

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**CV 2013-04899**

**BETWEEN**

**CLEVELAND GEORGE**

**Claimant**

**AND**

**BRENT FORD**

**SELBY WILSON**

**F E´ LOPEZ COLLYMORE**

**(As trustees of the pension fund plan made  
supplemental to a trust deed dated 5<sup>th</sup> day of May, 1987)**

**First Defendants**

**AND**

**GUARDIAN LIFE OF THE CARIBBEAN LIMITED**

**Second Defendant**

**BEFORE THE HONOURABLE MADAM JUSTICE JONES**

**Appearances:**

**The Claimant appearing in person and unrepresented.**

**Mr. R. Martineau S.C., and Mr. R. Nanga instructed by Ms. M. Ferdinand for  
the First Defendants.**

**Mr. J. Walker instructed by Ms. C. Gopie for the Second Defendant.**

**Reasons**

1. The claimant, Cleveland George, is unrepresented. By an application filed on 7 November 2014 he sought to re-amend his statement of case filed on 24 March 2014. The amendment sought is extensive. By it the claimant seeks to place before the court: 50 new paragraphs 26 of which contain legal submissions only; 12 new reliefs

in the form of declarations and 14 documents not originally annexed to his amended statement of case.

2. Insofar as the proposed amendments seek to adduce additional information not already contained in his amended statement of case relevant to the issues already before the court I am satisfied that this information either:

- (i) is unnecessary in that it does not add anything to the issues for determination or repeats information already before the court;
- (ii) merely recites the contents of statutes and cases; or
- (iii) comprises evidence.

3. Insofar as the proposed amendments contain legal submissions I am satisfied that such submissions ought not to form a part of the statement of case. Insofar as the proposed amendments contain facts not relevant to the existing claim and new reliefs it is too late for the claimant to seek to adduce a new cause of action particularly a cause of action which for the first time makes specific allegations of fraud.

4. Insofar as the proposed amendments seek to place documents not already contained in the amended statement of case before the court these documents are either irrelevant to the issues for determination; already before the court; comprise cases and authorities which if relevant ought to be placed before the court by way of legal submissions and other documents which are impermissibly defaced and marked. In any event if relevant these documents could have been placed before the court by way of evidence via the discovery process.

5. In addition the proposed re-amendment is clearly prolix and offends against Part 26.2(1)(d) of the Civil Proceedings Rules 1998 as amended (“the CPR”).

### **The chronological history of these proceedings**

6. The action was filed on 28 November 2013 by way of a fixed date claim. On that date the claimant was represented by three attorneys including senior counsel.

7. Thereafter in accordance with the docket rules the matter was randomly assigned to a judge and the first hearing scheduled for 14 January 2014. Subsequently, in accordance with the said rules, the matter was re-assigned to me and the 24<sup>th</sup> March 2014 was fixed for the date of the first hearing. On that date the claimant filed an amended claim form and statement of case.

8. Despite the fact that there had just been filed an amended statement of case after considering the nature of the case, the pleadings already filed and after discussion with attorneys representing the parties it was clear to me that the matter could not be settled or compromised in any way and that the action needed to proceed to trial. Subject to the filing by the defendants of their amended defences, the only other factor to be resolved before giving directions was whether there were any disputes of fact for my determination or whether the issues were merely issues of law. The answer to this question would have determined the mode of trial.

9. On that date the fixed date claim was adjourned to 4 June 2014 on the hearing of a case management conference for the amended defences to be filed and for attorneys in the interim to determine whether there were any disputes of fact

necessitating the hearing of evidence. During the period of adjournment both defendants filed their amended defences.

10. On the hearing of the first case management conference on 4 June 2014 attorney on record for the claimant advised that the claimant no longer wished them to appear for him and that in the circumstances he felt it not prudent to consider the communication from the other side with respect to the agreed facts. A new attorney appeared for the claimant on that date, sought and was granted leave to appear amicus for the claimant. The matter was then transferred to Port-of-Spain and adjourned to 1 July 2014 for the purpose once again of determining whether there were any issues of fact in dispute and for directions.

11. On 1 July the claimant indicated that he had parted ways with his new attorney and wished an opportunity to retain other attorneys. On that date as well the claimant for the first time raised the question of his filing a reply. In response I advised the claimant that he ought first of all to see whether the defendants were willing to consent to his filing a reply, and if not, he would need to make an application to the court in this regard. The fixed date claim was then adjourned to 23<sup>rd</sup> July 2014 at 9am for another case management conference matter to allow the claimant to obtain representation, get his house in order and for directions as to the mode of trial to be given.

12. To date no reply has been filed by the claimant nor has leave been sought for filing same. By a notice dated and filed 3 July 2014 the claimant advised that he now represented himself.

13. On 23 July 2014 the claimant was absent when the matter was first called. I was advised that he was in the precincts of the court filing documents in the registry. The claimant was summoned to the hearing and subsequently appeared. He was not represented. He advised that he intended to proceed with the matter and that he had been attempting to file an amended claim form and statement of case.

14. After satisfying myself that these were not simple or formal amendments but rather amendments which, even if they had been made before the conclusion of the first case management conference, were amendments which would be subject to legitimate objection, and bearing in mind the fact that the claimant was unrepresented, I then advised him that in the circumstances he needed to make an application for leave to amend; that I will give him time to do so but that if he did not meet that deadline it was hardly likely that I would re-open the time for doing so. I also advised the claimant that if no application for leave to amend was made by him we would be proceeding with the action. In those circumstances I ordered that any applications to amend the claim form and statement of case be filed on or before 29 August 2014 and adjourned the fixed date claim to 17 September 2014 on the hearing of another case management conference.

15. No application was filed by the claimant by 29 August 2014. On the hearing fixed for 17 September the claimant did not appear rather a telephone call was received by my judicial support officer (“JSO”) from the claimant indicating that he was unwell and was on his way to the doctor. Accordingly I advised the defendants of the position and without making any further orders adjourned the action to 7 October 2014 at 9.30 am for another case management conference. I subsequently received a

medical report with respect to the claimant in which the doctor advised that he complained of extreme fatigue and pains involving his neck and back and that there was evidence of muscle spasm in his back that could be as a result of an injury or unusual stress. No period of time for recovery was given in the report.

16. On 7 October 2014 the matter was called at 9:36 am. The claimant did not appear but rather a telephone call was received by my JSO indicating that he was still in Diego Martin and would be 15 minutes late. In the circumstances after hearing the defendants I came to the conclusion that it made no sense delaying the directions for the trial awaiting some agreement on the facts. In the circumstances I gave directions for the hearing of the action and fixed a trial date for 19 January 2015.

### **My determinations**

#### **(i) The need for permission to amend**

17. In coming to the decision of 23 July 2014 that the claimant would have to make an application for permission to re-amend his statement of case I took into consideration:

- (i) the nature of the amendments;
- (ii) the fact that the claimant was attempting to file the amendments during the period scheduled for the hearing of a case management conference. In this regard I was satisfied while Part 20.1(1) provided that permission was not required prior to a case management conference the claimant was attempting to file the amendments during the hearing of the

case management conference fixed for 23 July at 9am. In the circumstances in accordance with Part 20.1(2) he was required to obtain permission;

- (iii) the stage we had arrived at in the action. All the issues had been determined since 24 March there was no further case management to be conducted except to determine the mode of trial and that since 4 June all that was outstanding was the claimant's input on the question of whether there was need for oral evidence;
- (iv) the fact that the action had been adjourned and directions delayed since that time to accommodate the claimant; and
- (v) the overriding objective. In particular the requirement that I deal justly with the case. To my mind this included the requirement that I consider the positions of all the parties before me and allot to the case an appropriate share of the resources of the court bearing in mind the other cases requiring my attention. Despite the fact that, in my opinion, the first case management conference had been concluded and the amendments sought were prolix and to a large extent irrelevant my perusal of the proposed amendments were superficial. I felt that the claimant was entitled to be heard on both points and, particularly since he was not represented, prepare his arguments. Further given the nature and extent of the proposed amendments the defendants were entitled to an opportunity to consider same. I also took into consideration

the fact that the matter had been scheduled for a 15 minute case management conference, time had already been spent awaiting the claimant, there were other matters listed for hearing and that attorneys for the defendants themselves most likely would have had to attend to other matters.

**(ii) Refusing the application for permission**

18. The application for leave to re-amend the statement of case was filed by the claimant on 7 November 2014. In the circumstances I am satisfied that the application was filed after the first case management conference, after the time fixed by me for making the application and after the action was set down for trial. Accordingly Part 20.1(3) of the CPR applied. In the circumstances the claimant was required to first satisfy me that (a) there is a good explanation for the change not having been made prior to the first case management conference and (b) the change was made promptly. In my opinion the claimant did not meet these threshold requirements.

19. By his application the claimant relied on the following grounds:

1. his former attorneys failed and or disregarded his expressed wishes to add these (proposed amendments), to the case originally, and thereafter to include them by timely amendments, in spite of his constant insistence upon them to so do.
2. He would be greatly prejudiced and the interest of justice not served if the defendants are not directed to answer the extremely



serious allegations (including fraud), perpetrated against the claimant, as fiduciaries to assets of which he is a beneficiary.

3. The defendants will not be prejudiced by allowing the proposed amendments, as the claimant will still have the evidential onus of proving the claim and damages.

4. Nothing has transpired since the 16<sup>th</sup> September, the date of the affidavit in support, to further advance the case since he was ill on the 17<sup>th</sup> September; late for court due to car problems on the 7<sup>th</sup> October and contracted the Chikungunya virus soon afterwards.

20. The affidavit in support of the application does little to verify the grounds relied on by the claimant and in particular the threshold requirements of the Rules. Indeed it is the claimant's conclusions as to the status of the matter that forms the basis of the affidavit evidence. The status of the action is however a matter of record.

21. With respect to the threshold requirements the main ground presented is the fact that his former attorneys failed to heed his requests to make the proposed amendments. Except to annex copies of an email purportedly sent to attorneys however the claimant has provided no evidence to verify the first ground relied on by him.

22. While the email itself makes some vague references to attorneys' failure to accede to the Claimant's request that the claim be amended the claimant gives no evidence on oath to validate the contents of the email; identify the requested amendments or connect them in any way to the amendments now sought by him.

Neither does he place these requests in any time frame. If, for example, these requests made before the first amendment it would suggest that the requests were in fact considered but rejected as inappropriate by his attorneys.

23. In any event in my opinion, even if verified on oath, the failure of attorneys to accede to his requests to amend does not even closely approximate a good explanation. There may have been valid reasons for attorneys' refusal to do so. Indeed this is a very tempting inference to draw given the proposed amendments.

24. The grounds make reference to illness on the part of the claimant albeit in the context of the status of the action and his non appearances. The fact is that there is nothing in the affidavit that verifies any of these facts. That said a medical report was produced to me dated 17 September 2014 the contents of which have been referred to earlier.

25. With respect to promptness, even taking into consideration the claimant's lack of legal representation, it is clear that at least by 23 July 2014 the claimant not only knew that he needed to re-amend his statement of case but had already drafted and attempted to file the proposed re-amendments. All that was required therefore was for the claimant to file his application for permission to amend. He failed to do this within the time given by me for so doing. Against this background the excuses, of miscalculation of the nature of the task; impecuniosity; lack of competence; volume of the re-amendments and home environment, proffered by him for such failure at paragraph 5 of his affidavit in my opinion provide no valid reason for not doing so by

the 29<sup>th</sup> August. Neither, in my opinion, does his reference to the toll taken on his mental and physical health by going for days without any sleep.

26. In any event the application for leave was not filed until 7 November. The claimant has not treated with the period subsequent to the 29 August. In the circumstances I am satisfied that the claimant has not met the threshold requirements.

27. In my opinion, even if the claimant had satisfied the requirements of a good explanation and promptness, for the reasons adduced in paragraphs 2 to 5 above I would not have exercised my discretion to grant the changes sought. To do so, in my opinion, would not have been in the interests of the administration of justice and would clearly have necessitated the rescheduling of the trial date.

28. Further it is clear that the amendment sought to adduce information that was available to the claimant and known by him long before the institution of this action. Indeed the new facts sought to be placed before the court by the re-amendment are alleged to have occurred in 2004 and 2005. For this reason alone allowing the amendment would cause substantial prejudice to the defendants who would now be required to produce evidence at the trial to answer these allegations.

29. In these circumstances I refused the application by the claimant for permission to re-amend his statement of case.

Dated this 9<sup>th</sup> day of January 2015.

**Judith Jones**  
**Judge**