[2026] SC (Bda) 45 Civ

In The Supreme Court of Bermuda

CIVIL JURISDICTION
2025 No 232

BETWEEN	**PAMELA HEWSON**	**PLAINTIFF**

AND

(1) CONTINENTAL TRUST COMPANY LIMITED
(2) ANNETTE COOK

DEFENDANTS

Applications for costs of strike out summonses and security for costs under RSC Order 23

REASONS FOR ORDERS

MARTIN J IN CHAMBERS

Appearances

Keith Robinson and *Siobhan Boys* of Carey Olsen Bermuda Limited for the first defendant

David Kessaram of Cox Hallett Wilkinson Limited for the second defendant

Richard Horseman of Wakefield Quin Ltd for the plaintiff

Date of hearing: **28 April 2026**

Date of Reasons: **30 April 2026**

Introduction

1. Five interlocutory procedural applications came before the court in this matter of which only two were ultimately contested, and one was unopposed. The other two applications were not pursued[1]. The court will now give its reasons for its rulings on the three 'live' applications.

Leave to add defendants and serve a re-amended writ and statement of claim

2. The first application was a formal application by the plaintiff for leave to re-amend the writ and the statement of claim in a form that was ultimately produced just before the hearing. The proposed re amendments seek to amplify and modify the original pleadings and to add two more defendants to the proceedings in order to comply with formal requirements to add all necessary parties for the pursuit of the plaintiff's claims.

3. The addition of the new defendants is necessary in order to give the plaintiff standing to make an arguable claim that certain trust property which is at the centre of the dispute really belongs to the estate of her late husband. These individuals are the executors and trustees of the plaintiff's late husband's will and are therefore necessary and proper parties to the action and must be joined as defendants under RSC Order 15 rule 6. The court therefore hereby gives leave to add them as additional defendants.

4. The application for leave to re amend the writ and statement of claim in the form proposed at the hearing was not opposed by the defendants. Leave is hereby given to re-amend the writ and statement of claim in the form proposed and to serve the reamended writ and statement of claim on all the defendants (including those newly added) duly marked to show the re-amendments on the terms set out below.

5. These terms on which leave to re-amend the writ and statement of claim are (i) that the plaintiff is to pay the first and second defendants' costs of and occasioned by the re-amendments in any event to be taxed on the standard scale if not agreed (ii) the first and second defendants shall have leave to file amended defences within 28 days of the service of the re amended writ and statement of claim upon them (iii) the newly added defendant shall have 14 days within which to enter an appearance to the action from the date of service of the writ and reamended statement of claim upon them and a further 14 days thereafter to serve their defences to the action. The plaintiff shall have leave to serve a reply to all the defences (if so advised) within 14 days of the service of the last defence. Thereafter the matter shall proceed to directions in the usual manner.

Costs in respect of the first and second defendants' applications to strike out the writ and statement of claim

6. The second application was for an order that the plaintiff must pay the first and second defendants' costs of the action up to the date of the service of the revised draft reamended writ and statement of claim shortly before the hearing.

7. The defendants submitted that until they received the latest draft of proposed reamendments the claims made in the writ and statement of claim were demurrable. The defendants say that they are entitled to their costs of the strike out summonses, which ought to include all the costs of the action to date,

[1] The plaintiff's application for disclosure and the second defendant's application for summary assessment of costs.

applying the reasoning in **Beoco Ltd v Alfa Laval**[2]. The first and second defendants also complained that the plaintiff's pleading had taken an iterative course, with amendments being made in response to the various objections that had been taken by the defendants along the way. They submitted that until the claim was revised in its latest form (albeit without leave having been granted to amend it formally) the claim could (and would) have been struck out, so they should be entitled to their costs of the action to date.

8. The plaintiff objected to these criticisms on the grounds that all the relevant materials were within the defendants' possession power or control and it had not been possible for the plaintiff to plead a perfectly formulated claim on the strength of the limited materials available to her.

9. The court will not here set out all the pleadings or describe the history of the proceedings to date. The central theme of the plaintiff's claim is that a property which is held in a trust structure is (or was intended to be) held beneficially for the plaintiff's late husband, and that she has (or was intended to have) the right to enjoy the occupation of and profits from the property for her life. However, these claims are not straightforward factually or legally and involve considerable procedural and jurisprudential complexity. As a result, the plaintiff has had to trim her sails significantly to formulate the legal tack on which she proposes to advance her claim in a pleading that discloses a legally recognisable and factually sustainable cause of action.

10. The court has reviewed the pleadings from a high level and is satisfied that, notwithstanding the deficiencies the original versions of the pleadings contained, the court would not have been prepared to strike out the action altogether. Instead, the court would have ordered the plaintiff to serve an amended pleading that addressed the fundamental problems identified by the defendants. That has now been done, but while the defendants have withdrawn their strike out applications, they still vigorously deny the plaintiff's claims, both on the facts alleged and the legal principles to be applied. Those issues will be matters for trial.

11. The order made in the **Beoco** case relied upon by the defendants in support of their claim for the payment of their costs of the action was made because a crucial amendment was made to the pleading that substantially altered the nature of the claim was made *at the trial* of the action. The court in that case therefore awarded the costs of the action down to the trial because the defendants had incurred their costs of the proceedings up to the trial on an entirely different case than the claim that was ultimately (partially) successful at the trial.

12. By contrast, the present case is still at an early stage. Directions have not been given and the pleadings are not closed. It is normal for adjustments to be made at this stage of the case and sometimes involve changes of a substantial character. Indeed, there may be yet further amendments to the formulation of the claim after disclosure has been given.

13. The ordinary principle is that an amendment can be made at any stage of the proceedings, if no injustice is done to the other parties and they can be compensated in respect of the costs associated with the amendment[3]. These costs are usually only the costs of and occasioned by the amendments, namely the

[2] [1994] 4 All ER 464
[3] RSC Order 20 and the commentary in the Supreme Court Practice (1999) at 20/8/5.

defendants' costs of repleading their defences. Those costs have already been provided for in the order already made in paragraph 5 (i) above.

14. Where the defendants' strike out applications have been withdrawn, the court considers that the appropriate order is to order that the costs of the defendants' strike out summonses should be the costs in the proceedings. This will be adequate to meet the justice of the case if the plaintiff's claim is ultimately unsuccessful.

The first and second defendants' applications for an order that the plaintiff provide security for the costs of the action

15. The third application was for an order under RSC Order 23 that the plaintiff should provide a fund within the jurisdiction as security for the additional costs of enforcement of any costs award made in the proceedings in the defendants' favour if the plaintiff is unsuccessful in her claims.

16. The plaintiff is an elderly widow who lives outside the jurisdiction. She has adduced evidence that she has very limited means and that she is financing her claim by the payment of modest monthly instalments to her Bermuda attorneys. She says she cannot afford to pay any amount of security for costs, and her counsel submits that the facts show that her limited means will require her to abandon the claim if she is ordered to give security for costs.

17. The defendants say that the court should take into account that serious allegations of dishonest conduct are being made against professionals and about the manner in which the affairs of the trust were organised and conducted. The defendants also submit that the case is legally weak and the affidavit evidence is in direct conflict with the pleaded facts in the reamended statement of claim. The defendants submit that the ultimate costs of the action are likely to be substantial and it would not be even handed for the court to allow the plaintiff to conduct the case without facing any real risk as to costs.

18. Taking all these factors into account, the court has concluded that there should be no order for the provision of security for costs in this case. The most important reason for reaching this conclusion is that the evidence shows that the plaintiff has insufficient means to meet an order for the provision of security for costs.

19. Applying the principles set out **in Al-Koronky and anor v Time Life Entertainment Group Ltd**[4], the court must not order security in a sum which it knows the plaintiff cannot meet, because that would have the effect of shutting out the plaintiff from the judgment seat altogether. In this case, the clear evidence from the plaintiff's bank statements is that she would not be able to meet an order for security for costs of any meaningful amount.

20. It is true that the costs of pursuing this action are likely to be very substantial and that some of the allegations made by the plaintiff are very serious and involve allegations of dishonest conduct against professional persons. It is also true that there are some inconsistencies in the allegations made.

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[4][2006] EWCA Civ 1123 at [24] to [31] and citing **Tolstoy Miloslavsky v UK** (1995) 20 ERR 442 [59] for the proposition that the rules of procedure should not be used in ways which restrict or reduce citizen's access to the court to such an extent that the essence of that right is impaired.

21. However, the court should not engage in a detailed review of the likely prospects of success for the purposes of the grant of security for costs. The case is sufficiently pleaded to raise arguable issues for trial. Mr Horseman acknowledged that the plaintiff has not formally stated that if she is ordered to give security for costs she will have to abandon her claim, but says the evidence is sufficiently clear that the court can infer that she will have to do so if she is ordered to give security for costs. I accept that submission.

22. The court is therefore satisfied that an order for the provision of security for costs would have the effect of shutting out the plaintiff's claim altogether. Accordingly, the court is bound by the principles stated above to decline to order security for costs in this case.

Dated this day 30 April 2026

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THE HON. MR. JUSTICE ANDREW MARTIN

PUISNE JUDGE OF THE SUPREME COURT