

VIDEOCONFERENCE

GRENADA
Thursday 7th April 2011

JUDGMENTS

Case Name: The Beacon Insurance Company Limited v
Liberty Club Limited
[High Court Civil Appeal No. 29 of 2010]
Liberty Club Limited v The Beacon Insurance
Company Limited
[High Court Civil Appeal No. 30 of 2010]

Date: Thursday 7th April 2011

Coram: The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mde. Janice Pereira, Justice of Appeal
The Hon. Mr. Davidson Baptiste, Justice of Appeal

Appearances:

Appellant:	Ms. Sabrita Khan-Ramdhani holding papers for counsel for the appellant
Respondent:	Ms. Chevaughn Spencer-Joseph holding papers for counsel for the respondent

Issues: *Applications for permission to amend statements of case after case management conference – Rule 20.1(3) Civil Procedure Rules 2000 (“CPR 20.13”) – Amendment to statement of claim to plead different sums of loss – Change of circumstances – Amendment to reply to plead waiver – No change of circumstances alleged – Whether CPR 20.1(3) applying conventional principles of construction amounts to a violation of right of access to the court – Right to fair hearing – Section 8(8) of the Grenada Constitution Order 1973 (“the Grenada Constitution”)*

Result and Reason: The respondent in Appeal No. 29 of 2010 and the appellant in Appeal No. 30 of 2010, Liberty Club Limited

(“Liberty”), applied on the date fixed for trial of its claim, for permission to amend its Reply and also made an oral application for permission to amend its Statement of Claim. The application to amend the Reply so as to plead waiver asserted no change in circumstances since the first case management conference but rather challenged the constitutionality of CPR 20.1(3) in the context of the limitation placed on the right of access to the court. The trial had to be put off. Submissions were invited from the Attorney General in light of the Constitutional argument being raised. The application for permission to amend the Statement of Claim alleged a change of circumstances and sought to amend certain sums under the various heads of loss being claimed. The applications were opposed by The Beacon Insurance Company Limited (“Beacon”). On the applications coming on together for hearing on 8th March 2010, the trial judge in a written decision delivered on 22nd November 2010 refused permission to amend the Reply and awarded costs to Beacon. She allowed the amendment to Liberty’s Statement of Claim stating that there was a change of circumstances and made no order as to costs, nor did she grant leave to Beacon to consequentially amend its Defence. Beacon appealed against the decision granting permission to Liberty to amend its Statement of Claim and disallowance of costs thereon to Beacon and Liberty appealed against the refusal to permit amendment of its Reply.

Held: allowing Beacon’s appeal with costs on the application below and on appeal, that:

1. The learned trial judge erred in holding that there was a change of circumstances which occurred after the first case management conference which made it necessary to amend the statement of case. The question whether the basis for assessment of loss is to be on an indemnity basis or a reinstatement basis is an issue to be determined at trial and does not amount to a change of circumstances.
2. The amendment to change the sums claimed under the various heads albeit reduced was not necessary. A party who claims a higher sum may obtain judgment only on such sums as he is able to prove

at trial.

3. The learned trial judge erred in disallowing Beacon its costs in accordance with CPR 65.11(3) in the absence of special circumstances.

Dismissing Liberty's appeal with costs to Beacon:

1. That restrictions on the right of access to the court are permissible but only in so far as they pursue a legitimate aim and there is a reasonable relationship of proportionality between the means employed and the aim which is sought to be achieved.

Principle in *Ashingdane v United Kingdom* (1985) 7 E.H.R.R. 528 and *Goode v Martin* [2001] EWCA Civ. 1899 approved.

2. That CPR 20.1(3) has a legitimate aim, namely to counter excessive costs and delays.
3. That the restriction imposed by CPR 20.1(3) on the right of access to the court and the refusal of the amendment was not, in the peculiar circumstances of this case, taking into account the inordinate delay which was not justifiably explained, disproportionate to the aim sought to be achieved. Accordingly the trial judge was right to refuse permission to amend.

Circumstances in *Goode v Martin* distinguished.

APPLICATIONS AND APPEALS

Case Name:

Michael Mc Intyre et al v Grace Steele
[High Court Civil Appeal No. 2 of 2011]

Date:

Thursday 7th April 2011

Coram:

The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mde. Janice Pereira, Justice of Appeal
The Hon. Mr. Davidson Baptiste, Justice of Appeal

Appearances:

Appellant: Mr. James Bristol

Respondent: Ms. Sabrita Khan-Ramdhani, with her, Mrs. Celia Edwards, QC

Issues:

Whether order of the learned trial judge granting a stay should be varied or discharged – Discretion of trial judge

Result / Order:

1. The decision of the single judge of the Court given on 15th February 2011 is hereby varied to provide that the appellants shall give security in the sum of \$170,000.00 pending the determination of this appeal, instead of that sum being paid into court.
2. The said security shall be by way of guarantee on a bank, or established financial institution doing business in Grenada, as the parties may agree.
3. The said security shall be entered within thirty (30) days of today's date.
4. Costs in this application as well as the application for the stay shall be in the appeal, which appeal shall be prosecuted as a matter of urgency.

Reason:

The learned judge was correct in granting a stay, on condition. However, the condition should not be one which is necessarily directed against the company by way of its directors and thus it should be varied. The condition which was made falls under rule 26.1(4)(d) Civil Procedure Rules 2000 ("CPR 26.1(4)(d)") but the one which the Court intends to attach (to the stay) falls under CPR 26.1(4)(b), and so should be directed against the appellants.