

THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL

SAINT CHRISTOPHER AND NEVIS

SKBHCVAP2020/0014

BETWEEN:

ST. KITTS NEVIS ANGUILLA NATIONAL BANK LIMITED

Appellant

and

PINNEY'S HOTEL DEVELOPMENT LIMITED

Respondent

Before:

The Hon. Mr. Mario Michel

Justice of Appeal

The Hon. Mr. Gerard St. C Farara, QC

Justice of Appeal [Ag.]

The Hon. Mr. John Carrington, QC

Justice of Appeal [Ag.]

Appearances:

Mr. Damian Kelsick and Ms. Danni Maynard for the Appellant

Mrs. M. Angela Cozier for the Respondent

2020: October 28, 30;
November 20.

Interlocutory appeal — Amendments to defence — Rule 20.1 of the Civil Procedure Rules 2000 — Part 27 of the Civil Procedure Rules 2000 — Scope of the order of the Learned Master — Whether the appellant was entitled, in amending its defence, to re-plead the same facts in a different manner — Whether leave was required to amend defence — Whether case management conference had taken place — Whether the Learned Master erred in striking out certain paragraphs added by the appellant in its amended defence

REASONS FOR DECISION

- [1] **CARRINGTON JA [AG.]:** On 18th June 2020, in the court below, the Learned Master struck out certain paragraphs added by the appellant in its amended defence and ordered the appellant to file a re-amended defence in compliance with her order within 7 days, failing which the entire defence would be struck out (the “Unless Order”). The Learned Master’s order resulted from her having determined that the said paragraphs were added not in compliance with a prior order of Master Actie, and not with the prior permission of the court, which the Learned Master found was necessary under rule 20.1 of the **Civil Procedure Rules 2000** (“CPR”). The appellant did not comply with the Unless Order and appealed the Learned Master’s decision with leave of this Court.
- [2] The circumstances under which the amendment arose can be briefly dealt with. In response to the claim brought by the respondent in the High Court, the appellant filed its defence on 6th June 2017 and the respondent applied to strike out paragraphs of that defence. The application was heard on 26th June 2018 by Master Actie who found that certain paragraphs were prolix and made an order that those paragraphs be struck out and that an amended defence be filed within 7 days.
- [3] The appellant thereafter, on 3rd July 2018, amended its defence by striking out the offending paragraphs but also re-pleading the underlying facts from those impugned paragraphs in what it considered to be a manner that did not offend the rule against prolixity. The respondent’s response was to file yet another strike out application, on 18th July 2018, this time seeking also an Unless Order on the basis that the amendments made (specifically, the newly added paragraphs) required leave of the court, since by the date of that pleading the first case management conference in the proceedings had already taken place. The Learned Master agreed and made the orders referred to above.

- [4] Two issues were therefore canvassed on the appeal:
- (a) Was the effect of Master Actie's order that the appellant was entitled, in amending its defence, to re-plead the same facts in a different manner?
 - (b) Had the first case management conference taken place so that leave was required to amend the defence?
- [5] Mr. Damian Kelsick, who appeared with Ms. Maynard for the appellant, submitted that Master Actie's order to amend the pleadings should be read in the context of her finding that the offending paragraphs were prolix. The direction to amend the defence should therefore be treated as including permission to amend to re-plead the same facts in a proper manner.
- [6] I did not agree. While Master Actie's order may have been based on her finding that the offending paragraphs were prolix, her direction to amend clearly stated, in my view, that the offending paragraphs should be struck out and an amended pleading, reflecting that order, should be filed. The order for the amended pleading on the face of it was therefore limited to the matters stated in the first paragraph of her order, which did not include any other amendment to the existing pleading. If there was any doubt about the scope of her order, this should have been resolved by making a further application to her, as there would have impliedly been liberty to apply to the court for working out the scope of the order.
- [7] With respect to the second issue, CPR 20.1 states that a statement of case (including a defence) can 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. This date is therefore pivotal for determining whether leave was required by the appellant to amend its defence.
- [8] The underlying principle of the **Civil Procedure Rules** is that all cases are now managed by the court. The process of case management therefore commences from the time when service of a claim is acknowledged (when it is the court office that

notifies the claimant of such acknowledgment under CPR 9.4) through to trial of the claim. However, this overarching process should not be confused with the specific event of a case management conference which is dealt with at CPR Part 27. The court office fixes the case management conference under CPR 27.3. That particular event must be attended by the party or his representative under CPR 27.4. The court must consider making specific orders at a case management conference under CPR 27.5. The costs of attending this conference, as distinct from the hearing of an application, are part of the prescribed costs under CPR 65.7.

[9] It therefore seems to me that the date of the first case management conference should be established as a matter of fact and the party who is relying on this fact should be able to satisfy the court as to this date. In **Attorney General of Saint Lucia v Darrel Montrope**¹ at paragraphs 24 et seq, this Court considered the similar issue of whether a case management conference had taken place in relation to a fixed date claim so that leave was required thereafter to amend that claim. The Court found that the first hearing of such a claim constitutes the first case management conference and concluded that the notice of hearing in relation to a strike out application should have been construed by the court below as the notice of first hearing of the fixed date claim as, in any event, both matters could have been suitably dealt with at the first hearing. At paragraph 28 of the judgment, the Court issued a timely reminder of the importance of removing ambiguity from notices of hearing by including the nature of the hearing to which such notices apply.

[10] It is therefore a question of fact whether the first case management conference has taken place, and in **Comodo Holdings Limited v Renaissance Ventures Limited and another**², this Court, following its earlier decision in **George Allert (Administrator of the Estate of George Gordon Matheson, deceased) and others v Joshua Matheson and another**³, stated that once the date of the first case

¹ [2020] ECSCJ No. 235.

² [2016] ECSCJ No. 78.

³ [2014] ECSCJ No. 269.

management conference arises, it is of no moment that the hearing was adjourned or that no directions were given.

[11] When taxed by the Court, Mrs. Angela Cozier who appeared for the respondent, directed the Court's attention to several court lists on which the matter was listed for either "hearing of an application" or "further case management", and the order made by Master Corbin Lincoln on 18th July 2017 for "further case management" to take place in October 2017. A court list is not a prescribed document under the CPR but is an administrative procedure adopted by the court office for the assistance of the court and parties. The nomenclature given to proceedings in the list is therefore not conclusive. I agree with Mrs. Cozier that CPR 20.1 contemplates the court, as distinct from the court office under Part 27, fixing a case management conference, including the first case management conference. However, in such a case as well, CPR 27.3(6), as to notice, will apply to the fixing of this case management conference. In other words, the importance given to the holding of such a conference in the process of case management of proceedings demands that it should always be made clear when a case management conference is being listed, and the procedural requirements for such conferences should be scrupulously observed.

[12] Mrs. Cozier referred this Court to several court lists in which the matter was listed for interlocutory hearings or further case management and the order from Master Corbin Lincoln of 18th July 2017 which set the matter down for "further case management", but she was not able to point conclusively to the date of any hearing in the nature of a case management conference, i.e. in which the court considered whether to give directions in relation to the matters set out in CPR 27.5. The court was invited to infer that a case management conference must have taken place since the case management period would have commenced pursuant to CPR 27.3(3). We declined to do so in this case where the respondent had sought and obtained an Unless Order from the court below on the basis that there had been a case management conference and the appellant was therefore required to seek leave from the court below to amend its defence.

[13] The appeal was therefore allowed on the second ground, i.e. that the defence could have been amended on the relevant date without the leave of the court. I therefore set aside the orders made by the Learned Master on 18th June 2020 and ordered the respondent to pay the costs of the application heard in the court below, such costs to be assessed if not agreed within 21 days, and of this appeal in the sum of not more than two-thirds of the costs in the court below. Accordingly, the amended defence filed by the appellant on 3rd July 2018 was properly filed and this matter shall proceed in accordance with the CPR.

[14] The court had also indicated that it would have heard counsel for the parties on the costs of the application to vary the order made on 28th July 2020 by Justice of Appeal Blenman sitting as a single judge which was withdrawn by the appellant at the commencement of the appeal. This was not done. We therefore invite counsel to make written submissions on these costs within 7 days of the date of this order for consideration on paper by this Court.

I concur.
Mario Michel
Justice of Appeal

I concur.
Gerard St. C Farara, QC
Justice of Appeal [Ag.]

By the Court

Chief Registrar