

SAINT LUCIA



**IN THE HIGH COURT OF JUSTICE
(Civil)
A.D. 1998**

SUIT NO: 694 of 1997

Between:

GREGORY EDWARDS

PLAINTIFF

AND

ST LUCIA ELECTRICITY SERVICES LTD

DEFENDANT

1998: APRIL 3 and 24

JUDGMENT

Appearances:

Mr K Foster ^{D.C.} for the Plaintiff

Mr A McNamara for the Defendant

d'Auvergne, J

On the 3rd March 1998 the Plaintiff/Applicant filed a Summons for Leave to Serve Amended Statement of Claim.

That Summons was supported by an Affidavit of Charles Quinlan a Clerk at the firm of Counsel for the Applicant.

The Statement of Claim is hereby reproduced and the Amended Statement of Claim is also reproduced in its entirety -

STATEMENT OF CLAIM

The Plaintiff states:-

1. That all material times, he was the owner in lawful possession of all that parcel of land registered in Block Nos. 0036B and 0036B and parcel Nos. 07 and 94, at Canaries of this State.
2. The Defendants, a Statutory Corporation, is empowered to install an "Electricity Island wide Service" in and throughout the State.
3. That on or about the year 1988 to 1990, the Defendants, without notice or other authority unlawfully trespassed upon the said lands and wrongfully planted poles and high tension electricity wires thereupon and over a stretch of 400 yds thereby creating a danger to human life on the grounds below and adjacent whereby the Plaintiff has been precluded from selling divers lots as per particulars and/or using lands for his own purposes.
4. That in addition hereto, again, without permission and/or due notice given, the Defendants wrongfully bull-dozed said lands and constructed a temporary road 12 feet wide and 400 yds which, has not been maintained, thereby created nuisance value to the further depreciation of said lands whereby the Plaintiff has suffered damage.

Particulars of Damage

1. Agreement for sale to Mr. Joseph Peter 15,000 sq. feet @ \$3.50 per sq. feet = \$52,500.00; Refunded: \$29,000.00 deposited.
2. Agreement for Sale to one Francois of 1 acre @ \$3.00 per sq. feet = \$129,000.00; Refunded \$60,000.00.

And the Plaintiff claims:-

1. Special damages/loss of sales - \$181,000.00.
2. General damages.
3. Legal Costs.

Dated the 7th day of August, 1997.

AMENDED STATEMENT OF CLAIM

The Plaintiff states:-

1. That at all material times, he was the owner in lawful possession of all that parcel of land registered in Block Nos. 0036B and 0036B and parcel Nos. 08 and 96, at Canaries of this State.
2. The Defendants, a Statutory Corporation, is empowered to install an "Electricity Island wide Service" in and throughout the State.
3. That on or about the year 1988 to 1990, the Defendants, without notice or other authority unlawfully trespassed upon the said lands and wrongfully planted poles and high tension electricity wires thereupon and over a stretch of 400 yds thereby creating a danger to human life on the grounds below and adjacent whereby the Plaintiff has been precluded from selling divers lots as per particulars and/or using lands for his own purposes.
4. Deleted

Particulars of Damage

1. Agreement for sale to Mr. Maxim Jude @ \$3.50 per sq. feet = 10,000 sq. ft = \$35,500.00; Refunded: \$10,000.00, was aborted.
2. Land over which wires were installed measuring approximately 1000 ft x 36 ft = 36,000 sq feet @ \$3.00 per sq. foot = \$108,000.00.

And the Plaintiff claims:-

1. Special damages/loss of sales - (i) \$108,000.00
(ii) \$ 35,500.00
\$143,500.00
2. General Damages.
3. Legal costs.

Dated the 24th day of February, 1998.

An Affidavit of Service of the Writ upon the Defendant was filed on the 6th day of March, 1998.

ARGUMENTS

Learned Senior Counsel for the applicant informed the court that he sought leave from the court to file the new amended Statement of Claim.

Learned Counsel for the Defendant/Respondent commenced his arguments by stating that there were many errors in the application since the Summons should be firstly, to amend the Statement of Claim and then to file and serve not "to file and serve an amended Statement of Claim" . . . Secondly, Charles Quinlan was not a party to the case and it had not been shown that he had been given any authority to act on anyone's behalf. Thirdly, that under the head Particulars of Damage paragraph 1, the Plaintiff sought to amend only the words was aborted whereas the entire paragraph in the amended Statement of Claim was not in conformity with that paragraph in the former Statement of Claim.

Learned Senior Counsel replied by stating that a Solicitor's Clerk has always been empowered to swear to affidavits though a Solicitor should not do so.

CONCLUSION

Amendments to Writs pleadings and other related documents are governed by Order 20 of the Rules of the Supreme Court, 1970.

The pleadings in this case have been closed therefore the applicant must apply for leave to amend the Statement of Claim and having got such leave he must then file and serve on the defendant.

Order 20 Rule 5 (1) empowers the court to grant leave "*to the Plaintiff to amend his Writ at any stage of the proceedings on*

such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct."

In Bullen and Leake and Jacob's Precedents of Pleadings under the rubric **Practice on Amendments of Pleadings page 135** states:-

"In all cases except where amendment is allowed without leave the party seeking or requiring the amendment of any pleading must apply to the court for leave or order to amend. The proposed amendments should be specified either by stating them, if short, in the body of the summons, notice or other application, or by referring to them therein. An affidavit is not ordinarily required, except in the case of an amendment of a writ issued for service out of the jurisdiction and in cases where it is necessary to satisfy the court that the amendment is made in good faith.

In practice, leave to amend is given only when and to the extent that the proposed amendments have been properly and exactly formulated, and in such case, the order giving leave to amend binds the party making the amendment and he cannot amend generally

The amendment when made should make it clear what has been deleted and what has been added or altered, so that the court when reading the amended pleading should be able to see at once the exact nature and extent of the amendments made. For this reason, the amendments should be made in different coloured ink, the first amendment is red, the second or re-amendment is green the third or re-re-amendment is violet and the fourth amendment is yellow."

Based on the above it is clear that Learned Senior Counsel has not adhered to the rules laid down for the orderly progress and due expedition of an action.

This Writ was filed on the 7th day of August, 1997 and therefore is still within the twelve (12) calendar months.

As stated earlier an application for such an amendment need not be supported by an affidavit and I must say that the

affidavit of Charles Quinlan does not disclose anything that could not be deduced from perusing the court file. In other words, his affidavit is useless.

I ask myself the question, is this amendment done in good faith? meaning, is the amendment sought for the purpose of raising "the real question in controversy between the parties?"

Why are the facts stated under the head 'Particulars of Damage' under the former Writ and the one which is presented as the amendment so different?

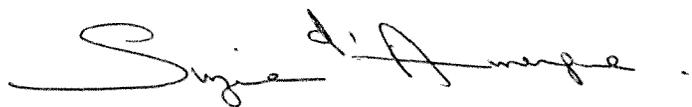
From a perusal of the Statement of Claim it is difficult for me to perceive that the facts now stated in the amended Statement of Claim were not known from the start.

The rules of pleadings must be observed.

This application lacks the essentials and therefore I have no alternative but to dismiss it.

My order is as follows:-

1. This application is dismissed.
2. The Plaintiff is to pay costs to the Defendant to be agreed or otherwise taxed.



**SUZIE d'AUVERGNE
HIGH COURT JUDGE**