

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2015-01621

BETWEEN

JERMAINE RAYMER

Claimant

AND

LEX CARIBBEAN

Defendant

Before the Honourable Madam Justice Margaret Y Mohammed

Dated the 5th September, 2016

Appearances

The Claimant in person

Mr. Adrian Byrne Attorney at law for the Defendant

REASONS

1. On the 26th July 2016 I dismissed the Claimant's notice of application filed on the 29th June 2016 ("the application") where she applied to the Court for permission to amend the Claim Form and Statement of Case. The Defendant did not pursue its costs and I therefore ordered that no order as to costs. The grounds of the application were : the Claimant made errors on the Claim Form and Statement of Case filed on the 15th May 2015 and seeks to correct the errors made; the Claimant came into possession of some files that were left at a previous attorney at law's office who was out of the jurisdiction at the time the matter was filed; the change was

needed as the Claimant now has pertinent information that concerns the subject matter of the instant case; the change is needed as some of the relief filed were not under the common law; the Form used was a Claim Form 1 and some of the reliefs did not fall under the common law; no prejudice would be caused to the parties if permission is granted; no instructions have been given in the matter for trial and the Claimant has generally complied with all the orders and directions given by the Court. The affidavit in support of the application mirrored the grounds but ironically added that the application “*may be a bit misconceived*”.

2. At the hearing of the application the Claimant essentially repeated the grounds of the application and added that she was uncertain if the first case management conference (“CMC”) had ended since no directions for discovery were given. She was of the view that the prejudice would be greater to the Claimant if the amendment was not permitted. She accepted that she did not attach a proposed draft of the amendment but that instead she had filed an Amended Claim Form and Statement of Case on the 19th July 2016 without obtaining the Court’s permission.
3. The Defendant objected to permission being granted for four reasons namely: factually the application was filed after the second CMC and that being the case pleadings were closed so that Part 20.1 as amended did not apply. The affidavit in support did not provide any grounds for the Court exercising its discretion on the matters set out in Part 20.1 (3) (a) and (b) Civil Proceedings Rules (“CPR”). Even if the Court examined the amendments made in the Amended Claim Form and Amended Statement of Case filed on the 19th July 2016 none of the amendments concerned matters which arose after the first CMC.
4. In the substantive Claim the Claimant has made several allegations against the Defendant which is the attorney at law for the Trinidad and Tobago Mortgage Finance Company (TTMF) concerning a mortgage which the Claimant had with TTMF with respect to property situated in Morvant and another transaction concerning property in Tobago. She is seeking to obtain the following reliefs against it:

A. *A Breach of the Legal Profession Act 1986 Code of Ethics under the Third Schedule, Part A under General Guidelines No. 10, 11 and 12, under Section II*

No. 13 and 16, under Section III No. 21(1)(2), 22(1)(3), No. 23(1)(2) No. 24, No. 44(1) and Section VI No. (53).

- B. *An injunction reversing/voiding the agreement entered into between Trinidad and Tobago Mortgage Finance who are currently the clients of Lex Caribbean and a third party on the 16th March 2015 for sale of the property known as Corner Plover and John Street Morvant and the agreement prepared and witnessed by Defendant.*
- C. *Costs in the amount of **Two Million Trinidad and Tobago Dollars (\$2,000,000.00)** for breach of duty of care in the sale of the property known as 23# Burleigh Heights, Signal Hill Tobago by the Defendant.*
- D. *An order to cease from entering of any other agreement concerning property known as Corner Plover and John Street, Morvant by the Defendants and/or any representative or associates of the Defendant.*
- E. *Payment in the sum of **One Million Dollars (\$1,000,000.00)** for loss as of financial gains between 2007 and 2015 by the Defendant.*
- F. *Negligence on behalf of the Defendant.*
- G. *Collusion*
- H. *Payment in the sum of **FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00)** for Breach of Confidentiality by the Defendant.*
- I. *An injunction preventing Ms Sheena Soodeo, an Attorney-at-Law with the Defendant Mr Richard Wheeler, and Attorney-At-Law with the Defendant and their associates from interfering in the private business of Ms Jermaine Raymer and any business associated with the Claimant.*
- J. *An injunction preventing the Defendant from colluding with the Department of Settlements and Labour who we are currently before the court with a similar claim of discussing the private affairs of the Claimant and business associated with the Claimant.*
- K. *An injunction preventing the Defendant from contacting and liaising with the attorneys who represents the Claimant and other the Claimant business interest.*

L. An order to suspend the practicing certificates of both Ms Sheena Sookdeo, an Attorney at Law with Lex Caribbean and Mr Richard Wheeler, also an Attorney at Law with Lex Caribbean Tobago.

M. Damages for Defamation

N. Costs

O. Interest”

5. The Defendant’s Defence is that while TTMF is its client, it did not owe any duty to the Claimant in contract, tort or otherwise since it was not connected with or involved in the Claimant’s purchase of the property at Morvant. It also pleaded that it did not represent the Claimant in relation to the agreement for sale for the Tobago property but it acted for a third party which financed the Claimant’s purchase of the Tobago property through a mortgage and it denied that it advised the Claimant that there were no encumbrances under her name since even when it represented the Claimant regarding the Tobago property, it had no duty to advise her on to the registration of any judgments against her. It also asked for the claim to be struck out of for summary judgment to be granted in its favour.
6. In considering whether to grant permission to amend the Claim Form and Statement of Case the Court must be guided by the provision of **Part 20.1 CPR** as amended ¹. The relevant part of the rule states:

“ (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-

¹ By Legal Notice 126/11

- (a) The interest 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 that 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.”

7. To obtain permission the first hurdle the Claimant had to cross was the threshold provisions under Part 20.1 (3) (a) and (b) which are cumulative. In this jurisdiction the Court of Appeal has stated that a good explanation is not an infallible explanation² and that “*when considering the explanation for the breach it must not therefore be subject to such scrutiny so as to require a standard of perfection.*”³. The explanations provided by the Claimant for filing the application as set out in her affidavit were primarily that the Claimant came into possession of some files that were left at a previous attorney at law’s office who was out of the jurisdiction at the time the matter was filed; the change was needed as the Claimant now has pertinent information which concerns the subject matter of the instant case; and the change is needed as some of the relief in the claim were not under the common law.

8. In my opinion the explanations provided by the Claimant were vague and lacking any substance for them to constitute a good explanation. There was no explanation of when the Claimant came into possession of the files from the previous attorney’s office and what efforts she had made previous to the application for her to obtain the information.

² The AG v Miguel Regis Civ Appeal No. 79/2011

³ Civ Appeal 52/2012 In The Matter of the Partition Ordinance , Rawti a/c Rawti Roopnarine and anor. V Harripersad a/c Harripersad Kisso and ors³, Mendonca JA at para 33

More importantly there was no evidence of what was this pertinent information that was so material to the instant case which she now needed permission to plead. Further the Claimant did not state what were the relief which under the “common law” which she needed to now amend and the reasons why she did not know about this before. Therefore, I was of the opinion that the Claimant did not meet the first condition in the threshold which meant that the application failed.

9. In determining promptitude the Court was guided by the learning in **Rawti a/c Rawti Roopnarine and anor v Harripersad a/c Harripersad Kisso and ors**⁴ which stated that “*Whether an application is made promptly depends on the facts of each case.*”.
10. I was of the opinion that the application was not filed promptly due to the lack of supporting evidence. According to the court record, the application was filed one month after the hearing of the second CMC and indeed the order of the 23rd March 2016 was clear when it stated that the hearing of the second CMC was scheduled for the 9th June 2016. There was no information from the affidavit in support of the application for the Court to determine the promptness within which the application was filed since the Claimant failed to indicate when she received the files that were left at the previous attorney’s office who was out of the jurisdiction at the time the matter was filed and what efforts she had made previous to the application for her to obtain the information.
11. The Claimant having failed to meet the threshold requirements the application failed. However even if the Claimant had met the threshold requirements which I did not find, my position on the discretionary factors which are also cumulative did not assist the Claimant.
12. Firstly, in my opinion it was not in the interest of the administration of justice given the history of this matter which was instituted on the 15th May 2015 to grant permission to amend the Claim Form and Statement of Case. The first CMC was heard on the 27th October 2015 and by the 23rd October 2015 when the Reply was filed all the pleadings

⁴ Civ Appeal 52/2012 Mendonca JA at para 24 decision 22nd June 2012

were closed. At the adjourned hearing of the first CMC the Defendant indicated that it intended to make a formal application to strike out the Reply and based on directions given by the Court, on the 29th January 2016 the Defendant filed an application to strike out the Claimant's Reply. On the 23rd March 2016 the Court struck out all but five of the thirty two paragraphs of the Reply. In my opinion there was no evidence in the affidavit how granting the Claimant permission to amend the pleadings after the ruling to strike out the Reply and in particular after the hearing of the second CMC was in the interest of the administration of justice. In my opinion in the absence of such evidence it appeared to me that to permit the amendment would delay the matter from moving forward.

13. Secondly, the evidence for the Court to determine whether the change which the Claimant wished to place before the Court in the proposed amendment was factually consistent with the Claimant's original claim was limited at best since the Claimant did not exhibit a proposed draft of the amended Claim Form and Amended Statement of Case to the affidavit filed in support of the application and she did not state in the affidavit the nature of the changes. Even if I was minded to examine the amended Claim Form and amended Statement of Case which the Claimant filed without the Court's permission on the 19th July 2016, this did not assist the Claimant. In the proposed amendments the Claimant included new reliefs namely damages for breach of trust and or legal malpractice, damages for breach of contract, deceit misrepresentation and fraudulent misrepresentation. In the Amended Statement of Case she also sought to add new pleaded facts at paragraphs 9, 10, 11, 14, 19, 21, 23, 28 and 33.
14. Thirdly, the evidence to determine whether the change was necessary because of some circumstance which became known after the date of the first CMC was vague, lacking and did not assist the Court in assessing when the information which the Claimant is now seeking to place before the Court first, came to the Claimant's attention.
15. Fourthly, there were no trial date set at the time the application was made however if permission was granted it would have had the effect at re-opening the pleadings which were closed as at 23rd October 2015 and therefore I formed the view that any re-opening of the pleadings would ultimately delay the likely trial date.

16. Lastly, the Claimant was unable to provide any evidence how she would have been prejudiced if the proposed amendment was not allowed. She was unable to indicate the new material facts which she intended to plead in the proposed amendment, which if not permitted, would prejudice her claim going forward.

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Margaret Y Mohammed

Judge