THE EASTERN CARIBBEAN SUPREME COURT

SAINT CHRISTOPHER AND NEVIS

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SKBHCV2013/0069

BETWEEN:

DENISE VIOLET STEVENS

Claimant

and

LUXURY HOTELS INTERNATIONAL MANAGEMENT ST. KITTS LIMITED (formerly MARRIOTT ST. KITTSMANAGEMENTCOMPANY INC.)

Defendant

Before:

Master Fidela Corbin-Lincoln

On Written Submissions:

Mr. Terence Byron and Ms. Talibah Byron for the Claimant
Ms. Elizabeth Harper and Mr. Jomokie Phillips for the Defendant

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2014: December 19th

Application to amend the statement of case during assessment of damages hearing and after the end of the relevant limitation period – Amendment to quantum of special damages under the heads of special damages already pleaded- Whether amendment amounts to a new claim- Whether amendment at this stage of the proceedings would result in prejudice which cannot be remedied by an award of costs - Rules 1.2, 20.1 (3) and 20.2 (2) of the Civil Procedure Rules 2000.

The claimant commenced a claim against the defendant for loss and damages arising from the alleged negligence of the defendant. The defendant admitted liability and directions were given for the assessment of damages hearing. On the day before the hearing was scheduled for continuation the claimant made an application to amend the statement of claim, specifically, the particulars of special damages by deleting some heads claimed and adjusting the quantum claimed under others. At the time the application was filed the limitation period for commencing a claim for negligence had expired.

HELD: Granting the application to amend the statement of claim and awarding costs of $2,500.00 to the defendant the said costs to be set off against any claim for damages and costs that may succeed.

1. The proposed amendments do not amount to a new claim under CPR 20.2 (2) or fall within any of the other circumstances set out in CPR 20.2 which applies to amendments to a statement of case after the end of the relevant limitation period. In the circumstance the application fell to be decided under CPR 20.1 (3).

2. The promptness of an application is only one of the factors to which the court should have regard when considering an application to amend a statement of case. The overriding objective is that the court should deal with cases justly. That includes, so far as practicable, ensuring that each case is dealt with not only expeditiously but also fairly. Amendments in general ought to be allowed so that the real dispute between the parties can be adjudicated upon provided that any prejudice to the other party or parties caused by the amendments can be compensated for in costs and the public interest in the efficient administration of justice is not significantly harmed.

Cobbold v London Borough of Greenwich (unreported 9th August 1999) (CA)

National Westminster Bank v Rabobank Nederland [2006] EWCA Civ 1578

Circumstances in Worldwide Corporation Limited v GPT Limited et al [1998] EWCA Civ 1894 distinguished.

JUDGMENT

[1] Corbin -Lincoln M [Ag]: This matter concerns an application by the claimant to amend the statement of claim following judgment on admission of liability and during the assessment of damages hearing.

Background

[2] On 13th March 2013 the claimant commenced a claim against the defendant for damages for personal injuries and consequential loss sustained on 20th March 2007 during the course of the claimant's employment with the defendant.

[3] The claimant's statement of claim pleads and particularises the claimant's special damages as follows:

Home help's wages while incapacitated	$ 5,000.00
Consultancy, Hospital and doctor's fees	$69,116.93
Medicine and drugs	$10,086.00
Overseas travel, accommodation and food for claimant and caretaker	$12,000.00
Physiotherapy treatment	$ 5,519.75
Telephone	$ 500.00
Loss of wages from 20th March 2007 to March 2013	$52,353.60
Loss of future earnings	$183,237.60
Diagnostic procedures	$8,628.00
Medical reports	$ 800.00
	$347,241.88

[4] On 15th April 2014, the learned Master granted judgment on admission of liability against the defendant, gave directions for the assessment of damages hearing and fixed the hearing for 2nd July 2014.

[5] The assessment of damages hearing commenced before the learned Master on 16th July 2014 and one (1) of the claimant's three (3) witnesses gave evidence. The matter was adjourned to 7th August 2014 for continuation.

[6] On 6th August 2014, the day before the hearing was scheduled for continuation, the claimant filed an application to amend the statement of claim pursuant to the Civil Procedure Rules ("CPR") Part 20.2 (2) and the inherent jurisdiction of the court.

[7] The proposed amendments, which all relate to the claimant's claim for special damages, are as follows:

Home help's wages while incapacitated	$ ~~5000.00~~ $ 15,000.00
Consultancy, Hospital and doctor's fees	~~$ 69,116.03~~ $137,472.78
Medicine and drugs	$ ~~10,086.00~~ $ 2,216.08
Overseas travel, accommodation telephone use and food for claimant and caretaker	$ ~~12,000.00~~ $ 47,541.84
Physiotherapy treatment	~~$ 5,519.75~~ $ 9,409.83
~~Telephone~~	~~$ 500.00~~
Loss of wages from 20th March 2007 to 7th August 2014	~~$ 52,353.60~~ $216,962.76
~~Loss of future earnings~~	~~$183,237.60~~
Diagnostic procedures	~~$8,628.00~~ $ 11,954.02
~~Medical reports~~	~~$ 800.00~~
	~~$347,241.88~~ $440,557.31

[8] On 7th August 2014, Dr. Santana, one of the claimant's medical experts who resides out of the jurisdiction, attended the hearing to give evidence. Taking all the circumstances into consideration, including that the defendant was not properly served with the claimant's application and that the parties were engaged in settlement discussions, the learned Master took the evidence of Dr. Santana and adjourned the matter for report.

[9] On 7th October 2014 the matter came up for report. The parties reported that the matter was not settled. The parties were ordered to file affidavits and submissions in relation to the claimant's application to amend the statement of claim.

Issue

[10] The sole issue for determination is whether the court should permit an amendment to the statement of claim.

CPR 20.2 (2) Changes to statements of case after end of relevant limitation period

[11] The claimant's claim is based on negligence. It is not disputed that the claimant's cause of action accrued on 20th March 2007 and that the period for commencing a claim expired six years from that date[1]. The claimant is therefore seeking to amend her statement of case after the expiration of the limitation period.

[12] CPR 20.2 applies to changes to a statement of case after the end of the relevant limitation period. It states:

> " *(2) The court may allow an amendment the effect of which will be to add or substitute* ***a new claim*** *but only if the new claim arises out of the same or substantially the same facts as a claim in respect of which the party wishing to*

[1]Section 4 (1) (a) of the Limitation Act Cap 5.09 of the Laws of St. Christopher and Nevis.

change the statement of case has already claimed a remedy in the proceedings.

(3) The court may allow an amendment to correct a mistake as to the name of a party but only where the mistake was –

(a) genuine; and

(b) not one which would in all the circumstances cause reasonable doubt as to the identity of the party in question.

(4)The court may allow an amendment to alter the capacity in which a party claims."

[13] The purpose of the claimant's proposed amendment is neither to correct the name of a party nor alter the capacity in which a party claims. It must however be considered whether the proposed amendment amounts to the addition or substitution of a new claim.

Do the proposed amendments amount to 'a new claim' ?

[14] CPR 2.4 states that 'claim' is to be construed in accordance with Part 8. CPR 8 does not however define the word 'claim' or 'a new claim'.

[15] In England, the rule similar to CPR 20.2 (2) is CPR 17.4. CPR 17.4 states that the rule applies where a person seeks to amend a statement of case and a period of limitation has expired under, inter alia, the Limitation Act 1980. Section 35 (2) of the Limitation Act 1980 defines 'a new claim' as a claim involving the addition or substitution of a new cause of action.

[16] Section 4 (1) (a) of The Limitation Act Cap 5.09 of the Laws of St. Christopher and Nevis establishes a limitation period of six (6) years for actions founded on tort

but does not define 'a new claim'. Notwithstanding the absence of a definition, in my view 'a new claim' in CPR 20.2 (2) means 'a new cause of action".

[17] In Cooke v Gill[2] Brett J stated that:

> "'*Cause of action' has been held from the earliest time to mean every fact which is material to be proved to entitle the plaintiff to succeed - every fact which the defendant would have a right to traverse*."

[18] In Paragon Finance Plc v Thakerar & Co[3] Millett LJ cited the definition of Brett J and added:-

> "... *only those facts which are material to be proved are to be taken into account. The pleading of unnecessary allegations or the addition of further instances or better particulars do not amount to a distinct cause of action. The selection must be made at the highest level of abstraction*."

[19] In Smith v Henniker-Major[4] is was stated that :

> *"[I]n identifying a new cause of action the bare minimum of essential facts abstracted from the original pleading is to be compared with the minimum as it would be constituted under the amended pleading."*

[20] Looking at the claimant's claim as a whole, the bare and essential facts of the tort of negligence as alleged in the original statement of claim are that :

(a) The defendant owed the claimant a duty of care;
(b) The defendant breached that duty on 20th March 2007 in carrying out its business of managing the Marriott Royal St. Kitts Beach resort; and

[2](1873) LR 8CP107, 116
[3][1990] 1 AER 400, 405
[4][2003] Ch. 182, 210 Robert Walker LJ

(c) As a result of that breach the claimant fell on the defendant's premises during the course of her employment and suffered personal injuries, loss and damage.

[21] Those bare and essential facts also appear in the draft amended statement of claim with some amendments to the particulars of special damage.

[22] Pleading additional facts or better particulars constituting a breach of a duty already pleaded does not amount to a new cause of action.[5] Longmore LJ in Berezovsky v Abramovich[6] stated:

> "*The addition or substitution of a new loss is by no means necessarily the addition or substitution of a new cause of action. For a cause of action to arise in tort there must be a breach of duty which causes loss but it is permissible to add or substitute further losses if they all stem from an original breach of duty which has caused some loss. This happens every day in personal injury claims in which a loss of earnings claim may be added to (or substituted for) a claim for loss and suffering, even after the original time-bar has expired; there is no question of a new cause of action being added or substituted because the loss all stems from the negligent act of the car driver or other tortfeasor*"

[23] In the present claim the bare and essential facts in the original statement of claim are the same as those in the draft amended statement of claim. The proposed amendments, in my view, expand on the original pleadings and do not amount to the addition of a new claim.

[24] Since the proposed amendments do not amount to the addition or substitution of new claim the application does not fall within the parameters of CPR 20.2. In the

[5]Darlington Building Society v O'Rourke James Scourfield 1998 All ER.
[6][2011] All ER (D) 253

circumstance, the application in my view fails to be determined under CPR 20.1 which deals with amendments to a statement of case generally and sets out the factors to which the court must have regard.

CPR 20.1 - Changes to Statements of Case

[25] CPR Part 20.1 (3) states:

> "(3) When considering an application to amend a statement of case pursuant to Rule 20.1(2), the factors to which the court must have regard are –
>
> (a) how promptly the applicant has applied to the court after becoming aware that the change was one which he or she wished to make;
>
> (b) the prejudice to the applicant if the application were refused;
>
> (c) the prejudice to the other parties if the change were permitted;
>
> (d) whether any prejudice to any other party can be compensated by the payment of costs and or interest;
>
> (e) whether the trial date or any likely trial date can still be met if the application is granted; and
>
> (f) the administration of justice.

[26] I pause to highlight that CPR 29.2 (1) states that the general rule is that any fact which needs to be proved by evidence of witnesses is to be proved at trial by oral evidence or by affidavit at any other hearing. For the purposes of the application before the court, any fact upon which either party wishes to rely should be in the affidavits filed by the parties rather than in submissions since the latter does not constitute evidence.

The Promptness of the Application

[27] The claimant's grounds in support of the application[7] and her affidavit in support [8] state that she only became aware of the need for the amendment *"after the end of the limitation period"*. The claimant states further that *"I only realized that the change was one which I was in a position to make since the defendant admitted liability and correspondence was exchanged….within the last three months.*"

[28] A party may amend his statement of case at any time after the date fixed for the first case management with leave of the court. This is not dependent on or subject to the other party admitting liability. The relationship between the claimant's ability to amend her statement of case and the admission of liability by the defendant is therefore unclear to me.

[29] The test is not when the claimant '*realized it was a change which she was in a position to make'* but rather how soon the application was made after the claimant became aware that the change is one she wanted to make. The claimant's evidence on this issue is vague and unclear. The claimant's evidence is that she became aware of the matters she now wishes to amend after the end of the limitation period but there is no evidence of how soon after March 2013 (the end of the limitation period) she became so aware .

[30] The claimant states that she has been *"routinely informing the defendant of her expenses, losses and damage suffered…all along the way and ever since she first began incurring such expense"* and that she disclosed the documentation to which proposed amendments relate on 23rd December 2013.[9] It can therefore be inferred that the claimant knew that the particulars of special damages which she now proposes to amend had changed at least by 23rd December 2013 - the

[7] Paragraph 7 of the grounds
[8] Paragraph 3 (a)
[9] Paragraphs 8 (i) and (ii) of the grounds

date by which it is alleged that all documents related to the proposed amendments were disclosed to the defendant.

[31] The application to amend the claim was made on 6thAugust 2014 - almost eight (8) months after the claimant became aware or ought to have been aware that there were changes to the particulars of her special damages which would need to be amended. In my view eight (8) months is an inordinately long period to wait to make an application to amend the particulars of special damages. I find that in all the circumstances the application was not made promptly.

Prejudice to the Claimant

[32] The claimant states that if the application to amend the particulars of special damages is refused she would suffer prejudice because:

(a) she is only seeking to be compensated for losses which she can prove she has incurred [10] ;
(b) the defendant has admitted liability and by so doing has accepted that it is responsible for compensating her for consequential loss and damage suffered; and
(c) it would be an unduly harsh penalty to her and would represent a windfall to the defendant if she was unable to amend the particulars of special damage.[11]

[33] In essence, the claimant asserts that if she is unable to amend the particulars of special damages she will be unable to recover the loss actually suffered even though she has documentary evidence to prove same and could do so at trial.

[10] Paragraph 11 of the grounds
[11] Paragraph 17 of the grounds

[34] I find that the claimant would suffer prejudice if she is unable to amend her statement of claim to reflect the actual quantum of loss suffered as a result of the defendant's admitted negligence

Prejudice to the Defendant

[35] The claimant states that the defendant would not suffer any prejudice if the amendments were allowed since:

(a) the claimant has been informing the defendant of her expenses along the way;
(b) the documentation to which proposed amendments relate were disclosed on 23rdDecember 2013 and supplemental disclosures were made in June 2014 and July 2014 after further proof of losses incurred came into her possession;
(c) Counsel for the defendant brought to the attention of counsel for the claimant several of the inaccuracies and discrepancies to which the proposed amendments relate; and
(d) The defendant, as the claimant's employers, must have knowledge of what the claimant's loss of past wages were and would be taken by surprise by this.

[36] The defendant's affidavit in opposition to the claimant's application consists of ten (10) paragraphs. Paragraphs 6 to 9 appear to address the issue of prejudice.

[37] Paragraph 6 of the affidavit in opposition states that an application *"at this stage is even more incongruous given that this is a personal injuries matter, and of which special damages must be pleaded and proved. The entertainment of the Application, would to say the least, impact significantly the evidence of which has already been given."*

[38] There is nothing strange about the claimant's application in my view. It appears to me that the application has been made by the claimant in recognition of the well

established principle that special damages must pleaded, particularized and proved.

[39] While the defendant asserts that granting the application at this stage would significantly impact the evidence already given, no evidence has been provided of precisely how permitting the amendment would impact this evidence. In the absence of any evidence in this regard I am unable to ascertain how permitting the amendment would significantly impact the evidence already given.

[40] Paragraph 7 of the affidavit in opposition states, *"As at the date of filing of the Application, the claimant has now had the benefit of representations of the Defendant and the Court during the assessment of damages part-hearing and has in view of same, belatedly and improperly sought to benefit there from with this ill-times but tactical application for amendment."*

[41] It is not stated in the affidavit what representations were made by the defendant and the court during the hearing and how the claimant is seeking to improperly benefit from same. In the absence of any evidence on this issue I am unable to ascertain how this amounts to prejudice to the defendant.

[42] Paragraphs 8 and 9 of the affidavit in opposition state:

> *"The prejudice that would befall the Defendant if the Application were permitted would grossly outweigh that of the claimant and of which the Defendant's prejudice could not be compensated by way of costs to it.*
>
> *As a result of this Application, the assessment of damages hearing is at a standstill – notwithstanding that the hearing has already commenced, and of which has been part heard by the Court on two occasions. The Application itself, if granted, would have a significant effect on the administration of justice in this case – the assessment of damages*

hearing having already been part heard on two occasions, with all evidence save the Claimant already attended to, it should not now be open to the Claimant to take this position at this stage."

[43] The assessment of damages hearing was scheduled for continuation on 7th August 2014. At that stage the remaining witnesses were Dr. David Santana, the expert who travelled from Trinidad and Tobago for the hearing, and the claimant. After taking into consideration, among other things, the claimant's filing of the instant application the previous day and the fact that the parties were engaged in settlement discussions, the court decided to proceed with the evidence of Dr. Santana and adjourned the matter for report on a date to be fixed and notified by the court unless a consent order was sooner filed.

[44] It cannot be disputed that but for the filing of the application by the claimant the assessment of damages hearing could have proceeded on 7th August 2014. I am unable to go further and say that the matter would have been concluded on that date as that would have depended on several factors such as the length of the time required for the evidence to be given and the court's schedule. It is however not completely accurate to say that the filing of the application by the claimant is the sole cause of the assessment of damages hearing being at the *standstill*. A major cause of the delay in a new date being fixed for the continuation of the hearing is the fact that the matter is part heard before another Master. The parties have been notified that efforts will be made by the court to fix a date in January 2015 for the continuation of the hearing by the Master before whom the hearing commenced.

[45] It is clear to me however that the claimant's application has contributed to a delay in the proceedings and that this delay can be said to be prejudicial to the defendant in the sense that it defers a final determination of the matter. Save for delay however, there is no evidence of prejudice to the defendant if the application is granted.

Can any Prejudice be Compensated By the Payment of Costs and or Interest?

[46] The defendant has placed heavy reliance on the case of Worldwide Corporation Limited v GPT Limited et al[12] in support of the submission that the prejudice to the defendant cannot be adequately compensated in damages. The facts of that case are in my view distinguishable from the preset case. That case concerned an appeal against three orders of the trial judge refusing to allow the defendant to make further amendments to the statement of case during the trial of the matter which was scheduled to last 24 days. The pleadings had been amended previously and the proposed amendments involved: (a) what was almost a wholesale abandonment of the previously pleaded case with the result that 'a more extensive and different investigation' would be required if the pleadings were amended; and (b) an essentially new claim with respect to the basis of the claim for quantum meruit which would require the defendant to get time to obtain additional evidence. Based on the facts of that case the Court of Appeal upheld the decision of the judge to refuse leave to amend.

[47] In this case, the proposed amendments cannot be described as a wholesale abandonment of the basis of the claimant's case which would require a different investigation. The claim is still founded in the tort of negligence and the nature of the investigation required remains the same – the claimant must prove her consequential loss.

[48] I note that the case of Worldwide Corporation Limited v GPT Limited et al was decided prior to the introduction of the UK CPR.

[49] I am cognizant of the fact that the UK CPR 17.1 (2), the rule similar to our CPR 20.1, does not contain provisions similar to our CPR 20.1 (2) which sets out the matters to which the court should have regard when considering an application

[12][1998] EWCA Civ 1894

to amend a statement of case and therefore applications to amend a statement of case in the UK are governed by the overriding objective.

[50] Notwithstanding, I am of the view that the UK cases decided after the introduction of the CPR, provide useful guidance and are persuasive authority particularly given the fact that CPR 1.2 requires the court to give effect to the overriding objective of dealing with cases justly when exercising any discretion given to it by the Rules.

[51] In Cobbold v London Borough of Greenwich[13], decided after the introduction of the CPR, the UK Court of Appeal was considering the trial judge's refusal of an application to amend the defence. Peter Gibson LJ stated:

> "*It is, of course, important that trial dates, when they are fixed, should be adhered to, but I fear that [the first instance judge in that case] may have let that factor dictate his approach to the question of amendment. The overriding objective is that the court should deal with cases justly. That includes, so far as practicable, ensuring that each case is dealt with not only expeditiously but also fairly. Amendments in general ought to be allowed so that the real dispute between the parties can be adjudicated upon provided that any prejudice to the other party or parties caused by the amendments can be compensated for in costs, and the public interest in the efficient administration of justice is not significantly harmed . . . . There is always prejudice when a party is not allowed to put forward his real case, provided that that is properly arguable.*"

[52] In setting aside the order refusing leave to amend, the Court of Appeal took into consideration, among other things, that the claimant was aware for several months of the point which the defendant wished to take and although the defendant ought to have sought leave to make the amendment earlier it could

[13](unreported 9 August 1999) (CA) cited with approval in National Westminster Bank v Rabobank Nederland [2006] EWCA Civ 1578

not be said that the claimant was taken by surprise. In Cobbold the amendment involved what was in essence a new case and notwithstanding same the amendment was allowed. In this case the proposed amendments do not amount to a new claim.

[53] In Chilton v Surrey Court Council[14] the court was considering an appeal against the trial judge's decision to refuse leave to amendment the schedule of special damages shortly before trial. The document ought to have been filed at the latest at the pre-trial review. The trial judge stated that the amendment was effectively, raising a $5,000 claim to a $400,000 claim and the existence of such a claim had not been foreshadowed. Henry LJ, delivering the judgment of the court, stated:

> *"When one looks at the documents it seems to me that the presence of a substantial claim for loss of earnings was clearly foreshadowed on those documents. The initial pleadings in the case pleaded the medical report into the prognosis that this was a second break of the left femur. Under "Prognosis" the document said:*
>
> > *He is now severely disabled and unlikely ever to walk without a stick or crutch. The lower left third of the left femur will always be vulnerable and it is likely that he will always have to wear some sort of splint. His functional disability has been significantly reduced by the accident on 3 February 1995. He is likely to develop osteoarthritis five to ten years earlier than he would have done but for the accident...."*
>
> *The medical report made clear that that was five years from the accident.*
>
> *The medical report was served with the particulars of claim. It showed that this was a relatively serious injury. I quote from para 36:*

[14] [1999] CPLR 525

"The effect of the second fracture was to convert a moderately severe disability into a total disability, both because of the delicate nature of the bone union of the second fracture, and because of the residual stiffness of the left knee. At present he is severely disabled...The second fracture is likely to increase the rate of development of osteoarthritis and I estimate that he is now likely to develop significant symptoms from the left knee from the age of forty-five onwards as a result of the fracture of 1995."

It is clear that injuries like that potentially lead to a loss of earnings claim. "

[54] After considering the exchange of correspondence between the parties the learned LJ continued:

"We do not know what happened as a result of that exchange but it was clear that the defendants there contemplated that they would be faced with a loss of earnings claim."

[55] With respect to the claimant's evidence of prejudice the Henry LJ noted:

"In relation to the prejudice suffered by the defendants, on the affidavit before the judge it was simply generally asserted that matters were dealt with on the basis of a modest claim when they would have been dealt with differently if there had been a more substantial claim. In relation to the question of quantum that is probably right but it can be remedied by giving the defendants the opportunity to do that work. That can simply be done. The claim on quantum would not be able to be heard next week in any event."

[56] In the present claim the claimant's statement of claim contains particulars of special damages which set out the specific heads of losses being sought by the claimant. While changing the quantum being claimed, the proposed amendments

do not add any new heads and therefore it cannot be argued that the defendant is caught by surprise by the various heads of special damages being claimed.

[57] Unlike the claimant in Chilton v Surrey Court Council the defendant has led no evidence that it would be required to deal with the case differently and, if so, how if the amendments are allowed and the quantum claimed under various heads of special damages varied. In the absence of any evidence in this regard it is not necessary to consider whether any prejudice could have been remedied by an award of costs or in some other way.

[58] Having considered the evidence provided by the defendant with respect to prejudice which will be caused if the application is granted, I find that the only evidence of prejudice to the defendant is delay caused by the filing of the application. In my view this prejudice can be compensated by an award of costs and by the court taking this consideration in determining interest to be awarded on damages.

Can the Trial Date or Any likely Trial Date still Be Met If the Application is Granted?

[59] A date for the continuation of the hearing has not been fixed by the court but the likely date will be in or around January 2015. There is no evidence by the defendant that the granting of the application would result in the defendant having to take any further steps prior to the continuation of the hearing and that such steps would require significant time to be completed so as to affect the likely trial date. I therefore find that the likely trial date in January 2015 would not be affected if the application is granted.

The Administration of Justice

[60] The overriding objective is to deal with cases justly. A refusal of the application would in my view prevent the claimant from seeking to recover losses suffered as a result of the negligence of the defendant. Permitting the amendment will not automatically result in the claimant recovering the sums pleaded – she is still required to prove her loss at the hearing in which the defendant has an opportunity to be heard. The only evident prejudice to the defendant in my view can be compensated in costs and or in the determination of an award of interest and in the circumstances I do not find that the amendment would result in an injustice to the defendant.

[61] Taking all the circumstances into consideration, notwithstanding the delay by the claimant in making the application, I find the justice of the case requires that the claimant be granted leave to amend her statement of case as indicated in the draft amended statement of claim.

[62] I therefore order as follows:

1. The claimant's application to amend the statement of claim is granted.

2. The claimant shall file and serve an amended statement of claim within five (5) days.

3. The claimant shall pay costs of $2500.00 to the defendant. The costs shall be set off against any claim for damages and costs that may succeed.

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Fidela Corbin - Lincoln
Master (Ag.)