificates undermines the public policy of Bermuda.

The court's assessment

32. It is obvious from the arguments BFS has advanced in this case that those directing the affairs of BFS have fundamentally misunderstood the purpose and effect of the section 57 (1) (a) of the Insurance Act 1978 and are labouring under a misapprehension of the nature of the legal relationship involved in a loan and mortgage transaction.

33. For the reasons explained below, the claims set out in the Statement of Claim (and the arguments advanced in support of them at the strike out hearing) do not establish a legally coherent claim. BFS seeks to apply public law concepts that apply in judicial review of the decisions of public bodies and adopts language to support its claim that is only appropriate to the exercise of public law powers and discretions. No such concepts arise in this case. BFS' "claims" do not give rise to a cause of action which exists in private law.

34. Without setting out all the relevant legal principles that apply to the relationship between a mortgagor and a mortgagee, it is relevant to state the basic legal theory that lies behind a residential mortgage transaction.

35. A borrower will usually borrow money from a bank to fund all or (more usually) a substantial part of the purchase price of the property. In exchange for the advance of funds to purchase the property, the borrower will usually enter into a mortgage with the bank. The purpose of the mortgage is to give the bank a legal right to enforce the recovery of the debt from the proceeds of sale of the property if the borrower defaults in the repayment of the loan. The legal mechanism that gives the bank this right is the transfer of the legal title to the property from the borrower to the bank. This transfer of legal title to the bank is subject to the borrower's right to remain in occupation and possession of the property as long as the debt is serviced in accordance with the terms of the loan (usually according to a debt repayment schedule amortised over a period of years). The bank's rights of enforcement are also subject to the mortgagor's equity of redemption (i.e. the right to recover the title to the property on repayment of the debt).

36. The basic legal effect of a mortgage is therefore that the bank (as mortgagee) becomes the legal owner of the property in place of the borrower, subject to the rights described above. As part of the financing agreement (contained in the mortgage as an obligation of the mortgagor) there is invariably an obligation imposed on the mortgagor to obtain and pay for insurance coverage over the property to protect the bank (as lender) against the risk of loss in the event of a covered risk occurring that damages the property or results in the bank not being able to recover the value of the loan (or the value of the property). The insurance cover is therefore not for the benefit of the mortgagor (except indirectly), it is for the benefit of the mortgagee: i.e. the bank, which is named as the beneficiary of the insurance policy, even though the mortgagor pays the premium.

37. It is therefore a misunderstanding of the legal relationship or mortgagor and mortgagee to suggest, as BFS seeks to, that there is an interference with the legal or contractual relationship between a friendly society and its members if a bank refuses to accept the friendly society as the insurer of the mortgaged property. It is the bank's right, as mortgagee, to decide who will be an acceptable insurer of its interest in the mortgaged property.

38. Thus, the Bank in this case is entitled to decide from whom it is prepared to accept insurance coverage for the mortgaged property. In practice a bank will generally (but not always) allow the mortgagor to choose the insurer, but it is always open to the Bank as mortgagee to refuse to accept any particular insurer if the Bank decides that the insurer is not (for some reason) appropriate. The reason(s) for refusing to accept an insurance certificate from an unlicensed, unregistered and unincorporated association which has no minimum capital and does not comply with the ordinary solvency requirements of a regulated insurer are too obvious to need explanation.

39. In this case, it is not alleged that the Bank has in fact declined any particular member's application for a loan or a mortgage on account of the BFS' status as an unregulated insurer. The Bank has simply made it clear that it will not as a matter of policy be prepared to accept

BFS as an insurer unless it is regulated. There is no actual loss to a member of the BFS that could possibly be alleged as a result of this statement of business policy.

40. Furthermore, there is no contractual arrangement between BFS and the Bank, no representations have ever been made that the Bank will accept insurance certificates issued by BFS, no reliance on any such statement by BFS has been alleged, and no detriment has in fact been suffered (nor is any alleged) as a result of the refusal to accept the BFS as a provider of insurance. The claims made by BFS in the Statement of Claim are therefore incapable of amounting to a legal cause of action, and no liability could ever result from the matters alleged by BFS even if they were proved.

41. For completeness, the court also expressly accepts the submissions made by the Bank that the elements of the claims that relate to an alleged abuse of a dominant market position, interference with the contractual arrangements of BFS, and alleged unfair commercial conduct are unsustainable. None of the necessary elements of unlawful means or intention to cause economic harm to the BFS have been pleaded, nor could they ever be pleaded based on the analysis of the legal relationship between mortgagor and mortgagee set out above.

42. Finally, by indicating that BFS will not be an acceptable insurer unless it is regulated, the Bank has not infringed the constitutional right of the members of the BFS to associate freely or to contract freely. Such a claim is obviously incontestably bad.

43. There is no basis upon which the court could properly allow this matter to proceed to trial. It would involve a complete waste of resources, result in inevitable failure, and at substantial cost to all parties. The court politely but firmly declines BFS' invitation to step through the looking glass and orders that the Writ and Statement of Claim be struck out and dismisses the proceedings with costs.

Representation

44. Mr Walls prepared the Writ and Statement of Claim and appeared in person in his capacity as a trustee of BFS to make submissions on its behalf as a "litigant in person". The Friendly Societies Act 1868 confers the right on friendly societies to sue and be sued in accordance with their internal rules. The court asked to see the rules of BFS and it turns out that those rules are entirely silent as to the delegation or authorisation of any person to sue or be sued in the name of BFS. Therefore, on the face of the rules of the society, no authority is granted to a trustee to sue in the name of BFS.

45. Usually, the power of a trustee to sue in the name of or on behalf of a trust is contained in the instrument creating the trust. An unincorporated association is not a trust. Although those in control of the affairs of an unincorporated association may have fiduciary duties with respect to the property of the association, strictly this does not make them 'trustees' because there is no beneficiary on whose behalf or for whose benefit the association's property must be applied. While those in charge of the unincorporated association's affairs may call themselves 'trustees' for convenience or as an official title, this does not confer any rights on them other than those set out in the rules of the particular association or society.

46. The court required Mr Walls to provide evidence that he had been re-instated as a 'trustee' and heard his submissions *de bene esse* because (for the reasons just explained) it remains unclear if he has the legal right to represent BFS as a litigant in person simply because he is called a trustee[5]. However, the court makes it clear that the right of Mr Walls (or anyone else) to represent BFS personally or to appear as a litigant in person in his capacity as 'trustee' has been left open for determination at a future date.

Dated this day, 17 June 2026

THE HON. MR. JUSTICE ANDREW MARTIN

PUISNE JUDGE OF THE SUPREME COURT

[5] The court considered that it would not have been fair to Mr Walls to require him to address the court on the matter without the opportunity to research the point, and he did not seek an adjournment in order to do so. In addition, the court did not consider it proportionate or fair to the Bank to adjourn the hearing for this purpose.