Neutral Citation Number: [2025] CIGC (Civ) 38

Cause No: G 2016-0201

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

BETWEEN:

(1) RHOAN MYERS
(2) CHARMAINE HOLNESS

Plaintiffs

-and-

DENISE NICOLE HOWELLE

Defendant

Appearances:	**Mr Delroy Murray of Murray & Westerborg for the Plaintiffs**
	Mr John Connole of Hampson and Company for the Defendant
Before:	**The Honourable Justice Jalil Asif KC**
Heard:	**26 November 2025**
Ex tempore judgment delivered:	**26 November 2025**
Finalised judgment approved:	**5 December 2025**

Civil procedure—road traffic claim—strike out for want of prosecution, for contumelious breach of an order or as abuse of process—whether delays due to plaintiffs lack of funding are excusable—whether claim should be struck out

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JUDGMENT

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1. This is my judgment on the application by summons dated 7 August 2025 brought by the Defendant to strike out the Plaintiffs' claim for want for prosecution, contumelious default and/or abuse of process, with the basis for the alleged abuse process being that the Court should infer in the circumstances that the Plaintiffs no longer have a *bona fide* intention to progress this matter to a conclusion.

2. The Defendant has been represented before me by Mr John Connole, who has presented arguments on behalf of the Defendant in support of the summons and the Plaintiffs have been represented by Mr Delroy Murray, who has really said everything that could possibly be said on behalf of the Plaintiffs in response to the summons.

3. I will indicate at the outset, because it is not kind to the parties to keep them on tenterhooks, that I have concluded that the fair and just outcome in this case is that it should be struck out for want of prosecution and for contumelious default, but not on the ground of abuse of process.

4. I can set out the facts which give rise to the claim relatively briefly, based on the allegations in the Statement of Claim and in the Defence. The claim concerns a road traffic accident that took place on 18 February 2016 at about 8:00 pm in the evening, when it was dark. It is alleged in the Statement of Claim that the First Plaintiff was driving a Toyota Corsa vehicle south along Huldah Avenue. It is alleged that the traffic lights were in his favour. He proceeded to cross the intersection with Smith Road and to continue onto Bobby Thompson Way when the Defendant's Honda, which was approaching the junction in the opposite direction, turned right across his path. I interpose here that the allegation that the Plaintiffs had the traffic lights in their favour is clearly incorrect. It is now accepted by everyone on the basis of CCTV footage and the expert accident reconstruction reports

that neither the Plaintiffs nor the Defendant had traffic lights in their favour. In fact, both of them drove through red lights, which may be a contributory cause to the accident that occurred.

5. In any event, carrying on in the Statement of Claim, it is alleged that the Second Plaintiff was a passenger in the front seat of the Toyota Corsa. It is alleged that both the Plaintiffs were wearing seatbelts at the time of the accident and that the accident was caused by the Defendant's negligence in seven specific respects that are pleaded.

5.1 failing to observe the traffic lights;

5.2 making an unauthorised right turn onto an intersection at a time when traffic lights did not permit turning traffic on to Smith Road;

5.3 failing to keep a proper lookout or to see or heed presence of the Plaintiffs' vehicle;

5.4 failing to use her brakes or to steer or control her vehicle to avoid the collision;

5.5 driving too fast or in such a manner as not to have a full control of her vehicle;

5.6 colliding with the Plaintiffs' vehicle; and

5.7 failing to comply with the Traffic Law and the Road Code of the Cayman Islands.

So those are a collection of fairly standard allegations of negligence in a road traffic case that were made against the Defendant.

6. It is alleged in the Statement of Claim in paragraph 8 that the Defendant and her insurer have accepted liability, although they had recently raised the issue of contributory negligence. I will come back to that when I deal with the Defendant's case, as pleaded in her Defence. The Statement of Claim then summarises the First and Second Plaintiffs' alleged injuries from the accident, which appear from the Statement of Claim to have been fairly significant and serious for both of them, involving facial fractures for the First Plaintiff and a fracture of the Second Plaintiffs' left arm, so this was clearly a serious accident.

7. The Defendant's Defence as to the date and time of the accident are essentially the same. She alleges that she was lawfully proceeding through the traffic light-controlled intersection of Bobby Thompson Way and Smith Road and was in the process of making a signalled right hand turn, intending to proceed eastbound on Smith Road in the direction of the airport. The Defendant alleges that she was

already well established in the intersection and was in the process of making the right turn when the First Plaintiff entered the intersection unlawfully on a red traffic signal in an attempt to beat the traffic signal and the Defendant's efforts to complete her turn. In doing so, the Plaintiffs' vehicle came into a head-on collision with the Defendant's motor car, with the front right corner of the Plaintiffs' motor vehicle colliding with the front left corner of the Defendant's motor vehicle.

8. The Defendant makes a number of allegations of negligence or contributory negligence against the Plaintiffs. In particular, I can summarize them as being:

8.1 attempting to enter the intersection unlawfully on a red traffic light when the First Plaintiff ought to have known that the Defendant was intending to complete her turn in front of him;

8.2 failing to obey the traffic lights and to stop his vehicle in compliance with an amber light, which on the expert evidence was showing for at least some five seconds before the collision occurred;

8.3 attempting to beat the traffic lights and to beat the Defendant's effort to complete her turn by forcing his way through the intersection at a high or excessive speed in the circumstances; and

8.4 the usual allegations of failing to keep a proper lookout, failing to give way, failing to take precautions to avoid the collision, and failing to brake.

9. There are also some less common allegations included in paragraph 5 of the Defence. In particular, it is alleged that the First Plaintiff had drank some alcohol during the course of the day, and it is said that he is put to proof that that did not impair the quality of his driving. Further to the nature of the First Plaintiff's driving, it is also alleged in the Defence that neither of the Plaintiffs were wearing seat belts or functional seat belts, which caused or contributed to the Plaintiffs' injuries.

10. As far as the alleged admission of liability is concerned, the Defendant asserts that there has not been any agreement or contractually enforceable admission of liability in respect of the accident or the Plaintiffs' injuries and damages. The Defendant was therefore clearly putting in issue that there was any such admission of liability. In other words, by her Defence, the Defendant was contesting everything in the case: liability, causation and quantum.

11. The Defendant pleaded very shortly to the injuries alleged to have been suffered by the Plaintiffs. Notably, the Defence included an allegation that the Plaintiffs' injuries and damages claimed are exaggerated, which was apparently based upon the Defendant's attorneys' review of the First Plaintiff's disclosed medical records.

12. In addition to her Defence, the Defendant pleaded a Counterclaim against the First Plaintiff only, seeking an indemnity or contribution from the First Plaintiff in respect of any liability that the Defendant is found in due course to have to the Second Plaintiff, who was the passenger in the First Plaintiff's vehicle. Again, not an unusual allegation or counterclaim to see in a case of this kind.

13. Finally, in terms of the pleadings, the Plaintiffs served a Reply on 26 May 2017, which denies that the Defendant was lawfully proceeding through the traffic lights at the intersection of Bobby Thompson Way and Smith Road when the accident occurred, and avers that when the Defendant entered the intersection and proceeded to make her right turn, she was not indicating that that was her intention. In addition, the Plaintiffs repeat in paragraph 4 of their Reply that the traffic light was signal was green in their favour at the time that the Plaintiffs entered the junction. It is asserted that as the First Plaintiff was proceeding across the intersection, the traffic light changed from amber to red.

14. It is clear from that summary of the pleadings that there are substantial disputes of fact as to the circumstances leading up to the accident and also as to the circumstances in which the Plaintiffs suffered their injuries, notably, whether or not they were wearing seat belts. All of those matters of fact will have to be determined at a trial of this matter if it were to proceed.

15. Following service of those pleadings in this case as long ago as 2017, some eight years ago, the history of progress of this matter has been quite lackadaisical.

16. The next interaction with the court in the bundle that was in front of me for the purpose of the hearing today is dated 16 July 2018 some 14 months after the Reply was served, when the Plaintiff served a Notice of Intention to Proceed.

17. On 22 October 2018, Murray & Westerborg served a Notice of Change. They took over conduct of the matter from the Plaintiffs' previous attorneys and have acted on behalf of the Plaintiffs at all times from 22 October 2018 onwards.

18. The Defendant filed a summons on 18 October 2018 seeking specific disclosure and directions. For various reasons, the summons did not come on for hearing until 14 June 2019. On that date, Kawaley J made a consent Order for directions which provided, first of all, for specific disclosure by the Plaintiffs of various classes of documents, particularly medical records relating to each of their treatment, and documents relating to their employment and educational records.

19. Apart from that specific disclosure, the consent Order provided for exchange of Lists of Documents within 28 days, service of witness statements within six weeks of the date of the Order, and the use of expert medical evidence on each side. It provided for examinations of the First Plaintiff by the expert appointed by the Defendant and required that within six weeks of service of the Defendant's medical expert's report that the Plaintiff should serve any expert medical report on which he proposed to rely at trial in response to that expert's report. It also gave each party leave to call experts in accident reconstruction. Lastly of relevance to the matters before me today, the consent Order provided for a split trial of liability in advance of the trial of the quantum issues.

20. The final paragraph of the consent Order provided that upon exchange of witness statements and the experts' reports, the parties should set the matter down for trial on liability with a time estimate of four days. Thus, at the time that the parties entered into this consent Order, they appear to have been anticipating that the matter would be tried, perhaps by the end of 2019 or depending on how long the medical expert evidence took to produce, perhaps at some point early in 2020.

21. Picking up the procedural chronology, none of what was ordered by consent happened, and I will come back to what did happen in relation to service of experts reports in due course. As far as the Court is concerned, the next step was a second Notice of Intention to Proceed served, this time on behalf of the Plaintiffs, on 30 October 2019 indicating an intention to pursue a summons for an interim payment. Murray & Westerborg filed the summons for an interim payment on 9 January 2020. However, that summons was not pursued to a hearing and, so far as I can ascertain, as between 2020 and 2025, no further steps were taken involving the Court until 24 March 2025, when the Plaintiffs

served another Notice of Intention to proceed, indicating an intention to apply for summary judgment against the Defendant and a further interim payment.

22. Whilst on the topic of interim payments, I will record that the Defendant, or more accurately her insurers, have made very substantial voluntary interim payments to the Plaintiffs on a without prejudice basis during the course of this matter, totalling about CI $95,000 for both Plaintiffs. Mr Connole has indicated in argument, and this is also dealt with in the evidence before me, that the Defendant and her insurers do not intend to seek any reimbursement of those interim payments if the claim were to be struck out.

23. I am now going to pick up the chronology regarding what was happening outside the Court from early 2019, shortly after Murray & Westerborg came on the record for the Plaintiffs. On 18 January 2019, the Defendant's attorneys wrote to Murray & Westerborg, indicating that they assumed that by that stage Murray & Westerborg had familiarised themselves with the file and suggested a meeting on a without prejudice basis to explore settlement possibilities in relation to the claim.

24. On 7 February 2019, the Defendant provided a draft consent order for directions, which Mr Connole tells me was in essentially the same terms as the consent Order for directions that I was signed by Kawaley J on 14 June 2019, some four months later.

25. On 2 April 2019, the Defendant wrote to the Plaintiffs' attorneys, complaining that this matter appeared to have been in suspension for some weeks, if not months, following a helpful discussion and meeting that had taken place on 1 February 2019. The letter recorded that the Defendant had provided the Plaintiffs with the proposed consent order for directions for review and approval, which dealt with the examination of the First Plaintiff by Dr Jimmy Brown, who was described as a Stanford-trained head and neck surgeon, and who had been willing and able to examine the First Plaintiff during the week of 18 February 2019 at the George Town Hospital. The Defendant's attorneys complained that they had not heard from the Plaintiffs in that regard, and their follow up emails seeking to confirm the First Plaintiff's attendance at the appointment with Dr Brown had not received a response. The Defendant indicated that part of the reason for wanting to pursue the examination of the First Plaintiff was so that both sides could then consider what further directions were necessary, including whether to have a split trial on liability. The Defendant's attorneys concluded by indicating

that they were looking forward to hearing from the Plaintiffs shortly, failing which they would be obliged to list the Defendant's summons for directions for a hearing in an effort to move the matter forward.

26. It appears that the Defendant did not receive any response. They followed up on 12 April 2019, complaining that the matter seemed to be languishing, and forwarded a listing form in order to seek to have their summons for discovery and directions listed.

27. On 30 April 2019, the Defendant wrote complaining again. On 3 May 2019, the Defendant served the summons for discovery and directions, returnable on 14 June 2019. At or shortly before the hearing on that date, the parties agreed the consent Order in the terms that I already summarised.

28. Dr Brown's examination of the First Plaintiff took place on 26 July 2019. From 26 July 2019 onwards, there was, I think it is best to describe it as, only sporadic progress. There was significant delay on the Defendant's part in obtaining Dr Brown's report, which was eventually dated 15 March 2020 and was served on the Plaintiffs on 16 March 2020. The Defendant pointed out that Dr Brown's report raised questions as to the merits of the First Plaintiffs' present complaints, alleged disability and seatbelt usage. The Defendant stressed that, in light of Dr Brown's report, liability in relation to the accident, including usage of seatbelts, was in question. Further, the Defendant suggested it was time to review the merits of the Plaintiffs' intended application for an interim payment in light of the substantial sums previously paid by the Defendant's insurers on a without prejudice basis. Again, it does not appear that the Defendant received a response to that letter.

29. The Defendant's attorneys followed up on 26 June 2020 and repeated their suggestion that in light of Dr Brown's report, the issues as to liability and contributory negligence and the interim payments already made, it was questionable whether there was any merit in continuing with the overall claim at all, if that was the Plaintiffs' intention. Again, there was no substantive response to that communication apart from a response from Mr Murray on 10 July 2020 indicating he was seeking instructions.

30. On 18 September 2020, the Defendant's attorneys wrote chasing for a substantive response. They wrote again on 14 January 2021 and finally got a response from the Plaintiffs on 6 August 2021, over

a year after the Defendant's first substantive letter, attributing the delay in the progress on the Plaintiffs' part to an inability to pay the fees requested by their expert for his accident reconstruction report.

31. In response to that letter, the Defendant's attorneys wrote on 23 August 2021, in the following terms:

> *"You will likely understand that from the silence over the past nearly year and a half, we were inclined to infer that your clients had recognized that pursuing this matter further was not economic having regard to the circumstances set out in our previous correspondence."*

They then acknowledge what was said about the Plaintiffs' financial position but complain that there had been wholesale failure to comply with the consent Order for directions on the Plaintiffs' part and they spelled out in detailed terms, what those breaches of the consent Order for directions were said to be.

32. On 25 May 2022, the Defendant provided details of the without prejudice interim payments that had been made to the Plaintiffs, which, as I have said, totalled just short of CI $95,000. On 8 December 2022, the Defendant's attorneys wrote asking whether the Plaintiffs' attorneys had any instructions regarding seeking updated medical records, a schedule of loss and witness statements, which were due to have been provided pursuant to the consent Order.

33. On 5 May 2023 the Defendant wrote again chasing for progress on what they described as a long-standing matter. On 7 September 2023 they wrote, chasing yet again. On 24 June 2024 they wrote, chasing again, asking for further medical records, damages documentation and a schedule of loss. On 11 October 2024, they wrote chasing up for documents and stated in their letter:

> *"Both of these claims have been unduly protracted and we fail to understand why, 8½ years post-accident, you are still not in a position to even quantify Mr Myers claim."*

They then warned in that letter:

> *"You will understand we are now compelled to look at an application to dismiss this action for want of prosecution."*

34. It seems that this letter is what finally triggered the Plaintiffs to do something. As I indicated earlier in this judgment, on 17 April 2025, some six months after that letter, the Plaintiffs filed their Notice of Intention to Proceed indicating an intention to apply for summary judgment and to seek an interim payment of CI $250,000.

35. In response, on 25 May 2025, the Defendant submitted their summons to the Court seeking an order for the claim to be dismissed. It appears that, for reasons that I do not know, the summons was not formally filed or accepted by the Registry as being filed until 7 August 2025. It may be that it took some time to obtain a listing date, which may be the reason why the summons was sealed on a later date than when it was submitted to the Court. On 7 August 2025, the Plaintiffs filed their summons for summary judgment and for the interim payment and, as I have indicated, it is possible that the sealing of their summons was similarly delayed from when it was first submitted to the Registry. That concludes the summary of the relevant conduct of this case from the period from early 2019 onwards.

36. The law on striking out for want of prosecution and for abuse of process is very well settled. I have recently had something to say about it in the Cayman Islands in two cases: *Burlington v. Butterfield Bank Cayman Limited* (unreported, 10/07/24), and *Watler v Patino* [2025] CIGC (Civ) 2. In both of those cases, I summarised the principles to be applied in relation to strike out for want of prosecution and abuse of process and I will not make this judgment longer than necessary by repeating my summary of the relevant law. I apply the law, as summarised in those two cases, in considering, separately and in order the questions of inexcusable delay causing prejudice, contumelious default and abuse of process.

37. Dealing first with the question of inexcusable delay causing prejudice, Mr Connole relies on two primary types of prejudice, which it is said that the Defendant has suffered as a result of the delays in question. The first is that the Defendant's own memory has faded and has further faded during the period of culpable delay, which Mr Connole says is the entire period from when the consent order was agreed onwards.

38. The second area of prejudice relied on by the Defendant is in relation to the Defendant's medical expert, Dr Brown, and I should explain the nature of that prejudice shortly as follows. Dr Brown has expressed significant scepticism over the authenticity of the First Plaintiff's complaints of ongoing symptoms and questions whether those ongoing complaints are genuine and caused by the accident in question. The Defendant would wish to rely on Dr Brown in order to challenge the validity of the complaints that the First Plaintiff makes, with the intention of reducing any damages payable to the First Plaintiff if liability were to be established at trial. The difficulty that the Defendant advances is that, whilst the Defendant still knows where to find Dr Brown in Florida, he has failed to respond to

inquiries on behalf of the Defendant to solicit his continued involvement in this case going forward. It is said in the affidavit evidence that notwithstanding several attempts to reach him, he has simply not responded. The Defendant invites the Court to infer from that lack of response that Dr Brown is no longer willing to be involved as an expert in this matter on behalf the Defendant.

39. The Defendant says that, in those circumstances, there are two aspects of prejudice that arise in connection with the expert evidence. First of all, there is the obvious prejudice that the Defendant is now going to have to locate and pay for a new expert to repeat the work that Dr Brown has already done. That expenditure is going to be wholly wasted as a result of the Plaintiffs' delays in bringing this matter to a conclusion. Secondly, whilst the Defendant is no doubt hopeful that the new expert will reach the same conclusions as Dr Brown, it is not necessarily the case that he or she will do so. If they were not to reach the same conclusion, then the Defendant will have been prejudiced in her ability to challenge the validity of the First Plaintiffs' injuries as a result of now having to rely on a new expert who has reached a different conclusion from that of Dr Brown.

40. The second argument put forward on behalf of the Defendant is that the Plaintiffs are in contumelious breach of the consent Order for directions. Mr Connole accepts that the Order has been complied with in two respects, albeit substantially late, namely the Plaintiffs have served some medical expert evidence and have also served Mr Moss's expert evidence on accident reconstruction. But apart from that, discovery has not been addressed in the way contemplated by the Order. Some documents may have been provided: there is an issue between the parties as to whether a file of papers was handed to the Defendant's attorneys by Mr Murray during a without prejudice meeting in, I think, 2024.

41. Certainly, on the evidence before me, there is no evidence to demonstrate that the Plaintiffs' discovery obligation in relation to medical records, employment records, educational history etc. has been fully complied with, and it is clearly the case that witness statements have not been prepared and exchanged, and no steps have been taken to set the matter down for trial. This is at a time when we are some six years after the date of the consent Order.

42. Lastly, Mr Connole relies on the abuse of process argument exemplified in England and Wales by the decision of the House of Lords in *Grovit v Doctor* [1997] UKHL 13, namely that in a case such as this the Court can and should properly infer that the plaintiff has no *bona fide* intention to bring this

matter to a conclusion. He submits that these Plaintiffs are misusing the Court's process and should not be permitted to continue to do so, and that their claim should be struck out for that separate reason as a result.

43. The Plaintiffs' response, as I indicated at the beginning of this judgment, was put forward as fully as one might conceivably hope for by Mr Murray on their behalf. Essentially it comes down to three aspects. First, for at least part of the period in question, there were ongoing without prejudice discussions between the parties with a view to trying to resolve the claim. Secondly, the Plaintiffs are impecunious and have throughout this matter suffered significant funding difficulties which have impeded their ability to move the case forwards as rapidly as they and Mr Murray would wish. Thirdly, it is said that at least part of the delay was caused by a desire on the Plaintiffs' part to obtain a memorandum of the Defendant's conviction in relation to this accident, which they only obtained during the summer of 2025.

44. Having set out the arguments on each side, I now provide my decisions on the issues. The first topic I need to address is, what is the period of culpable delay? The Defendant cannot properly rely upon the period from June 2019 to 16 March 2020, while she was waiting for Dr Brown to provide his medical report so that it could be served on the Plaintiffs. However, subject to that, I am satisfied, given that this is a relatively straightforward personal injury action arising out of a road traffic accident, that the entire period from April 2020 to April 2025 should be treated as relevant delay. It should not take a period of five years to bring a matter such as this to a trial and to a conclusion, let alone to achieve the limited steps that took place in the relevant period. Given the lack of any real procedural progress over the period from April 2020 to April 2025, I consider that the entire period of five years should be treated as relevant delay.

45. In my judgment, there is no good excuse for this period of delay. So far as the question of without prejudice discussions is concerned. There is no evidence before me to demonstrate what discussions were taking place, when and in what respects, and there is no evidence to suggest that there was any agreement between the parties that the impact of any ongoing without prejudice discussions should be that the parties were absolved from the obligation to move the case forwards so far as the Court proceedings are concerned. In fact, the evidence that I have seen indicates that notwithstanding whatever discussions were going on, the Defendant continued to press the Plaintiffs to move the case

forwards, and the Plaintiffs failed to do so. So, any without prejudice discussions, in my judgment, do not excuse the delay in question.

46. Secondly, it is said by Mr Murray that the court should take into account the Plaintiffs' funding difficulties and the effect that those funding difficulties had upon their ability to move their claim forwards. In particular, to pay for the expert reports that they needed in order to advance their case on liability, and also on contributory negligence and causation. As I indicated during the course of argument, I am not unsympathetic to the Plaintiffs' difficulties of funding a court action and the challenges that face plaintiffs who do not have the resources of an insurance company to prepare and to pursue their claims. But notwithstanding that sympathy, it is clear on the law that the fact that a plaintiff does not have sufficient funds to advance their case does not provide a good excuse for their failure to do so. There are usually alternative funding options potentially available to pursue a case. I note in this case, for example, that the Plaintiffs received nearly CI $95,000 by way of interim payments. I appreciate that that money was largely paid in relation to the Plaintiffs' ongoing loss of earnings, but there is no reason why part of that money could not have been ring-fenced and earmarked to fund the ongoing litigation, which the Plaintiffs must have realised would need to be funded somehow in order to bring their claim home to a conclusion.

47. I questioned Mr Murray in argument why the Plaintiffs did not obtain legal aid if they did not have sufficient funding from their own resources, and I was told in response that the Plaintiffs were refused legal aid on the basis that they could make a draw down on their pensions. There is no material before me to indicate why they did not do that in order to be able to fund the reports and the progress of the case that they needed to achieve. In any event, as I have indicated, the law is clear that whatever my sympathy for the Plaintiffs' position might be, their lack of funding is not a good excuse for a failure to move their case forwards and so that deals with that aspect.

48. Thirdly, is the question of the desire to obtain a memorandum of conviction. Again, this does not seem to me to provide any explanation or excuse for the delay that occurred. I say that because it is absolutely clear that the Plaintiffs' previous legal representatives in 2018 knew full well of the Defendant's conviction for careless driving in relation to this accident and indicated that they were intending to amend the Statement of Claim positively to plead the existence of that conviction. The Defendant, or more accurately her insurers, indicated in a letter dated 7 September 2018 that she did

not oppose that amendment on the ground that the fact of the conviction was not determinative of the issues of liability and of contributory negligence in the civil claim but was simply one factor that the Court would have to take into account in determining the liability and contributory negligence issues.

49. In the course of argument, I enquired of Mr Murray what documents he had received following the change of representation from the Plaintiffs' previous attorneys to Murray & Westerborg. He indicated that the only documents that he had been provided with were the pleadings. He said that he had not seen any of the *inter partes* correspondence. That is unfortunate and it should not have happened. I do not understand why Mr Murray did not ask for a full copy of the *inter partes* correspondence and why, if he did ask for it, the Plaintiffs' previous attorneys did not provide it.

50. In any event, that is irrelevant because, in fact, the letter in question was exhibited to an affidavit of an attorney acting on behalf of the Defendant sworn on 5 June 2019, well after Murray & Westerborg came on the record, for the purpose of exhibiting the correspondence between the parties. Thus, the Plaintiffs, including Murray & Westerborg, knew or ought to have known of the existence of the Defendant's conviction from no later than June 2019 onwards, if they were not aware of it from other sources. Secondly, for the reasons put forward by Mr Connole, the fact of that conviction is not determinative of the liability and contributory negligence issues in any event. It is simply one factor that the Court might take into account regarding the circumstances the accident, depending on the explanation given by the Defendant for her guilty plea.

51. Even if the Plaintiffs considered that the memorandum of conviction would be significant in the determination of the liability and contributory negligence issues, it does not seem to me that the desire to obtain a copy provides any reason to delay, or not to progress, all of the other aspects of preparation of this case towards a trial. In my judgment, there is no excuse, and certainly no good excuse, for any of the relevant delay from April 2020 onwards. Accordingly, I find that the period from April 2020 is inexcusable and inordinate delay in the progress of the Plaintiffs' claims.

52. Next, I am satisfied that there is significant prejudice to the Defendant as a result of that period of culpable delay of five years. Further, I am satisfied that it arises in the two respects that Mr Connole has sought to advance. First, and very unusually, in this case there is an affidavit from the Defendant herself, sworn on 29 September 2025, in which she says, in paragraph 3:

> *"I'm obliged to state that at this point, some 9½ years later I have very limited recollection of this accident beyond that the accident occurred at the cricket pitch intersection, and I was turning right. I'm afraid my memory of the details has almost completely faded with time. I add that I didn't prepare and certainly don't have any statement from which I can refresh my memory."*

It is a relatively easy inference to draw that, as a result of the period of five years since April 2020, to the extent that the Plaintiff did still have any residual recollection of the circumstances of the accident at that time, that recollection has now evaporated.

53. Secondly, and perhaps the more significant issue, is Dr Brown's apparent inability or unwillingness to continue to be involved in this matter. It seems to me that this is significant prejudice for the Defendant, both in respect of the additional expense and delay that would ensue from the Defendant having to identify and instruct a new expert, for that new expert to carry out examinations of the First Plaintiff and to prepare a report. There are question marks over the value of those examinations now, some nine and a half years after the accident took place, in order to deal with condition and prognosis issues. Additionally, as I have indicated, there is the risk that such an expert would not necessarily reach the same conclusions as Dr Brown has expressed, namely that the First Plaintiff's ongoing symptoms are inexplicable from a medical perspective, with the potential consequent impact on the value of the First Plaintiff's claim.

54. Against that I recognise, as Mr Murray urged me to do, that there is prejudice to the Plaintiffs by striking out their case, in that they have lost a potentially valuable claim that they intended or wished to bring against the Defendant. But in a case like this, my obligation is to consider the injustice to each side and, if there is real prejudice to the defendant or an inability to have a fair trial as a result of the culpable delay in question, then I should strike out the claim.

55. In my judgment, there is real and substantial injustice to the Defendant in her ability to resist or reduce the value of the Plaintiffs' claim, flowing from the period of culpable delay, which substantially outweighs the prejudice to the Plaintiffs from refusing to allow them to pursue this case any further. In reaching that conclusion, I take into account the substantial interim payments that they have received, and which the Defendant has indicated she will not seek to recover. It is therefore not the case that the Plaintiffs will leave empty handed in relation to the consequences of this accident. So that deals with the question of strike out for want of prosecution.

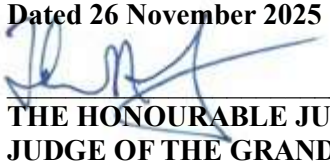
56. The second ground that Mr Connole relies on to justify striking out the Plaintiffs' claim is contumelious breach of the consent Order. It seems to me that this is an equally serious if not a more serious matter. Following the agreement to the consent Order by both parties on 19 June 2019, there was an immediate failure to comply with it by the Plaintiffs and, in many respects, it has still not been complied with more than six years after the consent Order was made. That is not acceptable conduct by any litigant. In saying that, I do not lose sight of the fact that the Defendant also breached the consent Order due to the significant delay in receiving and serving Dr Brown's expert report. If the parties were not able to comply with the consent Order when they were asked to agree to it, they should not have agreed. They should have resisted and should have asked the court for extra time, if necessary. Having agreed to the consent Order, if they found that they could not comply with it, they should have applied to the Court to vary it. It is simply not acceptable for them to do neither and to ignore their obligations pursuant to an Order of the Court. That is not acceptable conduct by any litigant who wishes the Court to resolve their disputes on that litigant's behalf. I treat the Plaintiffs' failure to comply with the consent Order over a period of six years as being a very serious breach by the Plaintiffs of their obligations to the Court. In conjunction with the delay and the prejudice to the Defendant that I have already described, it entirely justifies striking out the Plaintiffs' claims against the Defendant.

57. The last ground relied upon by the Defendant is abuse of process. I have considered very carefully whether it is appropriate to draw the inference that Mr Connole asks me to draw, namely that the Plaintiffs no longer have a *bona fide* intention to bring this matter to a conclusion. I am not satisfied that it is right to draw that conclusion. It seems to me that the Plaintiffs do want to bring this matter to a conclusion. That is evidenced, amongst other things, by their application for summary judgment and for a further interim payment. The fact that they have dragged their heels in moving this case forward, even to the extent that they have done in this case, set against the steps that they have taken, does not persuade me that this is a right and appropriate case to infer that they have no intention of pursuing their claims. The difficulty is that their ability to move this case forward, or their willingness to bring this case to a conclusion, has not translated into action on their part.

58. In conclusion, for the reasons I have set out, I have concluded that this case should be struck out, both for inordinate and inexcusable delay and also for contumelious breach of the consent Order, but not

on the grounds of abuse of process. As a result, the Plaintiffs' summons for summary judgment and for an interim payment is dismissed.

Dated 26 November 2025



THE HONOURABLE JUSTICE JALIL ASIF KC
JUDGE OF THE GRAND COURT