

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO: SLUHCV2018/0613

BETWEEN:

PETERSON FRANCIS

Claimant

and

**1. CHRISTOPHER HUNTE
2. CHOICE TV/MEDIA ZONE PRODUCTION INCORPORATED**

Defendants

APPEARANCES:

Mr. Horace Fraser for the Claimant
Mr. Leevie Herelle for the Defendants

2019: December 12
December 18

RULING

GILL M. (Ag.):

[1] The last Master ruling on two applications to strike out pleadings in this matter referred to the events in the case as “a comedy of errors”.¹ This Court will venture to say that the saga continues. This is the ruling on an oral application by learned Counsel for the claimant, Mr. Fraser, to amend the amended claim form and amended statement of claim filed herein on January 14, 2019.

¹ SLUHCV2018/0613, judgment of Actie M. delivered April 26, 2019, paragraph 1

Background

- [2] A chronology of the events so far will reveal how this application came about.

- [3] December 5, 2019. The claimant, the Mayor of Castries, filed a claim form with statement of claim in defamation against the first named defendant, Christopher Hunte and Choice News Now named as the second defendant. Choice News Now is not a legal entity capable of being sued.

- [4] December 20, 2019. The defendants put in an acknowledgment of service.

- [5] January 14, 2019. The claimant filed an amended claim form with amended statement of claim changing the name of the second named defendant to Choice TV/Media Zone Production Incorporated.

- [6] January 14, 2019. The defendants filed a defence denying the claim in its entirety.

- [7] January 15, 2019. A notice of application was filed by the first named defendant and Wayne Whitfield, managing director of Choice TV LTD, owners of the television news programme entitled Choice News Now for an order that (i) the statement of claim (filed on December 5, 2019) be struck out; (ii) judgment on the claim be entered against the claimant in favour of the defendants; (iii) the claimant's claim against the defendants be dismissed with costs in favour of the defendants; (iv) the claimant do pay to the defendants the costs of this application.

- [8] January 30, 2019. The claimant filed an application to strike out the defendants' defence.

- [9] April 26, 2019. Both the defendants' application to strike out the statement of claim and the claimant's application to strike out the defence were dismissed by

the learned Master.² She ruled, on the authority of **The Attorney General v Allen Chastanet and Kenneth Cazaubon**,³ that the amended claim filed on January 14, 2019 had subsumed the claim filed on December 5, 2019. The learned Master further ordered the defendants to file and serve a defence (to the amended claim) within 28 days of her order.

[10] May 6, 2019. The first named defendant and Wayne Whitfield in the same capacities as in their application of January 15, 2019 filed another notice of application for an order that (i) the statement of claim be struck out; (ii) judgment on the claim be entered against the claimant in favour of the defendants; (iii) the claimant's claim against the defendants be dismissed with costs in favour of the defendants; (iv) the claimant do pay the to the defendants costs of this application and (v) such further orders as the Court deems fit. The grounds of the application are stated therein: That the claimant has no real prospect of succeeding on the claim against the defendants in that:

- i. The Statement of Case does not disclose any reasonable grounds for bringing the claim. It does not satisfy the provisions of Part 69.2 of the Civil Procedure Rules.
- ii. The First Named Defendant was not served with a valid Claim properly issued out of the High Court of St. Lucia.
- iii. The Second Named Defendant is not a legal entity capable of being sued. No specific allegation of broadcast was made against the Second Named Defendant.
- iv. Permitting the claim to continue would be an abuse of process, subjecting the Defendants to unnecessary cost and hardship.

The affidavit in support of this application makes it clear that the application is in respect of the amended claim.

² Ibid at paragraph 27

³ SLUHCVP2015/0016, delivered July 4, 2016

[11] May 13, 2019. The claimant filed an affidavit in response opposing the application.

[12] May 15, 2019. The claimant filed a further amended claim form and further amended statement of claim. This amendment changed the name of the second defendant to its correct name Media Zone Production Incorporated and made an addition to paragraph 2. Paragraph 2 of the amended statement of claim reads:

“2. At all material times the first named Defendant is a talk show host of the television programme “Politically Incorrect” aired by the television station – channel 39 which is owned and controlled by the second named Defendant.”

The further amended statement of claim adds to paragraph 2 the words “which has editorial control of all programme content.”.

[14] June 11, 2019. Having failed to meet the deadline ordered by the Court to file a defence, the first named defendant and Wayne Whitfield filed a notice of application to extend the time to file the defence ordered by the Court on April 26, 2019. This application is in abeyance.

[15] October 9, 2019. This Court heard the application to strike out filed on May 6, 2019. At the hearing of the application, learned Counsel for the defendants, Mr. Herelle, abandoned ground 2, that the first named was not served with a valid claim properly issued out of the High Court of St. Lucia, and in light of the further amended claim, the first part of ground 3, that the second named defendant is not a legal entity capable of being sued. Submissions were argued and the ruling was reserved for November 13, 2019.

[16] While preparing the ruling, the Court observed from the case file that the claimant had not applied for, and was not given leave to file the further amended claim

form and further amended statement of claim. Days before the date set for the ruling, the Court summoned Counsel for the parties to Chambers and raised the issue and gave them the opportunity to address the matter.

[17] November 13, 2019. A notice of discontinuance of the further amended claim filed that morning was withdrawn. After hearing Counsel on both sides, the further amended claim was struck out. The ruling of the Court in that matter is as follows:

“While preparing the ruling in this matter, in reviewing the case file, I observed that the further amended claim was filed and served without an application being made to the Court as required by Rule 20.1 of the Civil Procedure Rules (CPR 2000). The relevant provisions are as follows:

“20.1 – (1) A statement of case may be amended once, without the court’s permission, at any time prior to the date fixed by the court for the first case management conference.

(2) The court may give permission to amend a statement of case at a case management conference or at any time on an application to the court.”

Further, Practice Direction 20, No. 5 of 2011 must be followed. Section 2.2 reads:

“2.2 When making an application to change a statement of case, the applicant should file with the court;

- (1) the application and affidavit in support, together with**
- (2) a copy of the statement of case with the proposed changes.”**

It is clear, therefore, that a party cannot simply file an amended claim after the first case management conference without applying to the court.

The purported further amended claim was filed on May 16, 2019 after this notice of application to strike out was filed on May 6, 2019. This was obviously an attempt to correct defects in the amended claim which was properly filed on January 14, 2019 before the first case management conference on February 6, 2019.

On the basis of the purported further amended claim, at the hearing of the application, learned Counsel for the defendants did not proceed with two elements of the application, of crucial relevance being the submission that the second named defendant is not a legal entity capable of

being sued. He pointed out to the Court that the further amended claim was filed after the application to strike out but did not raise any objection to the validity of the claim.

In the circumstances, the Court feels compelled to invoke its powers under Part 26 of CPR 2000. Rule 26.2 (1) states:

“Except where a rule or other enactment provides otherwise, the court may exercise its powers on an application or of its own initiative.”

As stated earlier, the court may strike out a statement of case if it appears to the court that there has been a failure to comply with a rule (Rule 26.3(1) (a)).

Before the Court can exercise its powers of its own initiative, it must comply with the following sub-rules of Part 26.2:

“(2) If the court proposes to make an order of its own initiative, it must give any party likely to be affected a reasonable opportunity to make representations.

(3) The opportunity may be to make representations orally, in writing, telephonically or by any other means as the court considers reasonable.

(4) If the court proposes to –

(a) make an order of its own initiative; and

(b) hold a hearing to decide whether to do so;

the court office must give each party likely to be affected by the order at least 7 days’ notice of the date, time and place of the hearing.”

Having conferred with Counsel for the parties, this matter is heard today.

In light of the claimant’s failure to comply with the Rules by filing a further amended claim form and statement of claim without applying to the Court, of the Court’s own initiative, the further amended claim filed by the claimant on May 16, 2019 is struck out. Case management will proceed on the basis of the amended claim filed by the claimant on January 14, 2019.”

Further, the Court gave leave to the claimant to file an application and gave directions on the application.

[18] November 13, 2019. The claimant filed a notice of application pursuant to Part 19 of CPR 2000 for leave to amend the claim form to substitute the name of the second defendant to read Media Zone Production Incorporated. The claimant did not apply to make any other amendment although in giving leave to the claimant to make an application, the Court pointed out to Counsel for the claimant, Mr. Fraser, that apart from the matter with the name of the second defendant, there was an issue with paragraph 5 of the amended statement of claim which reads in part:

“5. On the 2nd February, 2018 the television programme “Politically Incorrect” was aired on Choice News Now with simultaneous broadcast on Liberty FM 92.3, HITZ 92.1, and IBAS FM 104.5, the first named Defendant broadcast and published the following words:....”

There is no reference to Choice News Now in any other part of the claim. Choice News Now was the second named defendant in the original claim filed on December 5, 2018. This name has remained in paragraph 5 without amendment throughout the proceedings to date.

[19] November 14, 2019. The claimant filed skeleton arguments in support of the application for substitution of the name of the second named defendant.

[20] November 28, 2019. The first named defendant and Wayne Whitfield filed an affidavit in reply opposing the application for leave for substitution. Submissions on behalf of the defendants were also filed on the same date. Strenuous opposition was put forward.

[21] December 12, 2019. The application was heard and the Court being of the view that the naming of the second named defendant as Choice TV/Media Zone Production Incorporated instead of Media Zone Production Incorporated was a

misnomer which, in effect, simply required the deletion of the words 'Choice TV', the application for leave to substitute the name of the second named defendant was granted. The Court followed the approach of the Court of Appeal in **St. Lucia Chamber of Commerce Industry and Agriculture v Vela Samuel**⁴ where it was held that changes made to correct a misnomer or incorrect name were not substantial. The Court of Appeal dismissed the application to discharge the order of the Court below to refuse to set aside a default judgment. The appellant contended that it had not been served with an amended statement of claim correcting the name of the defendant from 'The St. Lucia Chamber of Commerce' to 'The Lucia Chamber of Commerce Industry and Agriculture'.

- [22] Notwithstanding this substitution of the name, the claimant was still left with the issue relating to paragraph 5 of the amended statement of claim earlier highlighted. This was again pointed out by the Court to Mr. Fraser. It was at this stage that Mr. Fraser made the oral application to amend paragraph 5 of the amended statement of claim on the ground that it is necessary in light of the change allowed to the name of the second named defendant, to tie in the second named defendant in paragraph 5. Mr. Herelle was at his wits' end in opposition. He contended that there is no application before the Court as an application to amend a statement of case pursuant to Rule 20.1(2) must be in writing.

Issue

- [23] Having given the claimant leave to substitute the name of the second named defendant to read Media Zone Production Incorporated, the Court has to decide whether to grant the claimant's oral application for leave to amend paragraph 5 of the amended statement of claim to allow the claimant to link publication with the second named defendant, now correctly named.

⁴ Civil Appeal No. 12 of 2008

Law and Analysis

Oral Application

[24] Rule 11.6 of CPR 2000 reads:

“(1) The general rule is that an application must be in writing in Form 6.

(2) An application may be made orally if –

(a) the court dispenses with the requirement for the application to be made in writing; or

(b) this is permitted by a rule or practice direction.”

[25] Mr. Fraser’s application to amend paragraph 5 of the statement of claim came about after the application for substitution of the name of the second defendant was granted. Given the nature of the amendment sought, the Court did not feel it necessary for the claimant to file a written application and so, the Court exercised its discretion and dispensed with that requirement.

Amendment

[26] Rule 20.1(3) is applicable. It reads:

“(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.”

[27] In **George Allert et al v Joshua Matheson and Madeline Matheson**,⁵ Blenman JA. expounded on this in paragraph 54 of the judgment when she stated:

“In determining whether to exercise its discretion as to enable an amendment to be made there are many factors that the court must take into consideration. These include the justice to the parties; the legitimate expectation that the basis of a claim will not be fundamentally changed at the last minute; the adverse effect on other litigants of lost judicial time; the stage reached in the proceedings; whether the other side can be adequately compensated in costs; and importantly, whether the amendment will serve any useful purpose.”

In that appeal, Blenman JA. also opined:

“In exercising its discretion the court should be guided by the general principles that amendments should be made which are necessary to ensure that the real question in controversy between the parties is determined, provided that such amendments can be made without causing inconvenience to the other party and can be compensated in costs. Indeed, in the exercise of its discretion, where the court’s permission is sought, the court, in determining whether or not to grant an amendment, must have regard to the overriding objective and the need to ensure that the real issues in controversy between the parties are determined. The rules must be applied in a manner that will prevent a litigant from prosecuting its case based on a mere technicality.”⁶

⁵ GDAHCAP2014/0007, delivered November 24, 2014

⁶ Ibid at paragraph 49 of the judgment

[28] This principle was followed in **Comodo Holdings Limited v Renaissance Ventures Limited and Joseph Katz**.⁷ Blenman JA. reiterated:

“This Court has stated that amendments which would enable the real issues between the parties to be decided should be permitted subject to the payment of costs. However, the corollary is also true, namely, that the amendment which is futile or frivolous will not be permitted, once the party who is prejudiced can properly be compensated by costs.”

[29] Mr. Herelle bemoans the state of affairs where the claimant is allowed to amend what he refers to as Counsel’s “shoddy” pleading. On this aspect of the submissions, the principle laid down by Brett MR in **Clarapede & Co v Commercial Union Association**⁸ is instructive. The learned Master of the Rolls declared:

“...however negligent or careless may have been the first omission, and however late the proposed amendment, the amendment should be allowed if it can be made without injustice to the other side. There is no injustice if the other side can be compensated by costs: but, if the amendment will put them into such a position that they must be injured, it ought not to be made.”

This principle was upheld in **Charlesworth v Relay Roads Ltd and others**⁹ by Neuberger J. as having universal and timeless validity.

⁷ BVIHCMAP2014/0032, delivered May 3, 2016, at paragraph 80

⁸ (1883) 32 WR 262, cited by Blenman JA. in *George Allert et al v Joshua Matheson and Madeline Matheson*, supra at note 4, at paragraph 50 of the judgment

⁹ [2000] 1 WLR 230 at page 235, also cited in *George Allert* at paragraph 51 of the judgment

- [30] The claimant's failure to make an application to amend the substance of the claim and not merely to substitute the name of the second defendant, in the opinion of the Court, is a careless omission on the part of Counsel for the claimant. Counsel should have realised that an amendment to the body of the claim was necessary since the first amendment was made. Having been given leave to make the necessary application, there is no excuse for this oversight.
- [31] Notwithstanding the foregoing, the Court is of the view that the proposed amendment is integral to the claimant's case against the second named defendant. In order to succeed in the claim for defamation against both defendants, the claim must establish that both defendants published the offending words. In its present form, in paragraph 5 (quoted earlier),¹⁰ the allegation of publication is clearly made against the first named defendant. Whereas this paragraph read in conjunction with paragraph 2 (also quoted earlier)¹¹ reveals that the television channel which aired the programme in which the first named defendant published the defamatory statements is owned and controlled by the second named defendant, the amendment is necessary to establish publication by the properly named second defendant. Therefore, it cannot be said that the proposed amendment is fanciful or hopeless or futile or will serve no useful purpose.
- [32] The amendment will enable the Court to determine the real issues between the litigants. The basis of the claim is not being fundamentally changed at the last minute. In fact, with the several applications in this matter, directions for trial have not been given and no trial date has been set. The defendants can be compensated by costs for the further delay caused by the amendment. The justice of the case demands that the amendment be allowed.

¹⁰ Above at paragraph 18

¹¹ Above at paragraph 12

Ruling on previous application

- [33] Mr. Herelle submitted that the Court should rule on the application filed on May 6, 2019 which was heard on October 9, 2019. That application was made in relation to the amended claim, that is, to strike out the amended claim. However, oral submissions were made in light of the purported further amended claim. As stated earlier, on the basis of the further amended claim, Mr. Herelle abandoned one ground and part of another ground of the application. When the Court struck out the further amended claim for non-compliance, the amended claim was revived, thereby reviving the issues that Mr. Herelle had abandoned in his submissions. The Court is now granting leave to the claimant to further amend the amended claim. Therefore, events have overtaken the application and the pending ruling on the amended claim.

Conclusion

- [34] In the interests of furthering the overriding objective to deal with cases justly, the Court will grant the application.

ORDER

It is ordered and directed as follows:

1. The oral application of the claimant for leave to amend paragraph 5 of the amended statement of claim is granted.
2. The claimant shall file and serve a further amended claim form and further amended statement of claim within 14 days of today's date.
3. The defendants shall file and serve a defence within 28 days of service of the further amended claim form and further amended statement of claim.

4. The claimant shall pay costs to the defendants in the sum of \$1000 within 14 days of today's date.
5. The matter shall proceed to case management conference on a date to be set by the Court Office.

Tamara Gill
Master (Ag.)

BY THE COURT

REGISTRAR