



Neutral Citation Number: [2025] CIGC (Civ) 2

GRAND COURT OF THE CAYMAN ISLANDS  
CIVIL DIVISION

Cause No: G 2001-0099

**BETWEEN:**

**(1) PAMELA JENNIFER WATLER  
(2) HENRY IRVIN JACKSON**

**Plaintiffs**

**-and-**

**JANE MARY PATINO**

**Defendant**

**Appearances:**           **Mr Clyde H Allen for the Plaintiffs**  
                                  **Mr David Collier of Ritch & Conolly for the Defendant**

**Before:**                   **The Honourable Justice Jalil Asif KC**

**Heard:**                   **5 December 2024**

**Judgment delivered:**   **14 January 2025**

*Strike out for abuse of process—long delays in progressing action—whether to infer that plaintiff does not have bona fide intention to prosecute claim to a conclusion—whether to strike out claim as abuse*

*Strike for want of prosecution—allegations of fraud against defendant—culpable delay in progressing case by plaintiff—death of plaintiff and defendant during period of culpable delay—whether still possible to have a fair trial— whether to strike out claim for want of prosecution*

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## JUDGMENT

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1. This is the most appalling case of procedural delay in the conduct of proceedings that I can recall having seen in over 35 years in practice and on the Bench.

**A. The genesis of the claim**

2. The Plaintiffs' pleaded case concerns an agreement by the Second Plaintiff, Mr Jackson, to sell certain land to the Defendant, Mrs Patino, who was his cousin. Mr Jackson signed the agreement in respect of which the Plaintiffs sue on 25 March 1995. The Defendant's case is that it is necessary to consider events before 1995 to understand the context for what happened in 1995. The Defendant refers to:  
(a) Mr Jackson's divorce in 1990, as a result of which there were certain dealings with the land in question and other adjacent land; and  
(b) an agreement to sell the land to Mrs Patino that Mr Jackson signed on 15 June 1992, memorably stated to have been:

*"... made on the back of a carton of cigarettes ..."*

I was told in argument that the original is still in the Defendant's attorneys' possession. The relevant events which are likely to be in issue in this case therefore date back around 30 years.

**B. Substitution of Parties**

3. As a preliminary matter, the Defendants' summons seeks the substitution of Mrs Brenda Gail Patino Aleman for Mrs Patino pursuant to GCR O.15, r.7(2). Mrs Patino died on 28 February 2014. Mrs Aleman obtained a grant of probate in respect of Mrs Patino's estate on 20 September 2018. I indicated at the start of the hearing of the summons that I would make that order. In addition, I have been told that Mr Jackson died in 2005. Mrs Watler obtained a grant of probate in respect of Mr Jackson's estate on 26 August 2009. I therefore also ordered the substitution of Mrs Watler (in her capacity as Executrix of his estate) for Mr Jackson.

**C. The procedural history****C.1 2001**

4. The attorneys acting for the Plaintiffs in 2001, A S McField & Associates, issued the writ in this matter on 15 February 2001, just before the sixth anniversary of Mr Jackson signing the agreement and nearly 24 years ago. The accompanying Statement of Claim made very serious allegations of fraud against Mrs Patino, as follows:

*“3. Henry Irvin Jackson, herein after called ‘Jackson’, is retired ... He is no longer capable of handling his own affairs.*

*4. On or about the 25th March 1995 Jackson is purported to have signed a Notarised Note, purporting to sell the Defendant two Parcels of land, inter alia, for the consideration of debts owed to the Defendant by the Plaintiff. The said purported two parcels of land were not identified and ascertained.*

*5. On or about 31st March 1995, Jackson by Form RL1 purported to transfer the property then registered in the Land Registry as West Bay North East Block 9A Parcel 476 to the Defendant.*

*6. At the time of the said transfer, Jackson was not the registered proprietor of Block 9A Parcel 476.*

*7. The Defendant attempted to register the said transfer of Block 9A Parcel 476 but the Land Registry refused to do so because the transferor, Jackson, was not the registered proprietor and had no power to transfer.*

*8. On or about 12th October 1998 Henry Irvin Jackson became the registered proprietor of Block 9A Parcel 477.*

*9. On or about 11th November 1999 the Defendant tendered the said transfer of Land Document dated 31st March 1995 to the Land Registry for registration. This time the Defendant by herself or other persons falsely recklessly and negligently marked off Parcel 476 on the said transfer and falsely recklessly or negligently substituted Parcel 477 in its place.*

*10. The said transfer containing the false Parcel 477 was then tendered and did receive registration in the Land Registry in the Proprietor Section in the name of the Defendant.*

*11 The said transfer was a false and fraudulent transfer.*

*12. Further and or in the alternative the said Transfer was received by the Land Registry and registered by mistake.*

*AND the Plaintiff claims:*

*1. Rectification of the Land Register in relation to Block 9A Parcel 477 for fraud or mistake.*

*2. That Block PA Parcel 477 be registered in the name of Henry I Jackson. ...*

*4. That the Honourable Court grant and Order inhibiting the registration of any dealings with respect to Block 9A Parcel 477 until further order of the Court. ...”*

5. On 30 March 2001, McField issued a summons returnable on 25 April 2001 seeking an order that an inhibition be placed on the title to Block 9A Parcel 477. Mrs Watler’s affidavit in support, sworn on 9 March 2001, also asserted that Mrs Patino had acted fraudulently:

*“6. The Defendant fraudulently and recklessly crossed off Parcel 476 on the 31st March 1995 transfer and fraudulently replaced 476 with the Parcel 477. She tendered the said Transfer to the Land Registry and procured its registration on or about 11th November 1999.*

*7. Block 9A Parcel 477 is now fraudulently transferred on the Land Registry in the Defendant's name ...*

*I verily believe that the Defendant will transfer Block 9A Parcel 477 to some third party. In the circumstances, I humbly seek the assistance of this Honourable Court in granting an inhibition against the Title to Block 9A Parcel 477 until further order of the Court."*

Mrs Watler does not provide any details of the basis for her alleged belief that Mrs Patino would transfer the property to someone else – for example, evidence that Mrs Patino was marketing the land for sale.

6. On 20 April 2001, Ritch & Conolly, who have acted for the Defendant throughout this matter, wrote on behalf of the Defendant denying the Plaintiffs' allegations of fraud but offering to consent to the inhibition on the title to Parcel 477 pending determination of the litigation in order to maintain the status quo.
7. On the morning of 25 April 2001, before the summons was due to be heard, Ritch & Conolly forwarded a draft Consent Order to McField for approval. I infer that McField did not respond and did not attend the hearing of the summons that day. On 27 April 2001, Ritch & Conolly wrote to McField:

*"We refer to the draft Consent Order faxed to you on the morning of 25th April 2001. We confirm that we appeared before the Chief Justice and that you did not appear on your client's application for an inhibition. However, we informed the Judge that our client consented to an inhibition ... I showed the Chief Justice the draft Consent Order but informed him that I was unable to confirm that it was a Consent Order as you had not confirmed your approval to the Order including the Order as to costs.*

*Accordingly, please confirm to us as soon as possible your approval to the draft Consent Order so that we can inform the Chief Justice's Secretary as soon as possible."*

There is no evidence that McField responded or followed up on this until 17 October 2002, when they called Ritch & Conolly to enquire whether the Consent Order had been engrossed and lodged with the Court. Ritch & Conolly indicated that it had not been, so far as they were aware.

8. Reverting to the chronology, Mrs Patino filed an Acknowledgement of Service on 24 April 2001 indicating an intention to defend. Her Defence and Counterclaim was filed on 18 May 2001, following an extension of time that had also been agreed on 25 April 2001. The Defence denied the Plaintiffs' allegations of wrongdoing. In summary, the Defence alleged:
  - 8.1 From about 1981, Mr Jackson and his wife were the registered proprietors of the land that subsequently became identified as Block 9A Parcels 476 and 477. Mr Jackson and his wife then became the registered proprietors of Block 9A Parcels 476 and 477 on 31 March 1995.

- 8.2 When Mrs Patino first sought to register the transfer to her of Parcels 476 and 477, she was told by the Land Registry that there was an existing charge in favour of Barclays Bank plc that had to be discharged first.
- 8.3 In 1997, Parcel 476 was transferred into Mr Jackson's wife's sole name and Parcel 477 was transferred into Mr Jackson's sole name.
- 8.4 In 1999, Mrs Patino learned that the charge in favour of Barclays Bank plc had been discharged and sought registration of the transfer to her of Parcels 476 and 477 as stated on the land transfer Form RL1. As a result of the transfers in 1997, the Land Registry deleted the reference to Parcel 476 on the form RL1 (because Mr Jackson could not transfer land that he no longer owned) and registered the transfer of Parcel 477 to Mrs Patino.
9. By her Counterclaim, Mrs Patino sought a declaration that she was the lawful legal and beneficial owner of Parcel 477, and declarations that the Plaintiffs were not entitled to any of the relief that they sought in the proceedings. Mrs Patino's Counterclaim was thus entirely responsive to the Plaintiffs' claim.
10. Following service of the Defence and Counterclaim on 18 May 2001, the Plaintiffs failed to progress the action further during 2001.

C.2 2002

11. On 7 May 2002, McField filed a Notice of Intention to Proceed.
12. The Plaintiffs then failed again to take any steps to progress the action and McField served a second Notice of Intention to Proceed on 18 October 2002.
13. On 28 November 2002, McField sought to fix a date for the further hearing of the Plaintiffs' summons for an inhibition, originally issued on 30 March 2001. On 6 December 2002, the court fixed the hearing for 7 March 2003.

C.3 2003

14. On 28 February 2003, McField wrote to Ritch & Conolly referring to the discussions in April 2001 towards agreeing a consent order in respect of the inhibition on dealing with Parcel 477 and forwarded a proposed consent order.

15. The fee-earner with conduct at Ritch & Conolly had changed in the meantime. He responded to McField by letter dated 6 March 2003 stating:

*“It appears that the parties agreed to deal with the matter by consent but although the draft Consent Order was sent to you on 25th April 2001 that Consent Order was not finalised or filed at Court.*

*Given the discussions that took place between our respective firms in April 2001 we accept that a Consent Order should be agreed in the terms initially suggested, although we should say that after this length of time and in light of the further enquiries we have made since April 2001, we would not now necessarily advise our client to consent to the registration of an inhibition over Parcel 477.*

*That said, as at April 2001 we agreed to deal with this matter by consent and we now enclose a further copy of the Order we sent you in April 2001. ...”*

16. On 7 March 2003, the Court approved the Consent Order that, *inter alia*:

*“1. An inhibition be placed over the property known as Registration Section West Bay North East, Block 9A, Parcel 477 pending determination of this action or until further Order of this Court.”*

17. On 20 March 2003, McField requested an extension of time for service of the Plaintiffs’ Reply and Defence to Counterclaim to 14 days after the date of that letter – in other words, an extension of time of more than 1 year and 10 months beyond the deemed close of pleadings under the Rules. Generously, on 24 March 2003 the Defendant consented to the Plaintiffs’ request for the extension of time. However, the Plaintiffs then failed to serve any Reply and Defence to Counterclaim, and one has still never been served.
18. On 9 May 2003, McField sent a letter by fax dated 6 May 2003 serving a Request for Further and Better Particulars including a number of requests pursuant to GCR O.24, r.10 for copies of documents referred to in Mrs Patino’s Defence and Counterclaim. There is no copy of that Request in evidence.
19. On 19 May 2003, McField chased Ritch & Conolly for a response to its Request for Further and Better Particulars. On the same day, Ritch & Conolly wrote complaining about the form of the Request but indicating that McField were welcome to inspect all documents requested by prior appointment within the following 7 days.
20. On 20 May 2003, McField served a revised version of the Request for Further and Better Particulars, which is in the papers before me.

21. Ritch & Conolly did not respond. There is no evidence before me that McField took the opportunity to inspect the documents, followed up with Ritch & Conolly regarding the Request for Further and Better Particulars or made any other efforts to progress the action.

C.4 2004

22. There is no evidence before me of any activity during 2004.

C.5 2005

23. On 6 May 2005, Walkers filed a Notice of Change indicating that they had been appointed in place of McField and served the Notice on Ritch & Conolly on 10 May 2005. Walkers indicated to Ritch & Conolly that they were in the process of obtaining McField's files. There is a reference to a letter or email from Ritch & Conolly to Walkers in November 2005 that is not in the bundle. Apart from that, there is no evidence of any progress of the action during 2005.

C.6 2006

24. The next communication in evidence is a letter from Walkers dated 18 January 2006 informing Ritch & Conolly that Walkers were no longer acting for the Plaintiffs.
25. On 29 May 2006, Mr Allen wrote to Ritch & Conolly to say that he was retained to represent the Plaintiffs. Mr Allen stated that he understood that Ritch & Conolly were seeking to contact Mrs Watler (I have not been shown any evidence of that). Ritch & Conolly responded on 31 May 2006 that they had prepared a draft letter and were awaiting client approval before sending it. On 1 June 2006, Mr Allen responded to Ritch & Conolly:

*"I have as of yesterday received the papers in this matter and **due to the passage of time need to progress this matter.** I await your letter."* (emphasis added)

This is significant because it highlights that Mr Allen was aware from the outset of his involvement that the Plaintiffs needed to progress their claim expeditiously.

C.7 2007

26. There is no evidence before me of any activity at all during 2007.

C.8 2008

27. The next communication the parties have shown me is an email from Mr Allen to Ritch & Conolly dated 7 January 2008, in which Mr Allen enquired whether McField had ever served the Request for Further and Better Particulars, and whether the Defendants had ever replied to it. Mr Allen indicated that his file did not indicate the answers. He concluded his email saying:

*“I intend to file a summons for directions and wish to seek directions if the documents was [sic] served and a response has never been provided. I await your immediate response.”*

28. On 8 January 2008 (misdated as 2007), Mr Allen wrote to Ritch & Conolly enclosing a copy of the Request for Further and Better Particulars dated 20 May 2003.

29. On 17 March 2008, Mr Allen wrote to Ritch & Conolly stating:

*“I have not received a response from you with regards the settlement proposal or a response to the Request for Further and Better Particulars. I put you on notice under the GCR that I intend to place this matter back before the Court.*

*I have amended the Statement of Claim ... Subject to any Defence that you are instructed to put forward in response, I intend to list this matter for directions and would be grateful if you can inform me of any directions that you would like incorporated in such proposed Directions. Subject to the notice period passing under the rules, I do not consider that your client has a Defence to this action and intend to apply to deal with your client’s purported Defence summarily thus saving time and costs.”*

30. Ritch & Conolly responded on 2 April 2008 by letter stating:

*“... may we suggest that you provide us with a draft Summons and a draft Listing Form for the application you propose, so that we may properly seek instructions.”*

There is no reply to that letter in evidence.

C.9 2009

31. There is no evidence of any activity in 2009 until September. On 24 September 2009, Mr Allen wrote concerning the need to amend the parties to the action, following the death of Mr Jackson and the recent grant of letters of administration to Mrs Watler in respect of his estate. He concluded that, once he had the papers to hand, he would contact Ritch & Conolly.

32. On 29 September 2009 Mr Allen wrote to Ritch & Conolly by email giving notice of intention to proceed – the fourth such notice. On the same day, Mr Allen forwarded a copy of the grant of probate to Mrs Watler dated 26 August 2009 in respect of Mr Jackson’s estate. There is no evidence of any

further action. Indeed, the parties to the action had still not been updated when the Defendant's summons came before me, some 15 years after this correspondence.

C.10 2010

33. On 29 April 2010, Mr Allen forwarded a draft summons for directions and listing form by email. He indicated that he would serve the filed documents in due course, including an affidavit in support. There is a draft summons for directions in evidence before me but because it is undated, I do not know whether it is the same document that Mr Allen forwarded. The listing form and affidavit referenced are not in evidence. Ritch & Conolly did not respond to Mr Allen.

34. On 30 September 2010, Mr Allen forwarded copies of the summons for directions, listing form and payment receipts to the listing officer for action. Mr Allen noted that Ritch & Conolly had not responded to his email dated 29 April 2010 and enquired whether the listing officer was waiting for a response from Ritch & Conolly before listing the summons. Mr Allen copied Ritch & Conolly into the email and concluded:

*"... I would like to list this matter so that we can obtain a hearing for directions as per the summons. I will wait to hear from you as to whether the summons is on the file and further from Ritch & Conolly with dates to avoid."*

35. On 1 October 2010, Ritch & Conolly responded to Mr Allen raising a number of matters:

*"In your first e-mail to the Listing Officer you mention having already sent me a Summons and a Listing Form ... However, although you indicated that you would serve on me an affidavit in support you did not do so. In the circumstances, I was not/am not in a position to give a time estimate for your Summons. Please let me have a copy of the affidavit.*

*The draft Summons you sent in April refers to a 'proposed draft Statement of Claim' which I haven't seen. Again I can't tell whether or not directions can be agreed and if not, how long our hearing will take, until I know what application you are making. Please let me have a copy of the document your summons refers to.*

*Your Listing Form indicates that a Summary Judgment application is being made. Is this correct? Please confirm the position.*

*I do not appear to have received a Notice of Acting from you and will be grateful if you would provide me with a copy of the Notice that you filed at Court. According to me file [sic] the attorneys of record for the Plaintiff(s) are Walkers.*

*It also appears that the last step in proceedings was taken quite some time ago and so other procedural steps need to be taken by you before steps can be taken to have this matter listed. ..."*

There is no reply to that email before me. Mr Allen did not and still has not filed any Notice of Acting or Notice of Change to record that he has taken over from Walkers as the Plaintiffs' attorney, despite 18 years having passed since he did so. Furthermore, during the hearing of the summons, Mr Allen

undertook to the Court to file a Notice of Acting forthwith but has still not done so, over one month later. This is not acceptable conduct.

C.11 2011

36. There is no evidence before me of any activity during 2011.

C.12 2012

37. By 2012, another new fee-earner at Ritch & Conolly had taken over conduct of the matter. On 24 July 2012, Mr Allen wrote indicating that he would like to try to resolve the case. He invited Ritch & Conolly to let him know when they had reviewed the file and were able to discuss it.

38. There is no evidence that Ritch & Conolly responded or that there was any follow-up or other steps taken by Mr Allen during 2012.

C.13 2013

39. On 2 May 2013, Mr Allen wrote to Ritch & Conolly by email to follow-up on his email dated 24 July 2012. It appears that this may have been following a conversation with the fee-earner at Ritch & Conolly. Mr Allen made various points regarding the merits of the claim before concluding:

*“... I understand that you will now take instructions from your client. I had rather hoped that you would have done so since last year when you received my e-mail. ... the earlier I can hear back from you the better. In the meantime, could you let me know if you agree the terms of my summons so that it can be agreed by consent, if possible. If it is not agreed then please let me know which parts are not agreed and also let me have your available date.”*

40. It appears from Ritch & Conolly’s email dated 17 April 2014, discussed later in this judgment, that there was a further conversation between Mr Allen and Ritch & Conolly on 2 May 2013, following Ritch & Conolly’s receipt of this email. However, Mr Allen does not appear thereafter to have chased the matter during the remainder of 2013.

C.14 2014

41. On 28 February 2014, Mrs Patino died.

42. On 17 April 2014, Mr Allen wrote by email to Ritch & Conolly referring to his emails of 2 May 2013 and 24 July 2012, saying:

*“I would like to finally deal with this matter as I do not appear to have received a response from you. ... I have copied in [the listing officer] as I would like to list this matter at the first available date.”*

43. This did generate a response from Ritch & Conolly by email the same day, who complained that:

*“You issued proceedings on this matter in 2000 (over 14 years ago).*

*When we spoke on 2 May 2013 in response to your email of the same date, you informed me that your client intended to apply to amend her claim and you would forward a notice of intention to proceed and draft amended writ. To date, I have not received any documents from you. I reiterate that before matters proceed, you are required to serve on my client a Notice of Intention to Proceed in accordance with the Grand Court Rules and then if appropriate apply to amend your claim or apply for directions.*

*In any event, **due to the inordinate delay on this matter, it is likely that my client will make an application to strike out your client’s case for want of prosecution.** I will confirm my client’s position in due course once I have taken their instructions.”* (emphasis added)

Thus, Ritch & Conolly clearly flagged in April 2014 that the Defendant was considering applying to strike out the claim for want of prosecution.

44. I have not been shown any evidence of further correspondence or action taken on behalf of the Plaintiffs during 2014.

C.15 2015 and 2016

45. There is no evidence that the Plaintiffs took any steps during 2015 or 2016.

C.16 2017

46. On 9 February 2017, Mr Allen wrote to Ritch & Conolly by email giving notice of intention to proceed. He enquired whether Ritch & Conolly were still instructed on behalf of the Defendant. He said that Mrs Watler had returned to him to find out what was happening with the case as certain monies were owed to third parties – part of Mrs Watler’s claim is that Mrs Patino was collecting rent for Parcel 477, which Mrs Watler claimed was hers.

47. Mr Collier of Ritch & Conolly responded by email on 13 February 2017. He indicated that he did not know whether Ritch & Conolly were still instructed and pointed out that the last correspondence was Ritch & Conolly’s email dated 17 April 2014. Mr Collier concluded:

*“Finally, I note that these proceedings were issued some 16 years ago. It may be, subject to our being able to get instructions, that our client will therefore want to apply to/invite the court to strike out the proceedings for want of prosecution ... I will try to confirm this to you as and when I receive instructions.”*

This was therefore a second warning to the Plaintiffs that their claim was susceptible to an application to strike out it.

48. Following this exchange, the matter ran into the sand again.

C.17 2018 to 2023

49. I have not been shown any evidence of any activity in this matter for the six years from 2018 until just before the end of 2023.

**D. Issue, preparation for and hearing of summons to strike out**

50. On 18 December 2023, the Defendant finally lost patience and filed a Notice of Intention to Proceed and a summons to strike out the claim both for want of prosecution and as an abuse of process. There was some difficulty in serving the summons and supporting affidavits on Mr Allen, which eventually took place on 17 April 2024. The Defendant then waited for details of the Plaintiffs' availability. In June 2024, the Defendant sought to have the summons listed despite Mr Allen not having provided any details of his availability for the hearing. The summons was listed for hearing on 4 July 2024.

51. Mr Allen then sought, for the first time, to persuade Ritch & Conolly that they were conflicted from acting for the Defendant because they had previously acted for Mr Jackson in respect of his divorce proceedings in the period up to 1990. He also sought to raise various matters regarding the merits of the claims. Ritch & Conolly rejected the suggestion that they were conflicted and refused to discuss the merits on the basis that it had become impossible to resolve the issues that Mr Allen sought to raise due to the passage of time.

52. Unfortunately, on 4 July 2024, the Court had to close because of the nearby transit of hurricane Beryl, so the summons had to be adjourned. The summons was finally listed for hearing before me on 5 December 2024. The correspondence suggests that the delay in re-listing was at least partly for the convenience of the Plaintiffs.

53. Notwithstanding the lengthy period to prepare for and respond to the summons, the Plaintiffs did not submit any affidavit evidence in response. In addition, the Plaintiffs' skeleton argument was only exchanged and provided to the Court on the morning of the hearing, which is par for the Plaintiffs' conduct of the case generally.

**E. The law and practice on striking out as an abuse or for want of prosecution**

*E.1 Striking out for want of prosecution*

54. The power in the Cayman Islands to strike out an action for want of prosecution has been applied in a number of cases, adopting the English approach based on *Birkett v James* [1978] A.C. 297 and *Allen v McAlpine* [1968] 2 Q.B. 229 and the many cases that followed in England & Wales during the 1990s, when the jurisdiction was closely scrutinised and refined. The principles to be applied can be summarised briefly as follows.

55. There are two bases for seeking to strike out a claim for want of prosecution, which are:

55.1 contumelious default – meaning a deliberate breach of a court order, but that avenue is closed as soon as the defaulting party complies with the order in question; and

55.2 inordinate and inexcusable delay preventing a fair trial or prejudicing a defendant.

At least in the second case, it is a requirement that the applicable limitation period must have expired, otherwise the plaintiff could simply start a new action based on the same cause of action.

56. Focussing on inordinate and inexcusable delay, the following principles apply:

56.1 There must be inordinate delay on the plaintiff's side in progressing the claim.

56.2 "Inordinate" means "*materially longer than the time usually regarded by the profession and Courts as an acceptable period.*"

56.3 The specific inordinate delay: (a) must give rise to a substantial risk that it is not possible to have a fair trial of the issues; or (b) must be likely to cause or to have caused serious prejudice to the defendants either as between themselves and the plaintiff or between each other or between them and a third party.

56.4 Time permitted by the Limitation Act cannot be inordinate delay. However, the later the plaintiff starts his or her action the higher is the duty to prosecute it with diligence. Thus, where the plaintiff has delayed within the period allowed by the Limitation Act, any additional prejudice flowing from any delay thereafter may be "serious" if more than minimal.

- 56.5 Whether the relevant delay is inexcusable should be looked at primarily from the defendant's point of view or objectively, but some allowance may be given for illness and mishaps during the conduct of the case.
- 56.6 The extent of any prejudice to the defendant is a matter of fact and degree. It is a question of fact and is fact sensitive, but the following considerations provide some guidance:
- (a) A common factor relied upon is the effect of delay on witnesses' memories (although the damage to their memories may already have occurred during earlier non-culpable delay) or their death or disappearance.
  - (b) The importance of witnesses depends on the issues in the case: their evidence may be very important in a case about an accident or where oral statements or representations are in issue but will be less significant in a heavily documented commercial action.
  - (c) There must be some specific evidence of prejudice – a bald assertion of prejudice or of a risk that the trial cannot be fair is not sufficient. However, provided that a proper factual foundation has been laid, the court may properly infer, for example, that the memory or reliability of witnesses is likely to have deteriorated because of culpable delay.
  - (d) Relevant prejudice is not limited to matters affecting the conduct of the trial, but can include prejudice to the defendant's business interests, the effect of having serious allegations hanging over the heads of professionals for an extended period, increases in the value of the claim attributable to the relevant delay etc. The kinds of detriment that a defendant may suffer are not closed.
- 56.7 Where both parties have contributed to the delay, the court will consider the conduct of each party, the various periods of delay and the various aspects of prejudice and decide, where possible, to whose fault they are attributable. If the defendant has contributed to the delay or, *a fortiori*, has agreed to it, he will seldom obtain the dismissal of the action based on that delay. The defendant will only be permitted to rely on causative culpable delay on the part of the plaintiff, and the prejudice attributable to it, for the purpose of seeking summary dismissal of the action.
- 56.8 A defendant may decide to take no action to stimulate the plaintiff and can "*let sleeping dogs lie*" in the hope that the action may die a natural death. But the defendant runs the risk that the court may conclude that the defendant encouraged or contributed to the delay.

E.2 Striking out as an abuse of process

57. There is also a parallel jurisdiction to strike out a claim as an abuse of process. The English case of *Grovit v Doctor* [1997] 1 WLR 640 is authority from the House of Lords that where the court can properly infer that a plaintiff has no *bona fide* intention of prosecuting the claim and bringing it to a conclusion, that can be an abuse of process justifying the striking out of the claim, without the need to show any prejudice accruing to the defendant. Lord Woolf, with whom all the other Law Lords agreed, said at page 647F-H:

*“... I am satisfied that both the deputy judge and the Court of Appeal were entitled to come to the conclusion which they did as to the reason for the appellant's inactivity in the libel action for a period of over two years. This conduct on the part of the appellant constituted an abuse of process. **The courts exist to enable parties to have their disputes resolved. To commence and to continue litigation which you have no intention to bring to conclusion can amount to an abuse of process.** Where this is the situation the party against whom the proceedings is brought is entitled to apply to have the action struck out and if justice so requires (which will frequently be the case) the courts will dismiss the action. The evidence which was relied upon to establish the abuse of process may be the plaintiff's inactivity. The same evidence will then no doubt be capable of supporting an application to dismiss for want of prosecution. However, **if there is an abuse of process, it is not strictly necessary to establish want of prosecution** under either of the limbs identified by Lord Diplock in *Birkett v James* [1978] A.C. 297. In this case once the conclusion was reached that the reason for the delay was one which involved abusing the process of the court in maintaining proceedings when there was no intention of carrying the case to trial the court was entitled to dismiss the proceedings.”* (emphasis added)

58. This remedy is available even before the relevant limitation period has expired but is unlikely to be granted in that situation unless the plaintiff's conduct is particularly egregious.

59. Like dismissal for want of prosecution, judges of the Grand Court have accepted in several cases that the *Grovit v Doctor* approach to abuse of process is available in the Cayman Islands, although I am not aware of a case where it has been directly applied.

60. In this context, it is relevant to record the obligation on litigants (and attorneys) pursuant to paragraph 3 of the Preamble to the Grand Court Rules to help the Court to further the overriding objective. The overriding objective is to deal with every cause or matter in a just, expeditious and economical way. This was introduced into the Grand Court Rules in 2003, and so has been in force for all but the first two years of the life of this action.

**F. The applicable limitation period**

61. Neither party had considered in advance of the hearing of the summons what was the applicable limitation period for the Plaintiffs' claim, and neither of them was able to address me on that question in oral argument. I therefore requested counsel to prepare short written submissions on the limitation question. The consequence of that is that I am satisfied that the Plaintiffs' claim is to be treated as a claim for rectification of the Land Register, which is subject to a 12-year limitation period. The limitation period runs from when the Register was (allegedly) wrongly updated, ie on 11 November 1999 on the Plaintiffs' case. In the absence of other factors, it would therefore have expired on 11 November 2011.
62. The Plaintiffs argue that because Mr Jackson was under a disability, the Plaintiffs' claim is subject to a 30-year limitation period by reason of s.32 of the Limitation Act, which provides:
- “32.(1) Subject to subsections (2) to (7), if, on the date when any right of action accrued for which a period of limitation is prescribed by this Law, the person to whom it accrued was under a disability, the action may be brought at any time before the expiration of six years from the date when he ceased to be under a disability or died (whichever first occurred), notwithstanding that the period of limitation has expired. ...*
- (4) No action to recover land or money charged on land shall be brought by virtue of this section by any person after the expiration of thirty years from the date on which the right of action accrued to that person or some person through whom he claims.”*
63. The difficulty with the Plaintiffs' argument is that Mr Jackson died at some point before August 2009 and Mrs Watler obtained a grant of probate in respect of Mr Jackson's estate on 26 August 2009. At all times after 26 August 2009, Mrs Watler was able to pursue the claim on behalf of herself and Mr Jackson's estate. It has not been suggested that she is under any disability. Thus s.32 of the Limitation Act was no longer available to Mrs Watler from 26 August 2009.
64. Accordingly, although I am not able to form a reliable view as to when the limitation period for the Plaintiffs' claim expired, I am completely satisfied that it has now expired.

**G. Decision*****G.1 Abuse of process***

65. I have set out earlier in this judgment the procedural chronology in some detail, partly to highlight the complete lack of action on the part of the Plaintiffs for lengthy periods of the life of this case. This can be summarised as follows:

65.1 Following service of the Defendant's Defence and Counterclaim on 18 May 2001, there has been absolutely no substantive procedural progress apart from agreeing the Consent Order dated 7 March 2003, to record the agreement reached on 25 April 2001. The Plaintiffs have not issued a summons for directions and, indeed, in March 2003, nearly 2 years after deemed close of pleadings, still wanted to file and serve a Reply and Defence to Counterclaim, but which they have never done.

65.2 The Plaintiffs have given notice of intention to proceed on multiple occasions without then taking any procedural step thereafter.

65.3 Apart from Walkers coming on the record and then indicating they were no longer instructed, there was no activity between May 2003 and May 2006 – a period of three years.

65.4 Mr Allen has still not filed a Notice of Change despite acting for the Plaintiffs in these proceedings for more than 18 years from May 2006.

65.5 When he first indicated in May 2006 that he was engaged, Mr Allen noted that “*due to the passage of time [I] need to progress this matter.*” The Plaintiffs have wholly failed to do so at any time over the following 18 years.

65.6 Mr Allen's attempts to progress a summons for directions can charitably be described as desultory at best and were completely ineffective.

65.7 The chronology shows that:

- (a) There was no activity between May 2006 and January 2008 – 1 year, 7 months.
- (b) There was no activity between April 2008 and September 2009 – 1 year, 5 months.
- (c) There was no activity between September 2009 and April 2010 – 7 months.
- (d) There was no activity between October 2010 and July 2012 – 1 year, 10 months.
- (e) There was no activity between July 2012 and May 2013 – 10 months.
- (f) There was no activity between May 2013 and April 2014 – 11 months.

- (g) There was no activity April 2014 and February 2017 – 2 years, 10 months.
- (h) There was no activity between April 2017 and December 2023, when the Defendant issued her summons – 6 years, 8 months.
66. The Plaintiffs’ conduct of this case involves a wholesale breach of the requirement of the overriding objective to progress the case in an expeditious manner.
67. Whilst more extreme during Mr Allen’s engagement since May 2006, there were also significant delays during the periods when McField and Walkers were engaged, which tends to suggest that the primary driver of the delays in the case is the Plaintiffs rather than the lawyers. However, I do not need to reach any conclusion on this aspect, since collective responsibility applies.
68. The abject failure of the Plaintiffs to advance this case in accordance with anything approaching the usual timescales is exacerbated by the following features:
- 68.1 The claim makes serious allegations of fraud against the Defendants. Mrs Watler repeated those serious allegations in her affidavit sworn on 9 March 2001. There is a high duty on a litigant who advances allegations of fraud only to do so where there is cogent evidence to support that allegation, and to progress the claim to a timely conclusion. Mrs Watler has completely ignored both of those requirements.
- 68.2 In *Annodeus Ltd v Gibson* [2000] 2 WLUK 72, Neuberger J (as he then was) said at page 6 in the judgment:
- “Sixthly, the duty of a claimant to pursue an action expeditiously and in accordance with the rules is all the more important when the claimant has already had a significant benefit at the expense of the defendant from the action — for instance, in this case the benefit of the search order. This is perhaps even more true where the claimant has, and continues to have, the benefit of a continuing interlocutory injunction to the defendant's disadvantage, which injunction is to run to trial. That principle is perhaps most graphically illustrated by the decision of the Court of Appeal in Hytrac Conveyors Limited v Conveyors International Ltd [1983] 1 WLR 44, where delay of a month or two in the service of a statement of claim was held to justify, on the facts of that case, an order dismissing the action in a copyright claim where the plaintiff had already obtained an Anton Pillar or search order against most of the defendants.”*
- The inhibition is in the nature of an injunction, since it prevents the Defendant from taking any steps in relation to Parcel 477 pending determination of the action or further order. The Plaintiffs have, through the proceedings, obtained that benefit since April 2001. Their conduct is clearly within the principle expressed in *Hytrac Conveyors Limited v Conveyors International Ltd* [1983] 1 WLR 44 and *Annodeus Ltd v Gibson*.

68.3 The Plaintiffs did not even have the courtesy to the Court to appear at the hearing of their own summons on 25 April 2001 to obtain the inhibition.

68.4 The Plaintiffs have chosen not to put any evidence before the Court:

- (a) to apologise to the Court for their dilatory conduct of the action;
- (b) to demonstrate why the proceedings should not be characterised as an abuse of process;  
or
- (c) to put forward any excuse or explanation for their conduct.

69. The only inference that I can draw from the Plaintiffs' behaviour in relation to this case is that they (before Mr Jackson's death) and Mrs Watler (since his death) have never had any *bona fide* intention to prosecute this action to a conclusion, let alone to a prompt determination of the issues. I therefore have no hesitation whatsoever in striking out this claim as an abuse of process.

G.2 Dismissal for want of prosecution

70. As Lord Woolf indicated in Grovit v Doctor, the same periods of delay that have caused me to conclude that the Plaintiffs' action is abusive are relevant to the question of dismissal for want of prosecution. Apart from the period from April 2001 to March 2003, which the Defendants indicated was consented to by agreeing an extension of time for the Plaintiffs' Reply and Defence to Counterclaim, each of the periods of delay that I have identified is, in my judgment, the responsibility of the Plaintiffs. Whilst Mr Allen sought at one stage to argue that the Defendants had contributed to the delays, the fact is that a defendant is not under the same duty as a plaintiff to advance the proceedings to a conclusion: a defendant may allow sleeping dogs to lie. The fact that the Defendant has made a Counterclaim does not affect the analysis since her Counterclaim is entirely responsive to the Plaintiffs' claims, as indicated earlier in this judgment.

71. The period of delay, amounting to 19 years 10 months in aggregate since May 2003 during which time the only progress achieved is close of pleadings, is clearly inordinate.

72. The Plaintiffs have not sought to put forward any excuse for the delay, and in my judgment, it is completely inexcusable.

73. I am wholly satisfied that those periods of culpable delay give rise to a substantial risk that it is not possible to have a fair trial of the issues and that the periods of culpable delay have caused serious prejudice to the Defendant.
- 73.1 If this case had been properly advanced, it should have come to trial by no later than about 2003.
- 73.2 Mr Allen sought to persuade me that this case could be decided purely on a consideration of the documents, and that there is no need for any oral evidence. Given the allegations of fraud pleaded in the Statement of Claim and advanced in Mrs Watler's affidavit sworn on 9 March 2001, in my judgment that is wholly unrealistic.
- 73.3 The two key witnesses have both died, Mr Jackson at some point before 2009 and Mrs Patino in February 2014. Both deaths occurred during the period of culpable delay. I cannot see how it can possibly be fair to try to resolve allegations of fraud made against Mrs Patino when she is no longer alive to answer them. This unfairness and prejudice to the Defendant is directly caused by the Plaintiffs' culpable delay.
- 73.4 There is no evidence that Mrs Lockwood, a witness to the completion of the Form RL10 in 1995, is still available. She swore an affidavit on 16 August 2001, which the Defendants might be able to rely upon under a civil evidence notice. However, it is easy to infer that Mrs Lockwood will no longer have any useful recollection of events, or at least that her evidence cannot usefully be tested by cross-examination, making the trial unfair. This unfairness is causally linked to the Plaintiffs' culpable delay.
74. Accordingly, if I had not already decided to dismiss this case as an abuse of process, I would have dismissed the claim for want of prosecution.

## **H. Consequential orders**

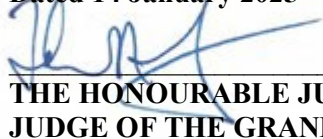
75. Consequent on my decision to strike out the claim, I order that the inhibition shall be removed forthwith from the title to the land known as Registration Section West Bay North East Block 9A Parcel 477. I will also make the declarations sought by the Defendant in her Counterclaim that:
- 75.1 Mrs Patino's estate is the legal owner of the land known as Registration Section West Bay North East Block 9A Parcel 477;

- 75.2 the Plaintiffs are not entitled to rectification of the Land Register to record either or both Plaintiffs as proprietor of the said land;
- 75.3 Mrs Watler is not entitled to register the registered land power of attorney granted to her by Mr Jackson against the title to the said land; and
- 75.4 the Plaintiffs are not entitled to maintain or lodge any new inhibition against the title to the said land.

**I. Costs**

76. Finally, as to costs, the Plaintiffs shall pay the Defendant's costs of the action. Furthermore, the Plaintiffs' conduct is unreasonable to an extremely high degree, such that I order the Defendant's costs to be taxed on the indemnity basis, if not agreed.
77. I will also consider ordering the Plaintiffs to make a substantial payment on account of costs, pending taxation, if the Defendant makes such an application supported by evidence as to the costs she has incurred in the proceedings.

**Dated 14 January 2025**



**THE HONOURABLE JUSTICE JALIL ASIF KC  
JUDGE OF THE GRAND COURT**