

**FEDERATION OF SAINT CHRISTOPHER AND NEVIS**

**SAINT CHRISTOPHER CIRCUIT**

**IN THE HIGH COURT OF JUSTICE**

**CLAIM NO.SKBHCV2003/0222**

**BETWEEN:**

**RICHARD ROWE  
and**

**MARK SECRIST  
(As Representative Claimants)**

Claimants/Respondents

**AND**

**ADMINISTRATIVE SERVICES LIMITED**

1<sup>st</sup> Defendant

**B.M.T. LIMITED  
(d/b/a The Angelus Resort, Paradise Beach Resort and Casino  
or Paradise Beach Resort and Convention Center)**

2<sup>nd</sup> Defendant/Applicant

**J.I.K. LIMITED**

3<sup>rd</sup> Defendant

**THE EXECUTORS of the Estate of Bill Gagnon also known as  
Bill Sherwood, Deceased**

4<sup>th</sup> Defendant

**SIR PROBYN INNISS  
(Individually and as Executor of the Estate of Mary Estes, Deceased)**

5<sup>th</sup> Defendant

**ROBERT MORSE ESTES  
(Individually and as Executor of the Estate of Mary Estes, Deceased)**

6<sup>th</sup> Defendant

**PARADISE PARTNERS LIMITED**

7<sup>th</sup> Defendant

**Before:**

Master Cheryl Mathurin

**Appearances:**

Mr Sylvester Anthony for the Applicant/2<sup>nd</sup> Defendant

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2005:March 16<sup>th</sup>;  
2005:April 27<sup>th</sup>.  
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## JUDGMENT

- [1] **MATHURIN, MASTER:** The 2<sup>nd</sup> defendant and the claimants were directed to address the court by way of written submissions on the question as to whether the claimants could lawfully amend their claim before the first case management conference in the face of an application by the 2<sup>nd</sup> defendant to strike out the original claim.
- [2] The original claim was filed on 9<sup>th</sup> December 2003. The 2<sup>nd</sup> defendant filed an acknowledgment of service on the 31<sup>st</sup> December 2003 and a defence on the 12<sup>th</sup> January 2004. The claimants filed an amended statement of claim on the 9<sup>th</sup> March 2004 and on the 6<sup>th</sup> December 2004 the 2<sup>nd</sup> defendant filed an application for an order striking out the amended statement of claim. The claimant filed another amended statement of claim on the 19<sup>th</sup> January 2005. At that time the pending application to strike out the claim had not been heard.
- [3] The matter came before the court for case management on the 16<sup>th</sup> March 2005 and counsel for the 2<sup>nd</sup> Defendant vehemently opposed the amended statement of claim, urging the court to hear the application for the order to strike out the amended claim of the 9<sup>th</sup> March 2004. Counsel states that once the period of 4 to 8 weeks during which the case management conference is to be held in accordance with Part 27.3(3) of the Civil Procedure Rules 2000 (The Rules) has elapsed, the claimant is not at liberty to amend his claim pursuant to Part 20.1 (1) of the said Rules.
- [4] The Civil Procedure Rules 2000 Part 20.1 states
- “(1) *A party may change a statement of case at any time before the case management conference without the court’s permission...*
- (4) *The party amending a statement of case must forthwith-*
- (a) *file at the court office the amended statement of case endorsed with a certificate of service; and*
- (b) *serve a copy on all other parties.”*

There are specific provisions relating to changes in the statement of case after the end of relevant limitation periods and I have omitted them as they bear no relation to the current issue.

Part 27.3 states

“(3) *The case management conference must take place not less than 4 weeks nor more than 8 weeks after the defence is filed...*”

- [5] It is the responsibility of the court office to set down the matter for the case management conference and to give the parties at least 14 days notice of the date set down. It appears that this was not done in a timely fashion by the court office and this departure I would believe is the exception rather than the rule. A perusal of the file indicates that several applications have been considered and determined by the resident judge Justice Baptiste, and I believe that this may have affected the scheduling of the case management conference. The claimants have not addressed this point but in my opinion, the parties also have a duty to help the court in furthering the overriding objective (Part 1.3). In this case, a simple application or notification to the court to have the matter set down for case management at any time after 8 weeks of the filing of the defence on the 12<sup>th</sup> January 2004 would have sufficed.
- [6] Counsel for the 2<sup>nd</sup> defendant states that an interpretation of Part 20.1 of the Rules can not mean that the claimant has an unlimited right to amend a statement of case after the period during which the first case management conference has elapsed. It is unfortunate that Counsel has not submitted any authority to support this submission. Counsel relies on the overriding objective of the Rules.
- [7] Counsel for the claimant has submitted that the court is limited by a literal reading of the Rule which allows the amendment at any time before the case management conference.
- [8] The application of the main concept in the overriding objective means that the primary concern of the court is to do justice. The primary purpose of the civil courts is to decide cases on their merits, not to reject them for procedural default. In this matter, the court is being asked to imply a procedural default into the actions of the claimant.
- [9] I am guided by the dicta of Saunders J. in Treasure Isle Co v Audubon et al Civil Appeal No. 22 of 2003, Tortola
- “The approach to be taken in reference to the relationship between the overriding objective and specific provisions of the Rules – the overriding objective does not in or of itself empower the court to do anything or grant to the court any discretion. It is a statement of principle to which the court must seek to give effect when it interprets any provision or when it exercises any discretion granted by the rules – this discretion is not found in the overriding objective but in the specific provision itself.”*
- [10] Further, in Vinos v Marks & Spencer (2001) 3 AER 784, May LJ stated
- “Interpretation to achieve the overriding objective does not enable the court to say that provisions which are quite plain mean what they do not mean, nor that the plain meaning should be ignored”*

It is clear that the overriding objective cannot be used to widen or limit what a specific section dictates when the language of the rule is pellucid. With this in mind, I hold that the claimant acted in accordance with the plain dictates of the Rules. I also recognize that the defendant has been put through the necessity of filing the application and the claimant has benefited from the substance of that application. As part of the active case management role of the court that enables it to give directions for the purpose of managing the case and furthering the overriding objective, I therefore hold the claimant accountable for the costs expended by the defendant on the application.

[11] In summary, the order of the court is as follows

- (a) The application of the 2<sup>nd</sup> defendant dated the 6<sup>th</sup> December 2004 is hereby dismissed.
- (b) The amended claim of the 19<sup>th</sup> January 2005 is hereby deemed to be properly before the court.
- (c) Costs to the defendant in the sum of EC\$6,000.00.

**CHERYL MATHURIN  
MASTER**