

GRENADA

IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE

CLAIM NO: GDAHCV2010/0135

BETWEEN

GODWIN JOSEPH

Claimant

AND

[1] GRENADA CO-OPERATIVE NUTMEG ASSOCIATION
[2] DESMOND JOHN
[3] TERRENCE PHILLIP

Defendants

Appearances:

Ruggles Ferguson of Counsel for the Claimant

Alban John of Counsel for the First Defendant

Celia Edwards Q.C with her Sabrita Khan of Counsel for the Second Defendant

Shireen Wilkinson of Counsel for the Third Defendant

2012: July 25th

2013: October 10th

2014: August 21th

- [1] **TAYLOR-ALEXANDER M:** Arnwill Limited by its application filed on the 23rd of May 2011 is seeking to strike out the claimant's amended claim form and statement of claim filed on the 9th of May 2011. A concurrent application of the claimant was filed on the 5th of July 2011, seeks the court's leave to deem the amended claim form and statement of claim as having been properly filed.

There had been other earlier applications in the proceedings that had dealt with housekeeping issues. These remains last outstanding applications in the proceedings, in its current form.

Brief History

- [2] It seems to me that a detail recital of the facts of this claim are unnecessary for the purposes of this application, except to say that it is a claim in personal injuries and damages brought by the claimant against the defendants for joint and several liability for injuries he received at a worksite, which he alleges, was under the control and /or management of the first and second defendant. The injuries, he avers, resulted from the failure of the defendants to take adequate precautions for the safety of the claimant.

- [3] An original claim was filed on the 16th of March 2010, in which the claimant sued three defendants the second of whom was Desmond John. The claimant subsequently, purported to file an amended claim which substituted a new party Arnwil Limited for Desmond John, whom it seems, was removed from the proceedings. At the time of the amendment the proceedings were at the stage of case management conference and upon the agreement of the parties, the proceedings had been referred to mediation.

The Applications

- [4] Arnwil Limited alleges that the amended claim form and statement of claim violate Part 19 of CPR 2000 which provides for leave to add a defendant to the

proceedings where the proceedings are at case management conference. The removal of Desmond John, replacing him with Arnwil Limited was in effect an attempt by the claimant to discontinue the claim against Desmond John and to add a new defendant for which leave was mandatory.

[5] The application and supporting affidavit of the claimant acknowledges that the effect of CPR 2000 Part 20.1 (1) before the 2011 amendment was to require leave of the court to make amendments to a statement of claim where such amendment is sought at or after the first case management conference. The claimant also acknowledges that the application was made after the first case management conference, although he acknowledges that that there have not yet been trial directions issued. The claimant submits that its own application to deem the amendment properly filed is to assist in saving both time and resources for the parties and the court.

[6] The claimant's application and submissions in so far as it is advanced under CPR Part 20 is misconceived. Firstly applications to add or otherwise substitute a party to the proceedings is dealt with under Part 19 of CPR 2000. Desmond John was formally removed as a party to the proceedings by order of my sister master dated the 6th of July 2011. As such the claimant's application for leave in relation to Arnwil Limited is properly one to add a party to the proceedings grounded under CPR part 19.2. That provision had remained unchanged by the scheme of amendments under the 2011 Civil Procedure Amendment Rules. It provides as follows:—

“(1) A claimant may add a new defendant to proceedings without permission at any time before the case management conference.

(2) The claimant does so by filing at the court office an amended claim form and statement of claim, and Parts 5 (service of claim within jurisdiction), 7 (service of court process out of jurisdiction), 9 (acknowledgment of service and notice of intention to defend), 10 (defence) and 12 (default judgments) apply to the amended claim form as they do to a claim form.....

(7) The court may not add a party (except by substitution) after the case management conference on the application of an existing party unless that party can satisfy the court that the addition is necessary because of some change in circumstances which became known after the case management conference."

[7] A necessary pre condition to the exercise of the court's discretion to allow an amendment is the defendant establishing a change in circumstance which became known after the case management conference. Our Court of Appeal interpreted this provision in **Gordon Lester Brathwaite and Anor and Anthony Potter and Anor** Grenada Civil Appeal No. 18 of 2002. Alleyne JA said this:—

"A change in circumstances in the context of these Rules is a change in the factual circumstances, not, as appears to be suggested by the Respondents, a change in the parties' awareness or understanding of their legal rights, or of the existence of possible defences to the claim made against them."

[8] Further in **Vinos v Marks and Spencer plc (2001) 3 ALL ER 784**, the UK supreme court interpreting the use of the phrase "may not" as it appears in the provision in relation to the exercise of the court's discretion said this:—

"..... the Court can only do what is possible. The language of the rule to be interpreted may be so clear and jussive that the Court may not be able to give effect to what it may otherwise consider to be the just way of dealing with the case..."

[9] Sharon Samuel who provided an affidavit for the claimant avers that it is only at the case management conference that the claimant became aware of the existence of a contract of employment between the first defendant and Arnwil Limited and as between the Arnwil Limited and Desmond John the relationship of employer and employee. She also states that it was then that the claimant became aware of the relationship of employer and employee between Arnwil Limited and Terrence Phillip. It seems that prior to that, the claimant's pleaded case is that Desmond John traded and operated as DJ Bobcat and was the employer of the

third named defendant. According to the affiant Desmond John is the managing director and in her words one of the “main players” of Arnwil Limited, She avers that there is little prejudice occasioned to the party now standing as the second defendant by virtue of the amendment in lieu of Desmond John.

[10] The issue of prejudice is only relevant to the exercise of my discretion. Firstly I must address the question of whether there was a change in the factual circumstances. The vehicle used by the second defendant to enter into contractual negotiations with the first defendant was by a corporate entity. That information ought to have been easily accessible by the claimant at the outset of the proceedings and as such it seems that was no change of the factual circumstances. For reasons that I have stated hereunder I have concluded otherwise.

[11] The evidence of Arnwil Limited is that the claimant was alerted to the fact that Desmond John had been improperly joined in the proceedings from the date of the filing of his defence. All the averments of the pleading of the claimant alleging the existence of a contract with Desmond John and the first defendant, and alleging that Desmond John was the employer of Terrence Phillip, were denied. This, the second defendant asserts ought to have alerted the claimant that Desmond John was improperly joined. I disagree.

[12] I found the pleadings of Desmond John to unhelpful in clarifying any misconception about who were the proper parties to the proceedings or otherwise, in narrowing the parties and the disputed issues. Not only did the pleadings violate CPR rule 10.5(4) which require the defendant where he/she denies any of the allegations in the claim form or statement of claim, to state the reasons for doing so; and where the defendant intends to prove a different version of events from that given by the claimant, the defendant’s own version must be set out in the defence, Desmond John as the then second named defendant also failed in his obligation to assist the court in furthering the overriding objective.

[13] Both the defence of the first defendant and the defence of the third defendant as originally filed admitted and acknowledge Desmond John as the party to the contract with the first defendant and as the employer of Terrence Phillip, although admittedly the third defendant filed an amendment to its pleading thereafter denying any knowledge of these facts. In so far as the claimant was misconceived as to the proper parties to the cause of action, the pleadings of the first and third named defendant as originally filed had brought comfort to the claimant on the issue of the proper parties to the proceedings. I find that the second defendant Desmond John possessed knowledge to clarify for the court who ought to have been the proper second defendant but failed to do so. By the failure to so plead, despite the direction of Part 10.5, I find that he deliberately delayed the proceedings and withheld a version of events that could have earlier changed the course of the proceedings.

[14] I accept the direction of the court in **Gordon Lester Brathwaite and Anor and Anthony Potter and Anor**. I accept as a fact that Desmond John usually operated as DJ's bobcat, and had been known as such. I find that the claimant having received by their pleadings, the endorsement of the first and third defendants, of the factual matrix averred in the pleadings was entitled to assume that its version of events had been confirmed. I accept the evidence of Ms. Samuel, that it was only at the stage of mediation that the true factual matrix between the defendants came to light. I therefore rule that the disclosure at case management conference, constituted a change in the factual circumstances which only became known at the stage of the case management conference.

The exercise of the Court's discretion

[15] Although Practice Direction No. 5 of 2011 is a supplement to CPR 20.1(2), it is instructive in relation to applications to change the statement of case where leave is required and the court is required to exercise its discretion. Having considered these guidelines, I am of the view that not only was the claimant's application

made promptly after it became aware of the circumstances under which the parties contracted, but I remain satisfied that none of the parties have suffered prejudiced other than compensable prejudice. As such I direct that the amended claim filed by the claimant be deemed validly filed. I direct consequential amendments if any of all defendants within 14 days hereof and the proceedings are thereafter is to be fixed for further case management conference.

[16] I award the all the defendants their costs incurred by the amendment to be agreed or otherwise assessed.

V. GEORGIS TAYLOR-ALEXANDER

HIGH COURT MASTER