**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

Claim No**. CV2015-01793**

BETWEEN

**WINSTON WILLIAMS**

Claimant

AND

**STACEY ROBERTS**

First Defendant

**SALISHA BOCUS**

Second Defendant

**MATTHEW BAIN**

Third Defendant

**ANDRE MORRISON**

Fourth Defendant

**ASHOON BOCUS**

Fifth Defendant

**PRAGMANIAH BRIDGELAL**
**(also called PAMELA BRIDGELAL)**

Sixth Defendant

BEFORE THE HONOURABLE MR. JUSTICE K. RAMCHARAN

**Appearances:**

For the Claimant: Ms Ria Bailey

For the Third and Fourth Defendant: Mr. Navindra Ramnanan

## REASONS FOR DECISION

1. Before the court is an application by the 4th Defendant to amend the Defence. It is common between both parties that the First Case Management Conference has

been completed and therefore, the 4th Defendant would have to satisfy the more stringent conditions set out in Part 20 Rules 3 and 3A of the Civil Proceedings Rules (As Amended). Those rules state as follows:

**"(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".**

2. The Claimant in the claim is seeking possession of a certain parcel of land of which he claims to be the owner. The Claim was originally brought against the first 3 Defendants but by various orders made by the judge previously docketed to the case, the 4th, 5th and 6th Defendants were added. In his original defence, the 4th Defendant were claiming that the portion of land which the 1st to 3rd Defendants were occupying did not form part of the parcel of land which the Claimant was entitled to. He further contended that if the Claimant did have a deed for that parcel of land, it was obtained by fraudulent means. Finally, the 4th Defendant alleges that if the Claimant does indeed have title to the parcel of land, then that title has been extinguished by the adverse possession of the 4th Defendant.

3. During the proceedings, it was ordered that a survey of the land be done by a joint expert to ascertain the boundaries of the land claimed by the Claimant. The report was completed in or around March 2017 and concluded that the parcel of land which was being occupied by the 1st – 3rd Defendants did fall part of the 11 acres which the Claimant had paper title to. In the circumstances, the first 2 defences of the 4th Defendant, that is to say that the 4th Defendant's predecessors in title had title to that portion of land, or that the title was obtained by fraud could no longer stand, and that the only possible defence was that of adverse possession.

4. At the next case management conference following receipt of the report, the 4th Defendant indicated that he would want to amend his Defence in light of the contents of the report and it was directed that the application be filed by the 28th July 2017. This was complied with.

5. At the hearing of the application, the Claimant objected to the application on the basis that there was no good explanation for the change not having been made before the First CMC. It was also argued that the amended claim was totally at odds with the original defence which was not only claiming that the 4th defendant was the true owner of the land but went so far as to allege fraud on the part of the Claimant. For his part, the 4th Defendant submitted that the change was brought about by the realization that they were in error as to the boundary of his land, and that the amendment to the defence was to "clean up" the defence and better particularize the defence of adverse possession.

6. The Rules with respect to amendments after the First CMC set out a 2 stage process. The first stage is the mandatory stage. The party wishing to amend must establish good reason for not amending at or before the 1st CMC and that the application was made promptly.

7. Considering first whether there was a good explanation, the Court of Appeal noted in in ***Rawti Roopnarine and Anor v Harripersad Kissoo and Ors***[1]: **"an explanation therefore that connotes real or substantial fault on the part of the person seeking relied cannot amount to a good explanation for the breach. On the other hand, a good explanation does not mean the complete absence of fault. It must at least render the breach excusable. As the Court of Appeal noted in Regis, supra, what is required is a good explanation, not an infallible one. When considering the explanation for the breach it must not be therefore be subjected to such scrutiny so as to require a standard of perfection".**

8. In light of the above, was there real or substantial fault on the part of the 4th Defendant? In one sense it could be argued that it was as it was the erroneous impression by the 4th Defendant that the parcel of land on which the 1st – 3rd Defendants occupied was part of the land owned by his predecessors, that there was a real and substantial default on the part of the 4th Defendant. However, the court must bear in mind that the determination of proper boundaries is a specialized field and it is not uncommon for persons to have an incorrect understanding of where the boundaries of their land truly are. It is only where an expert properly examines the land that a true determination is made. In the

[1] Civ App 52 of 2012

circumstances, the court was of the view that there was no real or substantial default on the part of the 4th Defendant and that there was a good explanation.

9. With respect to promptness, at the time of first handing down its decision, the court found that the application was not made promptly and therefore the application failed on that ground. Before the order could be made however, the 4th Defendant noted that in submissions, the Claimant, when asked, held the view that the application was made promptly. As the court was not yet functus, the decision was deferred to the following week for the court to review the audio recording to ascertain what was said by the Attorney for the Claimant.

10. On review, the Attorney for the Claimant did indeed address the question of promptness and did come down on the view that it was made promptly. That is not determinative though, the court itself must be satisfied that the application was made promptly. However, in considering the matter further, the following matters were considered which had not been fully considered previously.

11. Firstly, 4th Defendant did indicate to the court shortly after the hearing of the intention to amend the defence in light of the contents of the expert report. At the first CMC after the completion of the report, there was an indication by the parties that a further letter may have had to have been sent to the expert, so that it would not have been practical to make such an indication until the clarification was

received from the expert. The indication was made at the 2nd hearing of the CMC after the report, and while there was nothing in law preventing the 4th Defendant from filing the application to amend before the hearing, the action of the 4th Defendant does show an attempt to act with promptitude.

12. Secondly, the application was filed in accordance with the directions of the court. This in of itself is not determinative of the question of promptness, as it is really nothing more than a direction given by the court, and not an indication of what would be considered prompt. However, in the instant case, in light of the chronology of events, it was felt that compliance with the direction went towards establishing promptness.

13. Thirdly, while the court itself must be satisfied that the application was made promptly, the fact that the party opposing considers the application to have been made promptly must be a relevant consideration. When all these factors are considered it was felt that the application was made promptly.

14. The threshold having been met, the 4th Defendant submitted that the granting of the application should be virtually automatic. This cannot be the case. If it were, there would be no reason for rule 3A. The court still has to examine the different criteria and come to a determination when considering all the matters together. It is not a rubberstamping exercise.

15. When one considers the 6 criteria enumerated in Rule 3A as well as the overriding objective, it is to be noted, that the facts which led to the amended, while in existence from before the 1st CMC, only came to the attention of the 4th Defendant after receipt of the expert report. As noted above, it would be unreasonable to expect a layperson (and this regard, this would include the Attorney at Law), to be able to ascertain the correct boundaries of the land without a survey report. In that regard, both criteria c and d seem to resolve in favour of the 4th Defendant.

16. The Claimant focused on the fact that the claim was in direct contradiction to what was already certified to by true by the 4th Defendant. However, it is to be noted that the claim for adverse possession was already pleaded. While that claim is inconsistent with the other 2 claims which are now being discontinued, it was there already, so it is not in direct contradiction with what has already been certified to be true, and it is always possible for a party to plead inconsistent cases. In that regard therefore, it was felt that this did not operate against the 4th Defendant.

17. With respect to trial dates, the matter is still at the CMC stage, therefore no question of keeping trial date arises.

18. With respect to prejudice, the court is of the view that the prejudice that would be suffered by either side whether the application were granted or not (the Claimant having to expend more to defend a counterclaim, the 4th Defendant not being able to fully pursue his defence) are fairly balanced.

19. Considering the question of the administration of justice, it was felt that it would be best to have all relevant issues before the court, and more importantly, remove irrelevant issues.

20. In the circumstances, the application to amend the defence was allowed with costs to be paid by the 4th Defendant to the Claimant in the sum of $5,000.00

**Dated the 23rd February 2018**

**Kevin Ramcharan**
**Judge**