

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

MONTSERRAT

CLAIM NO. MNIHCV 2023/0029

BETWEEN:

[1] Providence Estates Limited

Claimant

and

[1] Dion Weekes

[2] Janine Debroah Carr-Weekes

(doing business as Engineering Design and Construction Ltd)

[3] Warren Cassell (doing business as Cassell and Lewis)

[4] Kharl Markham

Respondents

Appearances:

Mr. Khamaal Collymore for the Claimant

Mr. Sylvester Carrot for the First Defendant

Warren Cassell in person

2025: FEBRUARY 14

MARCH 3

RULING

COTTLE [AG.]:

- [1] This claim was one of over 40 matters filed by PEL which arose over certain real property owned by Providence Estates Limited (PEL). The sales were carried out by Warren Cassell, ostensibly as the Director of PEL. In this claim the Claimant sought, inter alia, a rectification of the land register to remove the name of the First Defendant as proprietor of a certain parcel of land and the reinstatement of the name of the Claimant as proprietor of the parcel. In related matters dealing with other parcels of the land the Privy Council (JCPC) ordered the rectification of the land register to remove the names of persons into whose names the parcels had been transferred. The JCPC found that the transfers were effected in error as Warren Cassell was never a director of the Claimant company and had no authority to sell the properties. There has been a long history of litigation in this matter. This is because Mr Owen Rooney, the Director of PEL acted as a litigant pro se. He had no legal training. Not surprisingly, the pleadings were convoluted and confusing. The Defendants took many technical and procedural objections and appealed all adverse decisions all the way to the apex court.
- [2] While some matters were being litigated, a stay of related matters was ordered. After the first instance decision went in favour of PEL the various Defendants appealed to the Court of Appeal and ultimately to the JCPC. After the stay of proceedings was lifted and this matter could proceed, the Claimant retained counsel. Confronted with the less than professional state of the pleadings, counsel indicated that they would wish to amend the pleadings so as to place the issues clearly before the court. Before this application could be made, the Defendants in related claims made applications to strike out the claims based on a perceived lack of standing by the Claimant. The First Defendant in this matter was not one such applicant. That challenge failed. The decision was appealed. Despite the fact that the First Defendant had not been an applicant in the matter he joined in the appeal. The Court of Appeal upheld the decision of the trial judge. While this was being litigated, the judge in this matter held any issues for amendment of pleadings in abeyance until the question of standing had been determined. Three weeks after the determination of the Court of Appeal the Claimant made the present application.
- [3] This is an application to amend the claim. The Claimant does not wish to proceed against the second Defendant. The claim against the second Defendant has already been struck out. The Claimant does not wish to proceed against the fourth Defendant as the fourth Defendant is now

deceased and the Claimant does not desire to have anyone appointed to represent the Fourth Defendant. No relief against that Defendant is sought. The Claimant simply now seeks to have the land register rectified.

- [4] Given the history of the litigation in this matter, it comes as no surprise that the remaining Defendants object to the application for amendment. Counsel for the First Defendant submits that the proposed amendments are tantamount to an abuse of process. He says this is just a thinly veiled attempt to bring a fresh claim without having to bear the cost consequences of abandoning the claim and starting anew. Counsel does not represent the Fourth Defendant but he urges the court that a notice of discontinuance must first be served on the Fourth Defendant before he can be removed as a defendant. I resist this invitation. CPR 2023 at part 21.8 provides that

(1) If a party to proceedings dies, the court may give directions to enable the proceedings to be carried on.

(2) An order under this rule may be made on or without an application.

- [5] In this case there is no application to have a representative of the Fourth Defendant appointed. Since no relief against that defendant is now sought there seems to be no point in having the Fourth Defendant represented in this claim. I direct that the claim continue with the Fourth Defendant removed as a party.

- [6] Counsel also argues that there is no proposal by the Claimant to pay the costs thrown away by the amendment in abandoning its 19 million dollars claim against the First Defendant or indeed the costs consequential on the amendment. On this basis he says the application to amend should be dismissed. This objection is misconceived. An examination of the pleaded case in its present condition does not reveal a 19 million dollar claim against the First Defendant. The claim for damages is not quantified. The Claimant asked the court for costs under various heads which he totalled as in excess of 19 million dollars. This is just one example why the claim as presently pleaded must be amended in order that the real issues between the parties can be identified.

- [7] The Third Defendant appeared in person. He joined counsel for the First Defendant in urging the court to reject the application for amendment as not having been made promptly. When one notes that the amendment is made more than 10 years after the claim was originally filed it appears unarguable that the Claimant comes far too late to the court to seek to amend the

pleadings. However, upon closer examination it becomes clear that this appearance is far from reality. On the peculiar facts of this claim, being merely a part of a convoluted tapestry of litigation from a frustrated landowner whose property has been wrongfully taken from him, it is clear that this is not the usual run of the mill claim. It is not that the Claimant has been idle. He has been doing his best to navigate very complicated litigation on his own. The Defendants have been constantly raising every possible procedural and interlocutory hurdle in his path to seeking justice. This case epitomises the use of Fabian tactics.

- [8] CPR 2023 at Part 20 sets out the factors which the court must consider when deciding whether to permit amendments to a party's statement of case. I have considered all these factors. I consider that the Claimant has applied for the amendment promptly after it became clear to his newly appointed legal representatives that amendment was needed. If the amendment is not permitted the Claimant's case at trial will be near impossible to comprehend. The short issue will risk becoming obscured in the jungle of otiose and irrelevant matter now pleaded. The Defendants are not prejudiced by the delay. In fact, it can fairly be said that much of it is of their own making. At the end of the day this is a simple matter of the Claimant averring that he seeks the restoration to him of real property that he has been deprived of by mistake at least. The First Defendant will seek to plead that he is a bona fide purchaser for value without notice. It bears noting that the Third Defendant has yet to file any defence. There is yet no trial date set. I do not consider that there are any costs which have been thrown away by the Claimant.
- [9] Counsel for the First Defendant sought to make heavy weather of the fact that the draft amended pleadings submitted also bear the name of a Second Claimant. Counsel knows that this must be a mere oversight. No embarrassment is caused to the Defendants by this. There has already been an order made allowing the Second Claimant to discontinue as a party in this matter. This argument is without merit.

[10] I dispose of this matter by granting the application for the amendment sought to the statement of case. The Claimant shall file the amendment within seven days of this order. The Defendants may plead to the amended statement of case in the usual way. I make no order as to costs.

The Hon. Brian Cottle
(Ag) High Court Judge

By the Court

REGISTRAR