

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
HIGH COURT CIVIL CLAIM NO. 39 OF 2009



BETWEEN:

EREEN ARCHIBALD

Claimant

v

THE ATTORNEY GENERAL

Defendant

Appearances: Ms. Patina Knights, for the Claimant
Mr. Richard Williams, for the Defendant

2011: 16th June

DECISION

- [1] **JOSEPH, Monica J:** This is an application for an order that (a) the amended defence filed on 4th April 2011 be struck out as no permission was sought by and granted to the Defendant to have its defence amended: (b) the amended defence filed on 4th April 2011 without the leave from the Court is an abuse of the Court process and ought to be struck out: (c) directions be given for the filing of witness statements: (d) costs.
- [2] The grounds of the application are (a) on 26th January 2009, a claim form was filed and more than two years have elapsed since the filing of the claim the Defendant at this late stage is now seeking to have the defence amended, (b) the Defendant has failed to comply with the Civil Procedure Rules 2000, (c) the matters now being raised by the

Defendant ought to have been in their peculiar knowledge (d) in the premises the Claimant contends that the amended defence filed on 4th April 2011 is an abuse of the Court process.

HISTORY

- [3] The Claimant filed a claim form on 26th January 2009 and the Defendant filed an acknowledgment of service on 2nd February 2009. A defence was filed by the Defendant on 17th April 2009 and a reply to the defence was filed on 22nd February 2009.
- [4] The matter went before Learned Master Lanns on 2nd June 2009, when preliminary issues surfaced. Submissions were filed, on behalf of the Claimant on 18th June 2009, and on behalf of the Defendant, on 26th June 2009. A ruling was delivered on 12th February 2010. An amended defence was filed on 4th April 2010 followed by this Notice of application on 5th April 2010.
- [5] Ms. Knights submitted under CPR 2000, Pt 20.1 (1) the defence can only be changed with out the Court's permission before the case management conference. By virtue of CPR 20 1(2) an application to change the defence may be made at the case management conference. Case management has already taken place.
- [6] Ms. Knights argument was that by Pt 20(3) there can be an amendment after the first case management only if the Court is satisfied that a change has become necessary, due to a change in the circumstances of the case which has become known after the date of that case management conference. The Defendant has not advanced such change.
- [7] Further, Counsel argued that there is abuse of the Court's process in that the maximum time for filing a defence, that is, fifty-six days (where parties agree) expired on 24th March 2009. As two years have passed, there is no cure for that lapse and a defence cannot be filed.

[8] In response, Mr. Williams submissions were: case management conference has a particular meaning. Under CPR 2000, Pt 27.5 certain orders are to be made at a case management conference. The fact that those orders were not made, supports his argument that, to date, there has been no case management conference. The current hearing, being the first case management conference, an amended defence can be filed without the Court's permission.

RELEVANT RULES:

[9] Part 20.1:

(1): A party may change a statement of case at any time before the case management conference without the Court's permission unless the change is one to which (circumstances stated).

(2): An application for permission to change a statement of case may be made at the case management conference.

(3): The Court may not give permission to change a statement of case after the first case management conference unless the party wishing to make the change can satisfy the Court that the change is necessary because of some change in the circumstances which became known after the date of that case management conference.

[10] Part 26.1: (1) sets out the Court's general powers of management.

[11] Part 27.3

(1): The general rule is that the Court office must fix a case management conference immediately upon the filing of a defence to a claim other than a fixed date claim.

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

[12] Part 27.5(1): The general rule is that at a case management conference the Court must consider whether to give directions for –

- (a) service of experts' reports (if any)
- (b) service of witness statements
- (c) standard disclosure and inspection;
- (d) by dates fixed by the court.

(2) The Court may also give directions for the preparation of an agreed statement –

[13] Part 27.7 (1) The Court may not adjourn a case management conference without fixing a new date, time and place of the adjourned case management conference.

[14] I conclude from the history of the matter that the Court Office following Pt. 27.3 (1) fixed a case management conference before the Learned Master upon the filing of a defence. Maximum time allowed by the rules for fixing a case management conference is eight weeks. The Order made by the Master on 2nd June 2009 mentions that hearing as a case management. It reads:

"Upon this matter coming on for case management this day, the matter is adjourned to 29th June 2009 for further case management."

[15] The following appears in the ruling on a preliminary issue given by the Master delivered on 12th February 2010:

"(4) At the first case management conference held on 2nd June 2009, I posed the following questions: (a) whether the Commissioner of Police is a proper party to the action, and (b) whether the Public Officers Protection Act applies to the action....The matter is to be fixed for the next case management conference."

[16] There has been no change in the circumstances of this case so Pt. 20.1(3) does not apply. There was a first case management conference on 2nd June 2009, and the Master adjourned that conference, fixing a date for the adjourned conference as provided in Pt 27.7(1).

CONCLUSION

[17] The Defendant did not amend the defence before the case management conference on 2nd June 2009: Pt 20.1(1). The Defendant did not apply to amend the defence at the case management conference on 2nd June 2009: Pt. 20.1(2). The Defendant filed the amended

defence on 4th April 2011 without leave of the Court. The Court strikes out the amended defence filed on 4th April 2011.

[18] The Learned Master, in her ruling of 12th February 2010, ordered that the matter is to be fixed for the next case management conference.

[19] It is ordered that:

1. The amended defence filed on 4th April 2011 is struck out.
2. Costs of \$750.00 to the Claimant.

A handwritten signature in black ink, appearing to read 'Monica Joseph', is written over a horizontal dotted line.

Monica Joseph

HIGH COURT JUDGE (ACTING)

6th June 2011