

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

GRENADA

CLAIM NO. GDAHCV2015/0414

BETWEEN:

REV. ELLEN NELSON

Claimant

and

[1] NATALIE ROBINSON-ESPRIT

[2] FRED ESPRIT

Defendants

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Mr. Ruggles Ferguson with Ms Danyish Harford for the Claimant

Mr. Alban John with Ms Hazel Hopkin Latouche for the Defendants

2022: July 27
August 3

JUDGMENT

[1] **ACTIE, J.:** This case involves the determination of liability for a motor vehicular accident on 5th November 2010, around the Wall Street Roundabout along the Grand Anse Main Road, St. George, Grenada.

[2] The claimant, Rev Ellen Nelson, in her claim filed on 29th September 2015, pleaded that she was at all material times the owner of a Honda CRV vehicle bearing the registration number PAD20. She states that on arriving at the roundabout from the direction of the city, the second defendant, Fred Esprit, negligently drove a Toyota Corolla causing it to collide with her vehicle resulting in extensive damage to her vehicle.

- [3] The claimant seeks general damages for negligence, special damages and costs. The claimant claims damages for the vehicle right and left headlamps; right fog lamp; grill panel; bumper; condenser; radiator and moulding. The claimant particularized the second defendant's negligence in that he failed to heed the presence of her vehicle which had stopped at the roundabout to properly give way to the traffic on the right inter-alia.

Defendants' Case

- [4] The defendants in their defence filed on 3rd May 2016 admit that the claimant was the driver of the vehicle but deny that that the claimant was the owner of the said vehicle. The defendants contend that the said vehicle was owned by Living World Outreach Inc. (hereafter "LWO").
- [5] Further, the defendants contend that the collision was caused solely by the negligence of the claimant. The second defendant avers that he was driving towards the direction of St. George's, approaching the Morne Rouge roundabout, turned right at the said roundabout and indicated that he would be turning left unto Wall Street. He avers that the claimant, who was proceeding from the direction of St. George's, negligently drove her vehicle causing it to collide with the centre of the left side of the first defendant's vehicle.
- [6] The defendants further contend that any loss or damage suffered by the claimant was due to her negligent driving. The defendants state that the claimant failed to stop her vehicle to give way to the first defendant's vehicle which was to her right on the roundabout; failed to keep any or any proper lookout or to have any or any sufficient regard for traffic turning right at the roundabout; failed to keep any or any proper lookout or to have any or any sufficient regard for other traffic on the road; failed to keep any proper lookout or to heed the presence or approach of the first defendant's vehicle; failed to apply her brakes in time or at all or otherwise so to steer, manage or control the said vehicle so as to avoid the collision; driving too fast in the circumstances; and driving without due care and attention. The defendants counterclaim for the loss and damage in the amount of \$8,556.81, interest and costs.

Claimant's reply and defence to the counterclaim

- [7] The claimant filed a reply to the defence and a defence to the counterclaim on 10th June 2016. In the reply, the claimant admits that she is not the registered owner and went on to say that though the vehicle is licensed in the name of LWO of which she is majority owner, it's assigned specifically to her, not only for the use and benefit of LWO, but also for her own use and benefit.
- [8] In response to the counterclaim, the claimant repeats paragraphs 3 and 6 of her statement of claim and paragraphs 1 to 4 of the reply to the defence. In the reply she states as follows: (i) she had already crossed the line before the second defendant turned right at the roundabout; (ii) there was no need to stop to give way to the first defendant's vehicle, since at the stop line approaching the roundabout the first defendant's vehicle had not yet turned at the roundabout; (iii) she was not driving fast and was well within the speed limit for the area. In fact, it was the second defendant who was driving too fast and who had come from nowhere and slammed into PAD20; (iv) the first defendant's vehicle was heading into St. George and at the last minute changed direction and suddenly turned right at the roundabout causing the collision.

Legal Analysis

Whether the Claimant or the Second Defendant was Negligent

- [9] It is necessary to highlight some procedural issues arising on the pleadings in the statement of case of the claimant.
- [10] Firstly, the claimant in her statement of claim states that she is the owner of the vehicle involved in the accident. The defendants in their defence challenged the veracity of the claimant's assertion of ownership of the said vehicle. The claimant in her reply to the defence and in defence to the counterclaim admits that the vehicle is registered in LWO of which she is the majority owner.

[11] Mr. Alban John, counsel for the defendants, both in filed submissions and orally, contends that the claim is not properly brought and prays that the claim be dismissed.

[12] **CPR 8.7** speaks to the claimant's duty to set out the case. The rule provides that the claimant must include on the claim form or in his statement of claim a statement of all the facts on which the claimant relies. Rule 8.7(5) requires the statement of claim to be verified with a certificate of truth to comply with the mandatory requirement of CPR 3.12.

[13] It is trite law that a company is a separate legal entity separate and distinct from its owners. Lord Halsbury LC in **Salomon v Salomon & Co Ltd**¹ posited that:

“...once a company has been legally incorporated it must be treated like any other independent person with rights and liabilities appropriate to itself, and the motives of those who promote the company (e.g., to enable them to trade with the benefit of limited liability) are absolutely irrelevant in discussing what those rights and liabilities are.”

[14] Under the separate legal entity principle, the assets of the company belong to the company and not to the shareholder. The claim should have been brought in the name of the registered owner, LWO or alternatively the statement of claim should have particularised the true ownership of the vehicle and the claimant's authorized use.

[15] **CPR 10.9** provides that a claimant may file a reply to a defence. It is not necessary for a claimant to file a reply since the defendant will not have an opportunity to file a response to any facts or issues pleaded in a reply. The facts of ownership and authorized use of the vehicle should have been pleaded in the statement of claim and not in the reply.

[16] The Text “**Blackstone Civil Practice (2005) at Para 27.2** provides:

“where the defence takes issue with a fact set out in the particulars of claim and the claimant accepts that the fact is incorrect, the proper course of action should be for the claimant to seek to amend his statement of case accordingly and not to deal with the matter in a reply”.

¹ (1897) A.C. 22 at 30, (1895-9) All E.R. Rep. 33 at 35

- [17] The claimant cannot maintain a claim for damages of the said vehicle as owner. The claimant having acknowledged that the vehicle belonged to LWO should have taken immediate action to remedy the error especially in light of the certificate of truth appended to the statement of claim. A claimant cannot raise a new issue that should have been pleaded in the claim form and statement of claim in a reply. Any new issues or evidence ought properly to have been pleaded in a statement of claim. The proper recourse was for the claimant to have applied for leave to amend the pleadings or particulars already served^{2,3}.
- [18] Counsel, Mr Alban John for the defendants, contend that the claim should be dismissed since the claimant lacks standing to bring the claim as owner. I am of a contrary view since the claimant also seeks damages for personal injury as a result of the said accident. Also, a claim will not fail because a person who should have been made a party was not made a party to the proceedings⁴. The court also has the jurisdiction to add a party (**CPR 19.3 (1)**) or to make an order against any person not a party to the said claim.
- [19] The second procedural defect is that the claimant's evidence in her witness statement contradicts her pleaded case in her statement of case. The claimant attempts to amend her pleadings in her statement of claim filed on 29th September 2015, and 10th June 2016 respectively through her witness statement filed in February 2017.
- [20] The claimant at paragraph 16 of her witness statement states:

“a small error was made in respect of paragraph 4 (i) (ii) (iv) of my reply to the defence and the defence to the counter claim which has been filed on my behalf on the 10th June 2016. I signed to it not realizing the effect of the explanation of how the accident took place in those paragraphs. When my attorneys recently reviewed it with me I realized the errors. My recollection of the accident is therefore contained in paragraphs 2 to 5 of this witness statement and as contained in my witness statement”.

² Per Lord Russell of Killowen in *London Passenger Transport Board v Moscrop* [1942] AC 332

³ *Williamson v London and North Western Railway Company* 1879 12 CH D 787

⁴ CPR 8.5(1) (a)

[21] Mr. Alban John, contends that parties to a case are bound by their pleadings in the statement of case and relies on the Court of Appeal decision in **George W. Bennett Bryson's & Co. Ltd. v George Purcell**⁵ where Blenman JA at paragraphs 30 and 31 stated:

“[30] The legal principles regarding the importance of pleadings are well-settled by authorities. It is a rule of pleadings that a party is bound by his pleadings unless he is allowed to amend them, and he is therefore bound by his particulars, which represent part of the pleading under which they are served. In the case of *Spedding v Fitzpatrick*, Cotton LJ held that ‘[t]he object of particulars is to enable the party asking for them to know what case he has to meet at the trial, and so to save unnecessary expense, and avoid allowing parties to be taken by surprise.’

[31] In *London Passenger Transport Board v Moscrop*, Lord Russell of Killowen had this to say:

“Any departure from the cause of action alleged for the relief claimed in the pleadings should be preceded, or, at all events, accompanied, by the relevant amendments, so that the exact cause of action alleged and relief claimed shall form part of the court’s record, and be capable of being referred to thereafter should necessity arise. Pleadings should not be “deemed to be amended” or “treated as amended”. They should be amended in fact.”

[22] A witness statement must be consistent with the pleadings and other statements prepared by the witness and other witnesses. The claimant’s version of her pleaded facts in her statement of case is wholly inconsistent with her witness statement. The claimant upon noting the inconsistency attempted to correct the pleadings in her witness statement. This is not permitted under the CPR. 2000.

[23] Sir John Dyson SCJ in the Privy Council decision in **Charmaine Bernard (Legal Representative of the Estate of Reagan Nicky Bernard) v Ramesh Seebalack**⁶ citing *McPhilemy v Times Newspapers Ltd* [\[1999\] 3 All ER 775](#) at p 792J, where Lord Woolf MR said:

⁵ [2018] ECSCJ No. 39

⁶ [2010] UKPC 15

"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 statements, 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 extent of the dispute between the 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.No more than a *concise* statement of those facts is required."

16..... But a detailed witness statement or a list of documents cannot be used as a substitute for a *short* statement of *all* the facts relied on by the claimant. The statement must be as short as the nature of the claim reasonably allows. (Emphasis added)

- [24] As indicated above, the claimant is duty bound to set out its case in a claim form and statement of claim and not in a reply or witness statement. Any inconsistency had to be corrected by an amendment to the statement of case and not in a witness statement.

The evidence

- [25] Cecil Charles gave evidence for the claimant, stating that the damage to the claimant's vehicle shows that it was hit by another object moving quickly across its path, colliding from the right front across to the left front section of the vehicle. This witness states that the vehicle was hit while standing rather than moving, and that it is normal that vehicles impacting an object while in forward motion will crumble or bend parts backwards because of the force colliding in the opposite direction of travel.
- [26] Lennox James also gave evidence for the claimant, indicating that he saw the vehicle being driven by the claimant stop at the stop line to give way to the vehicle

driven by the second defendant. This witness further states that the second defendant had indicated right on the roundabout at the time the accident occurred.

[27] On the other hand, it is the evidence of the defendants that at the Morne Rouge roundabout, the second defendant indicated right, and having completed half the turn around the roundabout indicated left, signalling his intention to drive into Wall Street. It is also the evidence of the defendants that the second defendant was proceeding towards Wall Street when the vehicle he was driving was impacted by the claimant's vehicle in the left midsection of their vehicle.

[28] The accident resulted in damage to the claimant's vehicle's front headlights, right fog lamp, grill, bumper, condenser, radiator and moulding. It also resulted in damage to the left midsection of the first defendant's vehicle.

[29] From solely this evidence of the damage to the vehicles, it is probable that the accident occurred as the defendants describe, by the claimant advancing in the direction of the Maurice Bishop Highway while it was unsafe so to do, given that the defendants were proceeding into Wall Street from the roundabout. This would explain why it was only the left side of the midsection of the first defendant's vehicle that was damaged, as opposed to the front of the vehicle, as well as why the entire front of the claimant's vehicle was damaged. The defendants' description of the accident therefore resonates with the damage that resulted from the impact.

[30] However, the claimant produces an eyewitness, as well as a witness who was the auto repair mechanic of her vehicle to corroborate her evidence. The defendants, on the other hand, produced no corroborating testimony, despite indicating that at the time of the accident there were passengers in the vehicle.

[31] The claimant at paragraph (6) of her statement of claim states that her vehicle had stopped at the roundabout to properly give way to traffic on her right. However, she relies on paragraph 4 of her reply in her defence to the defendants counterclaim. The claimant at paragraph 4 (i), avers that she had already crossed the line before the second defendant turned right at the roundabout. Further at

paragraph 4 (ii) she states that there was no need to stop to give way to the first defendant's vehicle, since at the "stop line" approaching the roundabout, the first defendant's vehicle had not turned at the roundabout. However

- [32] The claimant's pleadings in her reply on which she relies on in the defence to the counterclaim are conflicting to say the most. Mr. Ferguson, counsel for the claimant made a valiant effort in seeking to distinguish the case of **George W. Bennett Bryson's & Co. Ltd. v George Purcell** relied on by counsel Mr. John. Mr. Ferguson stated that the case considered a different cause of action which is not in issue in the present case as the claimant's pleaded case is in negligence and not a new cause of action.
- [33] The court, with respect, is of the view that counsel, Mr Fergusson, is totally misguided and has conflated the issues. The claimant is not attempting to bring a new cause of action but is seeking to correct errors made in her statement of case in her witness statement.
- [34] **CPR 8.1** and **CPR 10.5** require parties to set out all facts on which they rely in their statement of claim and defence respectively. The claimant as a defendant to the counterclaim is bound by **CPR 10.5**. The claimant specifically stated that she relies on her defence to the counterclaim and the reply to the claim in response to the defendants counterclaim to prove her case. The reply gives a totally different version of facts pleaded in the claimant's statement of claim. The claimant's evidence at trial and in witness statement is totally inconsistent with her statement of case.
- [35] The court having heard the parties accepts the evidence of the defendants. The photographs reflect that the damages to the claimant's vehicle were all to the front of her vehicle while the damages to the defendants' vehicle were on the left front and back door. Also, the court accepts counsel for the defendants' arguments that there were not any skid marks on the left side of the defendants' vehicle to support the claimant and her witness evidence that the vehicle was shifted and dragged from the right.

[36] The claimant's statement of case is full of inconsistencies. The claimant's only recourse was to have amended her statement of claim to correct the obvious anomaly in the pleadings, which she failed to do. The evidence before the court does not support the claimant's claim. The court is of the view that the claimant has failed to prove her case on a balance of probabilities and accordingly finds in favour of the defendants on their counterclaim.

ORDER

[37] For the foregoing reasons, it is hereby ordered as follows:

1. The claimant's claim stands dismissed, and judgment is entered in favour of the defendants on their counterclaim.
2. The claimant shall pay the defendants special damages as pleaded in the sum of \$8,556.81 with interest at the rate of 3% from the date of filing of the claim until judgment and at the rate of 6% from judgment until payment in full.
3. The claimant shall pay prescribed costs to the defendants in the sum \$1,283.52 pursuant to CPR 65.5.

Agnes Actie
High Court Judge

By the Court

Registrar