

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Claim No. CV 2016-03193**

BETWEEN

BURT SINANAN

Claimant

AND

GUARDIAN MEDIA LIMITED

First Defendant

AND

ORIN GORDON

Second Defendant

**BEFORE THE HONOURABLE MADAM JUSTICE M. DEAN-ARMORER**

**APPEARNCES**

Ms. Soraya Nanan, Attorney-at-Law on behalf of the Claimant

Mr. Andre Rudder, Attorney-at-Law on behalf of the Defendant

**REASONS**

***Introduction***

1. On the 28<sup>th</sup> March, 2018, I granted permission to the Claimant to re-amend his Statement of Case pursuant to Part 20.1 of the *Civil Proceedings Rules 1998 (CPR)* as amended by legal notice #126/11.
2. My reasons for so doing are set out below.

## ***Facts***

3. On the 23<sup>rd</sup> September, 2016, the Claimant instituted proceedings against the Defendants, seeking damages for libel as well as an injunction restraining the Defendants from publishing the same or similar words defamatory of the Claimant.
4. The Claimant was initially successful in effecting service only on the first Defendant, on whose behalf an appearance was filed on the 4<sup>th</sup> November, 2016 and a Defence on the 14<sup>th</sup> November, 2016.
5. The Claimant, unable to effect personal service on the second Defendant obtained the Court's permission to effect service by way of advertisements in daily newspapers of general circulation in Trinidad and Tobago.
6. Following the Claimant's compliance with the Court's direction for service by advertisement, the Defendant filed an amended defence on 22<sup>nd</sup> February, 2017, to include the defence of the second-named Defendant. The Claimant also amended his Claim Form and Statement of Case.
7. The first Case Management Conference was heard on 8<sup>th</sup> March, 2018. I gave permission to the Defendants to re-amend their defence and adjourned the first Case Management Conference to the 17<sup>th</sup> May, 2017. The Re-Amended defence was filed on the 3<sup>rd</sup> April, 2017 and served on the 13<sup>th</sup> April, 2017.
8. The hearing on the 17<sup>th</sup> May, 2017 was adjourned to the 14<sup>th</sup> June, 2017 at the joint request of the Attorneys-at-law, who represented that the parties were having discussions. On this occasion I did not adjourn the first Case Management Conference. Accordingly, the first Case Management Conference ended on the 17<sup>th</sup> May, 2017. <sup>1</sup>

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<sup>1</sup> See Estate Management and Business Development Co. Ltd v Saiscon Ltd. Civ App. 104 of 2016

9. Following the filing of the Re-Amended Defence on the 3<sup>rd</sup> April, 2017, Ms. Nanan despatched a “without prejudice” letter in answer to a letter which had been sent by Attorney-at-law for the Defendants to the Claimant.
10. Correspondence continued to flow between the parties in June, 2017. When this matter came up for Case Management on the 14<sup>th</sup> June, 2017, parties reported to the Court that there was no settlement.
11. On the 14<sup>th</sup> June, 2017, I granted permission to the Claimant to file and serve a Reply. I also gave pre-trial directions and adjourned the matter to the 6<sup>th</sup> December, 2017 for pre-trial review.
12. On the 7<sup>th</sup> July, 2017, learned Attorney-at-law for the Claimant filed a Reply which purported to provide, strict proof of his qualifications and of publication of the defamatory material by a WhatsApp post. At paragraph 20 of the Re-Amended Defence the Defendant put the Claimant to strict proof that the defamatory remarks had been distributed via a group chat on WhatsApp.
13. Following the filing of the Claimant’s Reply, learned Attorneys-at-Law for the Defendants began their attack against the contents of the Reply by their letter of the 12<sup>th</sup> July, 2017. Ms. Nanan responded to this letter, by hers of the 19<sup>th</sup> July, 2017 in order to indicate that she expected to be out of the jurisdiction and would respond upon her return.
14. In response, learned Attorney-at-law for the Defendants filed a Notice of Application on 10<sup>th</sup> August, 2017, seeking an order to strike portions of the Reply.
15. Apparently, conceding that the paragraphs should be struck, learned Attorney-at-law for the Claimant adopted a different strategy and applied by Notice of Application dated 31<sup>st</sup> October 2017 to have the Statement of Case re-amended so as to include allegations as to the qualifications of the Claimant and to annex a copy of a WhatsApp post.

## ***Law and Discussion***

16. Part 20.1 **CPR** as amended by Legal notice #126 of 2011, sets out the occasions upon which a statement of case may be amended. Part 20.1 is set out below:-

*“Part 20.1 (1) A statement of case may be changed at any time prior to a case management conference without the court’s permission.*

*(2) The court may give permission to change a statement of case at a case management conference.*

*(3) The court shall not give permission to change a statement of case after the first case management conference, unless it is satisfied that—*

*(a) there is a good explanation for the change not having been made prior to that case management conference; and*

*(b) the application to make the change was made promptly.*

*(3A) In considering whether to give permission, the court shall have regard to—*

*(a) the interests of the administration of justice;*

*(b) whether the change has become necessary because of a failure of the party or his attorney;*

*(c) whether the change is factually inconsistent with what is already certified to be the truth;*

*(d) whether the change is necessary because of some circumstance which became known after the date of the first case management conference;*

*(e) whether the trial date or any likely trial date can still be met if permission is given; and*

*(f) whether any prejudice may be caused to the parties if permission is given or refused.*

*(4) A statement of case may not be changed without permission under this rule if the change is one to which rule 19.2 (change of parties) applies.*

*(5) Any amended statement of case must be filed promptly at the court office.*

*(6) Where a statement of case is amended, the amendments must be verified by a certificate of truth unless the court orders otherwise.”*

17. Learned Attorney-at-law for the Claimant relied on the foregoing rule in support of her contention that there had been a change in circumstances following the first Case Management conference, that the change in circumstances gave rise to the need for a Re-Amendment to her Statement of Case and that she satisfied all the criteria set out Part 20. 1 as amended.

### ***End of the First CMC***

18. The first question which I was required to consider was whether the change of circumstances had occurred after the first case management conference, so as to entitle the Claimant to avail himself of Part 20.1 ***CPR***
19. In determination this issue, I was guided by the authority ***Estate Management and Business Development Company Ltd v Saiscon Limited***<sup>2</sup> where Justice of Appeal Jamadar addressed the question of paragraphs 36 and 37. The learned Justice of Appeal decreed that the first case management conference is presumed to have ended of the close of the first hearing specified for that purpose. However, Justice of Appeal Jamadar identified a single exception,

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<sup>2</sup> Civ. App P.104 of 2016

which occurs, when the **CPR** Judge specifically states, orders or directs that the first case management conference be adjourned to a fixed date, time and place.<sup>3</sup>

20. In the proceedings before me, the first Case Management Conference had been heard on the 8<sup>th</sup> of March, 2017. On this occasion, the first Case Management Conference was adjourned to the 17<sup>th</sup> May, 2017. There was no further adjournment of the first Case Management Conference. Accordingly, I disagreed with learned Attorney-at-law for the Defendant that the first case management conference ended on the 14<sup>th</sup> June, 2017, when pre-trial directions were given, together with permission to the Claimant to file and serve a Reply. The 14<sup>th</sup> June, 2017 would have been a Case Management Conference, when the Court would have actively managed the progress of the claim by granting permissions to file a Reply. See ***Estate Management*** per Jamadar JA. That date would not however have been a continuation of the first Case Management Conference, since the Court did not adjourn same on 17<sup>th</sup> May, 2017
21. Ms. Nanan, for the Claimant contended that the change in circumstances occurred when the Defendant's filed their application to strike her Reply on the 10<sup>th</sup> August, 2017, long after the end of the first Case Management Conference.
22. In order to satisfy the requirements of the amended Part 20.1**CPR**, the Claimant was required, first to surmount the threshold requirement by providing a good explanation for the failing to seek the change prior to the first case management conference and by satisfying the Court that he acted promptly. See ***Cristal Roberts v. Dr. Samantha Bhagan and Medcorp*** CA No. P263 of 2014.

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<sup>3</sup> See ***Estate Management Saiscon*** (ibid) at paragraph 6

### Good Explanation

23. I considered whether the claimant had furnished the Court with a good explanation. In so doing, I was guided by the words on Mendonça JA in *Rawti Roopnarine v. Harripersad Kissoo and Others*<sup>4</sup>

*“An explanation therefore that connotes real or substantial fault*

*.....cannot amount to a good explanation for the breach. On the other hand a good explanation does not mean a complete absence of fault”*

24. It was my view that learned Attorney-at-law for the Claimant had presented a good explanation for her failure to seek an amendment at or before the first case management conference.
25. It was Ms. Nanan’s case that she only became aware of the need strictly to prove qualifications of her client and the dissemination of the offending material by a Whats app post, when served with the Re-Amended Defence on the 13<sup>th</sup> of April, 2017. Even then, Ms. Nanan saw no need for the amendment, but attempted to place her client’s case in a Reply.
26. The change of circumstances and the Claimant’s need to re-amend became apparent when the Defendants applied, by their Notice of Application of the 10<sup>th</sup> August, 2017, to strike the Reply. Ms. Nanan’s response was to avoid resisting the application to strike and to seek a re-amendment.
27. I employed the test as propounded by Mendonça JA in *Rawti Roopnarine*<sup>5</sup>. In my view, there was no fault on the part of the Claimant or his attorneys. The requirement of strict proof

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<sup>4</sup> Rawti Roopnarine v Harripersad Kissoo Civ App 52 of 2012

<sup>5</sup> Rawti Roopnarine v Harripersad Kissoo Civ App 52 of 2012

came to the attention of the Claimant's attorney on the 13<sup>th</sup> April, 2017, by way of the Re-amended Defence, before the end of the first case management regime. However, Attorney-at-law became aware of the attack on her Reply long after the filing of the Re-Amended Defence, and long after the first case management conference had ended.

**Promptitude**

28. I turned to consider the issue of promptitude. I agreed with learned Attorney-at-law for the Defendants, in so far as he submitted that the Court should consider the 31<sup>st</sup> October, 2017, the date of filing of the Notice of Application to re-amend and thereafter look backwards to identify the earliest possible date that the application could have been filed.<sup>6</sup>
29. The earliest possible date on which the Claimant could have applied for an amendment was the 13<sup>th</sup> April, 2017 being the date on which the Defendants filed the Re-Amended Defence requiring strict proof of the Claimants qualifications as well as strict proof of publication by a WhatsApp Group Chat.
30. The Claimant did not file at this time, since Ms. Nanan, exercising her discretion as Attorney-at-law, decided to meet the request for strict proof by filing a Reply. Accordingly, Ms. Nanan sought and obtained the Court's permission on the 14<sup>th</sup> June, 2017 to file and serve a Reply on or before the 7<sup>th</sup> July, 2017.
31. It was only on 12<sup>th</sup> of July, 2017 when Ms. Nanan received the letter of attorney-at-law for the Defendants, the she would have been aware that there were objections to the content of the Reply.
32. Ms. Nanan responded by letter of the 19<sup>th</sup> July, 2017 in order to indicate that she would be leaving the jurisdiction and would respond upon her return in September, 2017. It was clear

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<sup>6</sup> See Paragraph 12 Written Submissions for the Defendants, filed on the 27<sup>th</sup> November, 2017



that, by the time of Ms. Nanan's letter, the long court vacation was imminent and it was understandable that Ms. Nanan would expect that she could proceed on her vacation without any fear of development against her client.

33. There is no indication that the application came to Ms. Nanan's attention before the 5<sup>th</sup> September 2017, when she wrote to the court and to learned Attorney-at-law for the Defendants, in order to indicate that she was in the process of preparing an application to Re-Amend her amended Claim Form and Statement of Case.
34. The preparation of the Notice of Application and the supporting affidavit took approximately one and a half months. Ms. Nanan has not accounted for this period in her affidavit. In my view however, this was not excessively long having regard to the work which was required prepare the notice of application and the affidavit.
35. Accordingly, it was my view that the Claimant had satisfied the threshold requirement of promptitude.

***Part 20.1 (3A) CPR Criteria***

36. I proceeded to consider the criteria set out at Part 20.1 ***CPR***. Each criteria is set out in turn below.

*The interests of the administration of justice*

37. It was my view that the application to re-amend had no impact on the interest of administration of justice.

*Whether the change has become necessary because of the failure of the party or his attorney*

38. The change was not made necessary by the failure of the claimant or his attorney. On the contrary, it was the late re-amendment of the Defence and the fault of Attorney-at-law for

the Defendants, which placed the Claimant well beyond the protection of the first case management conference.

*Whether the change is factually inconsistent with what is already certified to be the truth*

39. The requested change is consistent with material which had been certified as true in the original and Amended Claim Form and Statement of Case. It seeks to include the qualifications of the Claimant, as well as to include a copy of the screenshot, reference to which had already been made in the amended Statement of Case.

*Whether the change became necessary because of some circumstance which became known after the date of the first Case Management Conference*

40. The change became necessary because of circumstances, which occurred after the first case management conference, that is to say that having put the Claimant to strict proof, the Defendants were seeking to strike the Reply, where the requested proof was pleaded. The Defendants' resistance to the Reply only became known on the 12<sup>th</sup> July, 2017, almost one month after the end of the first case management conference, which had been adjourned from 8<sup>th</sup> March to 17<sup>th</sup> May, 2017.

*Whether the trial date or any likely trial date can still be met if permission is given*

41. The trial date has not been set and will in no way be affected. Pre-trial directions had been given on the 14<sup>th</sup> June, 2017, compliance with the last direction was required by the 31<sup>st</sup> December, 2017. With no application to re-amend, the Court's Schedule would have placed a trial in 2019. The date can still be kept.

*Whether any prejudice may be caused to the parties if permission is given or refused*

42. It was my view that no prejudice would have accrued to the Defendants by the amendment. On the other hand, great prejudice would accrue to the Claimant, should he be prohibited from making the re-amendment. Matters, to which they have been put to strict proof, would be left unpleaded and accordingly impossible of proof.
43. Accordingly it was my view that the Claimant satisfied the requirements of Part 20.1, as amended and I granted to the Claimant permission to Re-Amend the Amended Claim Form and Statement of Case.

Dated this 23<sup>rd</sup> day of May, 2018.

M. Dean-Armorer  
Judge