

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

Civil Division

SAINT LUCIA

Claim Number sluhcv2021/0198

BETWEEN:

ELIZABETH JANE JN BAPTISTE

Claimant

-and-

PRISCILLA JOSEPH, Personal Representative of the Estate of
DAMIAN SILAS JOSEPH, deceased pursuant to the Order of
Master Pariagsingh made on July 19, 2021.

Defendant

Appearances:

Trudy O. Glasgow for the Claimant; and
Dexter Theodore QC for the Defendant.

2022: January 20 – Claimant’s submissions;
March 08 – Defendant’s submissions; and
May 03 – Decision

DECISION

(Claimant’s application to amend filed on January 20, 2022)

[1] **PARIAGSINGH, M.** : - Before the Court is the Claimant’s application¹ seeking permission to amend her statement of claim filed on May 12, 2021. This application is opposed.

[2] The crux of the objection is that the original statement of claim served does not disclose any cause of action. The Defendant contends that the statement of claim discloses no averment of any facts which gives rise to a tortious action and accordingly discloses no cause of action.

¹ Filed on January 20, 2022

The claim:

- [3] This claim arises out of a motor vehicle accident which occurred on July 25, 2018. There is no doubt that the cause of action accrued on July 25, 2018. In this jurisdiction, prescription applies. Once time is prescribed, the Court has no jurisdiction. Both the Claimant's right and remedy are extinguished². The Civil Code is pellucid on what interrupts prescription³. A judicial demand interrupts prescription. For there to be a proper judicial demand, the claim must not only be filed but served before the anniversary of the cause of action. In this case, the third anniversary.
- [4] On May 28, 2021, fourteen (14) days after the claim was filed, an application for substituted service was made. On June 18, 2021 this application was refused by Cenac – Phulgence J on the basis that it was premature in that no one had been appointed to represent the estate of the deceased Defendant.
- [5] Approximately three (3) weeks after the application for substitution was refused, on July 06, 2021 the Claimant applied for an order appointing a personal representative for the estate of the deceased.

² **Alison Wilson v Liz-Ann Debeuville – Jones et al SLUHCV2019/0520** at paragraph 16 on a similar application, which position I maintain:

16. Prescription is different from limitation. They are distinct concepts. A complete and thorough analysis of the what stops time for running was conducted the Court of Appeal in David Sweetnam et al v The Attorney General of Saint Lucia et al, Civil Appeal No: 42 of 2005 Gordon JA at paragraph 11 of the judgment succinctly stated the law in this jurisdiction as:

The law in St. Lucia has never been amended to harmonise with either the Quebec or Louisiana laws as amended. It must therefore follow that prescription in St. Lucia is only interrupted civilly by the commencement of a suit before a court of competent jurisdiction and the proper service of such suit on the party whose prescription it is sought to interrupt. This conforms absolutely with plain ordinary meaning of the language of article 2085

³ Article 2085 of the Civil Code - A judicial demand in proper form, served upon the persons whose prescription it is sought to hinder, or filed and served in conformity with the Code of Civil Procedure when a personal service is not required, creates civil interruption....

[6] On July 19, 2021 this Court granted an order appointing a personal representative of the estate of the deceased. This Court also ordered that in addition to or in lieu of personal service, the Claimant was granted permission to serve the claim by newspaper advertisement twice per week for one week.

[7] The Claimant complied with the order for substituted service and served the claim on the Defendant by newspaper advertisement on July 21 and July 24. The Claimant also caused the claim to be served on the Defendant personally on July 23, 2021.

Does the original statement of claim disclose a cause of action?

[8] Stuart Sime in **A practical approach to civil procedure 21st Edition at page 148–14.09** states:

A claim form need only contain a concise statement of the nature of the claim. This imposes an obligation to inform the defendant in the simplest terms of the case the defendant has to meet (*Adams v Thompson Holiday Ltd* [2009] EWHC 2559 QB)..... This means that all the elements necessary for establishing a cause of action or defence must be set out in the statement of case, and if even a single essential allegation is omitted, the statement of case will be amenable to being struck out (*Bruce v Odhams Press Ltd* [1936] 1 KB 697])

[9] Having considered the original statement of claim, I am of the respectful view that there is no express aversion of causation. That said however, the general tenor of the document is that the Claimant is alleging that the accident was caused by “the deceased lost control of his vehicle and swerved onto the right side of the road causing the accident”⁴. This is said in the context of referring to a police report.

[10] This Court is of the view that although very scantily pleaded and without condescending to any particulars of negligence the bare allegation of negligence is there.

⁴ Paragraph 6 of the Statement of Claim

[11] In the police report attached to the statement of claim, the cause of accident is well set out.⁵ Regrettably, that level of particularity was not transcribed in the pleading but there is no doubt that the Claimant is relying on the version of the facts stated in the report.

[12] This Court is also mindful of the reply to the pre-action letter dated March 07, 2019 wherein the Defendant's insurers deny that their insured (the deceased) was negligent and averred that a third party who is not a party to this claim caused the accident by his negligence. This instills in my mind a degree of certainty that the nature of the Claimant's claim was known from an early stage.

[13] The first time the word negligence features in this claim as far as I can ascertain by the Claimant is in a letter dated October 19, 2020⁶. In this letter to the Defendant's insurers, the Claimant's Attorney stated that "If not for the negligence of your insured, our client would not have suffered her injuries and her subsequent loss of earnings, pain and suffering."

[14] In the circumstances, the failure to condescend to particulars, whilst not proper for pleadings, is not sufficient to be fatal. The general tenor of the claim and the cause of action, which is negligence, is apparent and discernable from the statement of claim and the attachments appended to it.

Prejudice in granting or refusing the application:

[15] Whilst the Defendant's objection to the amendment on the basis that the pleading is not in proper form to satisfy the requirement of a judicial demand being made within time is far from being without merit, the Court is also mindful of the prejudice which will result from the granting or refusal of the application.

⁵EJ1

⁶EJ12

[16] If the application is refused, the Claimant's claim fails. Although not directly put in these exact words by the Defendant, the contention is essentially that the Claimant did not comply with Part 8.6 CPR.

[17] A breach of Part 8.6CPR however can be remedied by an amendment, once the prejudice can be cured in costs and it is in the interest of the administration of justice to do so.

[18] If the application is granted, the prejudice to the Defendant can be remedied by an order for costs.

The application to amend:

[19] This Court is loath to repeat that very little or no weight will be attached to affidavits filed in proceedings by legal assistants of Attorneys. It simply is not proper where the facts stated are clearly not within the knowledge of the deponent. Save for formal matters or matters actually within their knowledge, the weight of their evidence ought in my view to be discounted.

[20] In support of the application is the affidavit of the assistant of the Claimant's counsel. In the affidavit it is deposed that on or about May 12, 2021 the Claimant's counsel became aware that the Director of Public Prosecutions had received an opinion and that after numerous calls counsel has not been successful in obtaining a copy of the opinion. This is the context of a proposed draft amendment being exhibited which speaks to particulars of negligence, to my mind is confusing. If the document was not received, I fail to understand why the Claimant waited on this opinion to make the application. The affidavit is also silent on promptitude.

The administration of justice:

[21] In addition to the prejudice discussed above, the Court is mindful of the administration of justice. The good administration of justice favours claims being determined on their merits and not being struck out for technical reasons. This is also in furtherance of the overriding objective. Whilst I am mindful that we still operate in an adversarial system, the ultimate objective of the Court is to do justice between the parties. This is a claim that can be saved by granting an amendment in the terms sought.

Costs:

[22] The general rule is that costs follow the event. I am not of the view that given the circumstances, that the Defendant ought to pay costs. Whilst the Claimant is getting permission to amend, the Defendant's objection was far from unreasonable. In this application I am of the preliminary view that the omission to properly plead the Claimant's case was an act or omission on the part of the Claimant's legal practitioner. I consider it unreasonable to order the Claimant to pay the costs of the application. In this regard, the Claimant's legal representative shall show cause in writing within fourteen (14) days of this decision why an order for wasted costs ought not to be made against her on this application.

Conclusion:

[23] For the reasons set out above, it is hereby ordered that:

1. Permission is granted to the Claimant to file and serve an amended statement of claim in terms of the draft annexed to her application filed on January 20, 2022 on or before 3:00pm on Friday May 06, 2022, in default of which this claim is dismissed with prescribed costs (on \$50,000.00) to the Defendant quantified in the sum of \$4,125.00;

2. The Claimant's legal representative shall show cause in writing within fourteen (14) days of this decision why an order for wasted costs on the application filed on January 20, 2022 ought not to be made against her personally;
3. A decision on costs will be given on the adjourned date; and
4. This matter is adjourned to July 04, 2022.

**Alvin Shiva Pariagsingh
Master**

By the Court,

Registrar