

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO. SLUHCV2021/0492

BETWEEN:

SHANNA PASCAL

**Administratrix of the Estate of Rufinus P. Pascal aka Ruphinus P. Pascal
Claimant**

and

1. MORGAN KHODRA

**2. HEAVY MACHINERY & CONSTRUCTION LIMITED
Defendants**

Appearances:

Mrs. Lydia Faisal of Counsel for the Claimant

Mr. Duane Jean Baptiste of Counsel for the second named defendant

2023: May 31
: June 14th

RULING

- [1] **INNOCENT, J.:** The present proceedings arise within the context of a representative claim brought by administrator of the estate of the deceased.
- [2] The events giving rise to the claim arose out of a vehicular collision wherein the deceased perished.
- [3] The second defendant is a limited liability company that owned the motor vehicle driven by the first defendant.
- [4] The claimant's pleaded case was that at the time of the collision, the first defendant drove the second defendant's vehicle with the second defendant's knowledge and consent or alternatively that the first defendant was the servant and or agent of the second defendant. The relevant part of the statement of claim read:

“The first defendant was driving the motor truck with the knowledge and consent of the owner or alternatively as its servant or agent.”¹

- [5] The first defendant filed no acknowledgement of service or defence to the claim.
- [6] In its defence the second defendant denied the assertion that it had knowledge of the first defendant having driven their motor vehicle or that the first defendant was its servant and or agent. The second defendant pleaded as follows:

“Paragraph 5 is denied. The Second Named Defendant asserts that:

- (a) The First Named Defendant was not and has never been its servant or agent as alleged and as such puts the claimant to strict proof; and
- (b) At the material time, the vehicle was being driven by the First Named Defendant without the knowledge and consent of the Second Named Defendant.”

- [7] In a rather lengthy and prolix reply to the second defendant’s defence, the claimant made the following assertions which the court thinks it is worthwhile to set out in full:

“As to the second defendant’s denial of paragraph 5 of the statement of claim, the claimant avers that she has personal knowledge of the following facts:

- (1) Whereas the claimant cannot insist that the first defendant was indeed the servant or agent of the second defendant at the time of the accident, it is a fact that the first defendant habitually used the second defendant’s truck registration TG 3641 to collect and haul bulky waste to the Deglos landfill on Saturdays. The claimant has personally witnessed the first defendant driving the said truck on numerous occasions for that purpose.
- (2) The first defendant is believed to have a contract to collect and transport bulky waste to the Deglos land fill, since he does so regularly on Saturdays. The first defendant also owns a dump truck that he uses to perform the aforementioned activity. However, when his own dump truck, which is quite old, is out of commission, he drives the said TG 3641, belonging to the second defendant, to collect and to haul the bulky waste to the landfill.
- (3) On the Saturday when the accident happened, the first defendant’s truck was parked in the yard of the business place of the second defendant at Odsan. The claimant saw it there with her own eyes. At the material time, she reasonably believed that it was parked there for repairs. On that said day, whilst his truck was parked as indicated, the first defendant was using TG 3641, belonging to the second defendant.

¹ At para 5

- (4) At the time of the accident, the first defendant had just emerged from the yard of the second defendant's business place, where TG 3641 is habitually parked, and where the first defendant's truck was also parked at the time. The claimant reasonably believes that the first defendant was on his way to collect bulky waste.
- (5) The claimant knows as a fact, that the first defendant and the second defendant had an agreement whereby, the first defendant used TG 3641 owned by the second defendant to execute the collection and hauling of bulky waste on Saturdays whenever the first defendant's truck was out of commission. The claimant knows as a matter of fact, that the first defendant had the second defendant's general permission to use the said truck for the purpose indicated.
- (6) The claimant avers further, that the second defendant is unwilling to accept liability for the accident unless the claimant agrees to compensate it to the extent of the damage caused to its truck (TG 3641).
- (7) As far as the claimant understands, such compensation to the second defendant, would be in exchange for the second defendant's admission of liability to facilitate compensation to the claimant by the insurer of the second defendant.
- (8) For this reason, the second defendant has wholly denied knowledge of the use of the truck by the first defendant, when the relationship between the two defendants concerning the use of the truck for the purpose indicated, is long standing, well established and well known.
- (9) Further, besides the two bald assertions at paragraphs 5(a) and 5(b) of the defence, the second defendant has put no case in support of its assertion that the first defendant drove the truck without his knowledge or consent.
- (10) The second defendant is estopped by CPR 10.7 from relying on any assertion of material fact, not set out in the defence. It is not enough for a defendant to admit or deny the allegations in the statement of claim, the defendant is also required to put its case and to set out its own version of the facts on the relevant issues.
- (11) The issue of whether the first defendant had the permission of the second defendant to drive the truck at the material time is the gravamen of this case, and beside a bare denial, no case has been put forth on that issue. The second defendant is therefore estopped from later introducing any material facts on that issue. Rather, at the appropriate time, the Court must find that the denial at paragraph 5 of the defence is a bald assertion and enter judgement for the claimant on that issue."

- [8] The claimant filed an application to have the second defendant's defence and witness summary struck out and for the matter to proceed in a summary manner. The court was quite unsure precisely what was meant by in "a summary manner".
- [9] The grounds of the strike-out application were ostensibly that the second defendant's defence contained bold assertions and bare denials and that the second defendant failed to set out its case all of which was contrary to the provisions of CPR 10.7.
- [10] In support of the foregoing contention, the claimant relied extensively on what was contained at paragraphs (9) to (11) of her reply to defence.
- [11] The claimant submitted that the second defendant made "material allegations" in its witness summary which ought properly to have been made in its defence; and that the allegations are of such a substantial nature and ought not to have been canvassed in the witness summary without having been pleaded in its defence.
- [12] Additionally, the claimant contended that the claimant has been taken by surprise by these "new averments" and accordingly has been denied the opportunity to respond to same in her pleaded case; and in all the circumstances of the case, the second defendant's defence and witness summary ought to be struck out as being in contravention of the dictates of CPR 10.5 and CPR 10.7.
- [13] The claimant's argument was that the defendant had for the first time presented new facts and allegations in its witness summary has caused prejudice to the claimant since the claimant had no opportunity to reply to these allegations.
- [14] The claimant also submitted that these "new" facts and allegations went to the core of the substantive issue to be decided at the trial and that the claimant's case stood or fell on the resolution of those substantive issues.
- [15] The second defendant, quite rightly, observed that the claim had proceeded solely as against the second defendant notwithstanding that the entire claim related to the negligence of the first defendant.

- [16] It was submitted on behalf of the claimant that there was a pending application for default judgment against the first defendant. This is not entirely correct. The claimant had applied for judgment in default against the first defendant. However, the request for default judgment was denied since the claimant had employed the wrong procedure for obtaining judgment. It did not appear from the record that the claimant took any further procedural step to obtain judgment in default against the first defendant. In any event, the first defendant's liability is of no moment to the present application save that the question of the first defendant's liability in negligence is still left to be determined.
- [17] It was submitted on behalf of the second defendant that the court ought to examine the defence within the entire context of the pleadings filed in the claim; and to that extent ought not to view the defence outside of this context and in isolation but rather alongside the claimant's pleaded case. The court agrees with this approach.
- [18] According to the second defendant, the claimant had an equal and or corresponding duty to set out in her statement of case all the facts upon which she intended to rely in conformity with the provisions of CPR 8.7.
- [19] It is apparent that the claimant's statement of case did not contain any facts upon which she relied to support the allegation that the first defendant was the servant and or agent of the second defendant or that the first defendant drove the vehicle with the second defendant's knowledge and consent.
- [20] In short, there was no dispute as to the ownership of the vehicle involved in the collision. The singular discrete issue was whether the second defendant was vicariously liable for the loss and damage resulting from the alleged negligence of the first defendant and the basis upon which it became vicariously liable.
- [21] The second defendant contended that in order to make the second defendant vicariously liable, the claimant ought to have pleaded the facts upon which she relied to establish the second defendant's liability. This they argued the claimant failed to do. Consequently, the second defendant was placed in the awkward position of

having to respond by way of defence to assertions that had no factual basis and which were in effect “bald assertions”. To that extent, the second defendant described the claimant’s statement of case as deficient.

[22] The court understood the second defendant’s foregoing submission to mean that there were no factual contentions to which the second defendant could respond or in relation to which the second defendant could give its version of events.

[23] The second defendant also took the position that having regard to the claimant’s witness statement, it was fair and reasonable to find that she was only seeking to advance her case on the basis of knowledge and consent as opposed to agency.

[24] On the foregoing premise, the second defendant contended that assuming that the second defendant had admitted that the first defendant drove the vehicle with the second defendant’s knowledge and consent that this would be insufficient by itself to establish vicarious liability. Therefore, in the second defendant’s view, the question of knowledge and consent paled in significance or was immaterial and insufficient by itself to establish liability against the second defendant.

[25] Ultimately, the second defendant argued that, taken at its highest, the claimant’s case cannot succeed on the basis of the pleadings and the witness statement as neither of them canvassed any legal or factual basis upon which the second defendant could be held vicariously liable.

[26] The singular discrete issue that the court must decide on the present application is whether the defendant is in breach of CPR 10.5 (3)-(5) and if answered in the affirmative whether the consequences of CPR 10.7 apply.

[27] The claimant did not identify or set out precisely pursuant to which rule that she sought to strike out the second defendant’s defence and witness summary. The court assumes that the application to strike out the defence is made pursuant to CPR 26.3(1). It is also presumed that the claimant sought to have the second defendant’s witness statement struck out on the basis that the second defendant’s

defence not having complied with CPR 10.5 prevented the second defendant from relying on any allegation or factual argument which is not set out in the defence, but which could have been set out there.

[28] CPR 26.3(1) sets out the circumstances when the court may strike out a statement of case or part of a statement of case and provides that if it appears to the court that there has been a failure to comply with a rule, practice direction, order or direction given by the court in the proceedings;² the statement of case or the part to be struck out does not disclose any reasonable ground for bringing or defending a claim;³ the statement of case or the part to be struck out is an abuse of the process of the court or is likely to obstruct the just disposal of the proceedings;⁴ or the statement of case or the part to be struck out is prolix or does not comply with the requirements of Part 8 or 10.⁵

[29] It appears by the tenor of the claimant's application that she sought to enlist all of the matters referred to in CPR 26.3(1) as justifying the striking out of the second defendant's defence. However, greater emphasis was placed on the provisions of CPR 26.3(1)(d) and the claimant's submissions in respect of the application seemed to have been confined to that Rule.

[30] Therefore, the court will deal with the claimant's application within the context of CPR 26.3(1)(d) which empowers the court, in addition to any other power under the CPR, to strike out a statement of case or part of a statement of case if it appears to the court that the statement of case or the part to be struck out is prolix or does not comply with the requirements of Part 8 or 10.

[31] The general principle is that it is impermissible for a defendant to simply state in a defence that he is unable to admit or deny any averment in pleadings without giving

² CPR 26.3(1)(a)

³ CPR 26.3(1)(b)

⁴ CPR 26.3(1)(c)

⁵ CPR 26.3(1)(d)

reasons for doing so. A defendant who adopts this posture is in violation of CPR 10.5(3) and CPR 10.5(5).⁶

[32] CPR 10.5 provides:

- “(1) The defence must set out all the facts on which the defendant relies to dispute the claim.
- (2) Such statement must be as short as practicable.
- (3) In the defence the defendant must say which (if any) allegations in the claim form or statement of claim –
 - (a) are admitted;
 - (b) are denied;
 - (c) are neither admitted nor denied, because the defendant does not know whether they are true; and
 - (d) the defendant wishes the claimant to prove.
- (4) If the defendant denies any of the allegations in the claim form or statement of claim –
 - (a) the defendant must state the reasons for doing so; and
 - (b) if 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.
- (5) If, in relation to any allegation in the claim form or statement of claim, the defendant does not –
 - (a) admit it; or
 - (b) deny it and put forward a different version of events; the defendant must state the reasons for resisting the allegation.

[33] The sanction for non-compliance with CPR 10.5 is provided for by CPR 10.7 which provides that the defendant may not rely on any allegation or factual argument which is not set out in the defence, but which could have been set out there, unless the court gives permission or the parties agree.

[34] What has been made patently clear from the claimant’s pleadings, particularly her statement of case, is that every averment contained therein with the exception of paragraph 5 which was relative to the question of the second defendant’s liability, that the entire claim was devoted to the acts and omissions of the first defendant.

⁶ Sandra Ann-Marie George (Administratrix of the Estate of Karlos George) v Nigel Don-Juan Glasgow [2015] ECSCJ No. 89

- [35] In the present case, it should be noted that the material part of the statement of claim which the second defendant was obliged to address in its defence was that which related to the allegation that the first defendant drove the second defendant's vehicle with its knowledge and consent and in the alternative that the first defendant was a servant and or agent of the second defendant. In these circumstances, it would be quite difficult to adopt the view that the second defendant was required to address the several allegations of negligence leveled at the first defendant. It is not disputed that the second defendant had no knowledge of the events surrounding the collision.
- [36] Admittedly, the second defendant denied the claimant's allegation in respect of vicarious liability. Essentially, the second defendant denied that the first defendant was its servant and or agent and put the claimant to strict proof thereof. It appears that the second defendant did not state its reasons for denying that the first defendant was its servant and or agent neither did it set out its own version of events in relation to that part of the claimant's statement of case.
- [37] However, the second defendant's pleadings went slightly beyond a bare denial. The second defendant's averment was that "the first defendant was not and had never been its servant or agent". This is entirely different to the second defendant simply pleading that "paragraph 5 of the statement of claim is denied".
- [38] Additionally, the second defendant pleaded that the vehicle was not driven by the first defendant with its knowledge and consent. It appeared that the claimant took the position that the second defendant was required to set out the factual basis for such denial. In other words, that the second defendant was required, if it intended to prove a different version of events from that given by the claimant, the second defendant ought to have set out its own version in the defence as it related to that allegation.
- [39] However, the court is mindful of the fact that the claimant's statement of case merely stated that the first defendant drove the second defendant's vehicle with the latter's knowledge and consent and in the alternative that the first defendant was the

servant or agent of the second defendant. The claimant's pleadings did not set out the facts upon which the claimant relied to support that allegation.⁷

[40] The court cannot ignore the fact that the claimant's pleadings were deficient in that it did not set out the facts upon which the claimant relied to establish vicarious liability against the second defendant. As a result, it can fairly be argued that the second defendant was left to infer the nature of the claim against it and the facts upon which the claimant relied. The second defendant ought to have been given a clear indication of the nature of the claim against it. It was necessary for the claimant to set out the facts to support her claim of vicarious liability against the second defendant.

[41] Thereafter, the claimant filed a reply in which she appeared to have partially jettisoned her reliance on agency as the basis for alleging vicarious liability. The pith and substance of the claimant's reply to the second defendant's defence was substantially in relation to the question of knowledge and consent. At least this much is readily apparent from a reading of the claimant's reply the full text of which is set out in this ruling. The court is not quite sure whether this approach was employed by the claimant as her litigation strategy or for tactical reasons.

[42] Much of what is contained in the claimant's reply to the defence is repeated in the claimant's witness statement. Clearly, the defendant could not have filed any response to the claimant's reply. At that stage the pleadings were closed. The defendant's witness statement contained the evidence upon which it intended to rely in support of its case at the trial that the first defendant was not its servant or agent and that its vehicle was not driven with its knowledge and consent.

[43] The approach that the court should adopt and the principles involved in a strike-out application made pursuant to CPR 26.3(1) is well settled and do not require any

⁷ CPR 8.7(1)

extensive elucidation here. Striking out a party's statement of case is a drastic step and must be used sparingly and only in the clearest of cases.⁸

- [44] As with every discretion conferred upon the court by the CPR, the discretion to strike out must be exercised in accordance with law and with a view to furthering the overriding objective. The central principles which underscore the court's jurisdiction to strike out all or part of a statement of claim are now settled, have been consistently cited and applied by this court, and need not be extensively recited.
- [45] The court must be persuaded either that a party is unable to prove the allegations made against the other party; or that the statement of claim is incurably bad; or that it discloses no reasonable ground for bringing or defending the case in the sense that it has no real prospect of succeeding at trial.⁹
- [46] A statement of case is not suitable for striking out if it raises a serious live issue of fact which can only be determined by hearing oral evidence. Further, a statement of case should not be struck out where the dispute between the parties involves a substantial point of law which does not admit of a plain and obvious answer, or the law is in a state of development, or where the strength of the case may not be clear because it has not been fully investigated.¹⁰ The court does not hesitate to find that this is similar to the situation in the present proceedings.
- [47] Striking out is a draconian step or "nuclear option" and ought only to be deployed sparingly, in the clearest of cases. The reason for proceeding cautiously is that the exercise of the jurisdiction to strike out deprives a party of its right to a trial and of its ability to strengthen its case through the process of disclosure, the filing of witness statements or witness summaries and other procedures such as requests for further information.¹¹

⁸ Real Time System Limited v Renraw Investments Limited and others [2014] UKPC 6; Ian Hope-Ross v Martin Dinning and others [2021] ECSCJ No. 540

⁹ CITCO Global Custody NV v Y2K Finance Inc [2009] ECSCJ No. 165

¹⁰ Ian Peters v Robert George Spencer [2009] ECSCJ No. 212; Tawney Assets Limited v East Pine Management Limited and others [2012] ECSCJ No. 284

¹¹ Ian Peters v Robert George Spencer; HRH Prince Abdulaziz Bin Mishal Bin Abdulaziz Al Saud v Apex Global Management Ltd and another [2014] EWCA Civ 1106.

- [48] As striking out is a draconian step, the court must consider whether the interests of justice are better served by permitting an amendment to pleadings or deploying some other sanction, instead of striking out the statement of claim.¹²
- [49] The court has noted as a matter of observation that the claimant's application came at quite a late stage in the proceedings. It is surprising that the issues arising on the present application were not canvassed before the Master at the case management stage. The present application was made at the cusp of the trial and appeared to be a preliminary objection raised by the claimant to the evidence intended to be led by the second defendant at the trial. However, at this stage of the proceedings the court is well placed to make a fair assessment of the pleadings and the evidence relied on by the parties.
- [50] Having found that the second defendant's defence did not offend the provisions of CPR 10.5, and had the court found that it did, there still appeared no need to go on to consider the question of whether the sanction imposed by CPR 10.7 ought to be applied. The claimant had suggested that the second defendant should be estopped from relying on the evidence and factual contentions contained in the witness statement as these matters were not canvassed in the pleadings. Giving the principled approach which the court has adopted in respect of the application to striking out the court declines to adopt the view espoused by the claimant.
- [51] The court has examined the witness statement filed by the claimant and the second defendant's witness summary. The claimant contended that the second defendant ought to have pleaded those facts contained in its witness summary in its defence. It appeared to the court that the claimant's main challenge was with respect to the contents of the witness summary filed by the second defendant. It is not unreasonable to infer based on the claimant's submissions that the claimant anticipated that the striking out of the defence or the court's denial of the second

¹² The Attorney General of Saint Lucia v Darrel Montrope [2020] ECSCJ No. 235; Peerless Limited v Gambling Regulatory Authority and others [2015] UKPC 29; Real Time Systems Limited v Renraw Investments Limited and Others [2014] UKPC 6; Cedar Valley Springs Homeowners Association Incorporated v Hyacinth Pestaina et al

defendant's reliance on what is contained in the witness summary would have yielded the result that the trial would proceed in a summary manner. Assuming that this were to occur, the court trying the case would still be mandated to consider the question of vicariously liability based on questions of both fact and law.

[52] Therefore, there was no guarantee that the claimant would succeed in establishing liability against the second defendant on the basis of vicarious liability. Any allegation based wholly and substantially on the presumption of ownership, in any event, was not by itself sufficient to entitle the claimant to succeed on her claim against the second defendant given the circumstances of the present case and what has already been placed before the court.

[53] The claimant had argued that the second defendant had failed to produce any evidence by way of disclosure or otherwise that the first defendant was not its servant or agent and that the vehicle was not driven with the second defendant's knowledge or consent.

[54] However, it does not appear from the record that the claimant had made any request for disclosure of the evidential material alluded to in her written submissions. Similarly, the second defendant could have made a request for further information or particulars or sought specific disclosure at an earlier stage of the proceedings. These were options available to both parties.

[55] Nevertheless, the court is in a well-placed position, on the basis of the pleadings and the witness statements to resolve the issue of vicarious liability at the trial.

[56] The question of whether the first defendant was the servant or agent of the second defendant or whether the first defendant drove the second named defendant's vehicle with its knowledge and consent is a question of mixed fact and law which ought to be determined on the evidence led at the trial.

[57] The claimant, by her submissions on the present application seemed to have been inviting the court to engage in a mini-trial of the issues raised on the pleadings. At

this stage of the proceedings and for the purposes of the present application the court is not concerned with the merits of the case based on the evidence to be presented at the trial.

[58] The claimant appeared to have attributed liability to the second defendant purely on the mere presumption of ownership. However, it also appeared by virtue of the witness statement that there was the allusion to the vehicle being used in the course of the second defendant's business.

[59] The law puts an especial responsibility on the owner of a vehicle who allows it to go on the road in charge of someone else, no matter whether it is his servant, his friend, or anyone else. If it is being used wholly or partly on the owner's business or for the owner's purposes, the owner is liable for any negligence on the part of the driver.

[60] An inference may be drawn from ownership that the driver was the servant or agent of the owner. This inference may be drawn in the absence of all other evidence bearing on the issue, or if such other evidence as there is fails to counterbalance it. The fact of driving with the consent of the owner does not of itself establish service or agency. It must be established by the claimant, if he is to make the owner liable, that the driver was driving the vehicle as the servant or agent of the owner and not merely for the driver's own benefit, in his own interest, and on his own concerns.

[61] The owner only escapes liability when he lends it or hires it to a third person to be used for purposes in which the owner has no interest or concern. The onus of proof of agency rests on the party who alleges it. Ultimately the question of service or agency is always one of fact. An inference may be drawn from ownership that the driver was the servant or agent of the owner. However, it appeared that the claimant's case also goes beyond reliance on that presumption.

[62] The present case does not present a situation where no more is known other than that at the time of the accident the vehicle was owned by the second defendant giving rise to a presumption, by virtue of that ownership, that the first defendant was driving as their servant or agent. Evidence bearing upon the question of service or

agency has been canvassed in the witness statements filed by the respective parties and that evidence remains to be tested at the trial.

[63] The decision of Barrow JA in the case of **East Caribbean Flour Mills Limited v Ormiston Ken Boyea; East Caribbean Flour Mills Limited v Hudson Williams**¹³ is illustrative of the point which the court seeks to make in the present proceedings.

[64] In the afore-cited case, Barrow JA referred to the decision of Lord Hope in *Three Rivers* where it was stated that:¹⁴

"In my judgment a balance must be struck between the need for fair notice to be given on the one hand and excessive demand for detail on the other. In **British Airways Pension Trustees Ltd v Sir Robert McAlpine & Sons Ltd** (1994) 72 BLR 26, 33-34 Saville LJ said:

"The basic purpose of pleadings is to enable the opposing party to know what case is being made in sufficient detail to enable that party properly to prepare to answer it. To my mind it seems that in recent years there has been a tendency to forget this basic purpose and to seek particularisation even when it is not really required. This is not only costly in itself, but is calculated to lead to delay and to interlocutory battles in which the parties and the court pore over endless pages of pleadings to see whether or not some particular point has or has not been raised or answered, when in truth each party knows perfectly well what case is being made by the other and is able properly to prepare to deal with it."

[65] At paragraph 50 of his judgment Barrow JA referring to the decision in **Three Rivers** stated that these observations were made under the old rules. But the same general approach to pleadings under the CPR was indicated by Lord Woolf MR in **McPhilemy v Times Newspapers Ltd** [1993] 3 All ER 775, 792J-793A:

"The need for extensive pleadings including particulars should be reduced by the requirement that witness statements are now exchanged. In the majority of proceedings identification of the documents upon which a party relies, together with copies of that party's witness statement, will make the detail of the nature of the case the other side has to meet obvious. This reduces the need for particulars in order to avoid being taken by surprise. This does not mean that pleadings are now superfluous. Pleadings are still required to mark out the parameters of the case that is being advanced by each party. In particular they are still critical to identify the issues and the

¹³ [2007] ECSCJ No. 110

¹⁴ At para 50

extent of the dispute between parties. What is important is that the pleadings should make clear the general nature of the case of the pleader. This is true both under the old rules and the new rules."

[66] At paragraphs 43 and 44 of his judgment, Barrow JA said:

"Lord Hope's reproduction and approval of the exposition by Lord Woolf MR in *McPhilemy v Times Newspapers Ltd* on the reduced need for extensive pleadings now that witness statements are required to be exchanged, should be seen as a clear statement that there is no difference in their Lordships' views on the role and requirements of pleadings. The position, as gathered from the observations of both their Lordships, is that the pleader makes allegations of facts in his pleadings. Those alleged facts are the case of the party. The "pleadings should make clear the general nature of the case," in Lord Woolf's words, which again I emphasize. To let the other side know the case it has to meet and, therefore, to prevent surprise at the trial, the pleading must contain the particulars necessary to serve that purpose. But there is no longer a need for extensive pleadings, which I understand to mean pleadings with an extensive amount of particulars, because witness statements are intended to serve the requirement of providing details or particulars of the pleader's case.

It is settled law that witness statements may now be used to supply details or particulars that, under the former practice, were required to be contained in pleadings. The issue in the *Three Rivers* case was the need to give adequate particulars, not the form or document in which they must be given. In deciding that it was only the pleadings that she should look at to decide what were the issues between the parties the judge erred, in my respectful view. If particulars were given, for instance, in other witness statements the judge was obliged to look at these witness statements to see what were the issues between the parties. It follows, in my view, that once the material in Mr. McAuley's witness statement and Report could properly be regarded as particulars of allegations already made in the pleadings such material was relevant and, therefore, admissible."

[67] The court finds that the reasoning of Barrow JA can be properly applied to the present case. The court having had the benefit of reading the pleadings and the witness statements filed in the present case has concluded that the second defendant has given sufficient particulars of its pleaded case in its witness summary. Therefore, it cannot be said that the claimant will be taken by surprise by not having been given any fair indication of the case she has to answer.

- [68] The witness statements and the pleadings give a clear indication of the issues to be decided between the parties. It cannot be said that in this instance the claimant is taken by surprise and is likely to suffer any prejudice in the course of the trial. The court does not concede that the matters contained in the second defendant's witness summary are new allegations as opposed to particulars of existing allegations. The second defendant has not sought by its witness summary to change the nature or tenor of its defence. It can clearly be seen as the provision of particulars of the same defence pleaded. The court is firmly of the view that what is contained in the second defendant's witness summary are particulars of a sufficiently made allegation and do not constitute a change in the statement of case.
- [69] In the circumstances, the claimant's application is refused and accordingly dismissed. The court makes no order as to costs.

Shawn Innocent
High Court Judge

By the Court



Dp. Registrar