

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CLAIM NO: CV2017-04682

BETWEEN

ENRICK AUSTIN

Claimant

AND

THE WATER AND SEWERAGE AUTHORITY

Defendant

Before the Honourable Madame Justice Quinlan-Williams

Appearances: Mr. Sheldon A. Mitchell instructed by Ms. Erica Cummings for the Claimant
Mr. Keston McQuilkin instructed by Ms. Sheena Ragoobar for the Defendant

Date of Delivery: 28th January 2021

DECISION

DOES THE CLAIMANT REQUIRE LEAVE TO FILE A CLAIM FORM AND STATEMENT OF CASE

1. An examination of the procedural history by the court is necessary to answer the question whether leave of the court is required for the claimant to file an amended claim form and statement of case.

2. The claim form and statement of case were filed on the 29th day of December 2017. Four defendants were named as parties. The defendants included the Water and Sewerage Authority (WASA). Appearances were entered on the diverse days including the 6th day of April 2018, 10th day of April 2018. WASA file a defence on the 1st day of May 2018.
3. The defendants having been served with the claim form and statement of case, defences having been filed and the period for filing defences having been elapsed, on the 1st day of March 2019, notice was given for the first case management conference (CMC) to be heard on the 5th day of April 2019. Before the date fixed for the first CMC, on the hearing of a notice of application filed on the 20th day of November 2018, the claim was dismissed against the first two named defendants. This was not fixed as a case management conference nor did the court convert the hearing to a case management conference. The only matter addressed was the notice of application.
4. On the 5th day of April 2019, the day scheduled for the first case management conference the court, after discussions and on an oral application, granted leave for the claim against the fourth defendant to be withdrawn, with no orders as to costs. No further issues were raised nor orders made regarding management of the claim against WASA, the only remaining defendant.
5. By then the parties had been before the court on a few occasions and the pleadings familiar to the court. The court formed the view that this was a suitable case for the parties to hold discussions before the usual processes of the court were engaged. Upon invitation, the parties agreed to enter into discussions with a view to settling the claim. The CMC was adjourned to the 26th day of July 2019. Since that time, the case has been adjourned at the request of both parties to facilitate

negotiations and settlement. The only orders made by the court were to grant adjournments to facilitate discussions as the parties appeared confident that the claim could be compromised. Apparently, the discussions have not accomplished the ultimate purpose.

6. On the 16th day of March 2020, the claimant filed an amended claim form and an amended statement of case. Thus far the defendant has refused to accept service of these documents. The court neither gave leave nor was leave sought to file these amended pleading. The defendant objects to these filings.
7. It is quite obvious this court opines, that it has taken no steps, made no orders or done anything to manage the claim between the claimant and WASA. In fact, there has never been a case management conference. The claim has been called and the parties have appeared, but there has not been a case management conference.
8. A case management conference occurs, when the court manages a claim and exercises any or all of its jurisdiction under CPR Part 26.1 (1) with a view to advancing the case through the normal or allowable processes of the court to take it to disposition. No power or jurisdiction was exercised with that intention or having that effect. Therefore, while not articulated in exactitude, the claim was still at the stage of the first case management conference. While it is unfortunate that so much time has elapsed and so little progress has been made in advancing this claim, time is not without more, a measure of case management within the meaning of the CPR Parts 25, 26 and 27.
9. Therefore, the question is what effect does this finding have on whether or not the claimant needs the leave of the court to file an amended claim form and statement of case?

10. Changes to statements of case can be made at anytime, without the court's permission, if such changes are made prior to a case management conference: CPR Part 20.1(1). Additionally, a court may give permission to change a statement of case at a case management conference: CPR Part 20.1(2). In the former case, the practical effect is to allow changes before the court is effectively engaged in what courts do. The practical effect of what has occurred here, is that the court has not been effectively engaged at all: See CV2011-03949 *National Insurance Board of Trinidad and Tobago v The Trinidad and Tobago National Petroleum Company Ltd* and Civ App No.104 of 2016 *Estate Management and Business Development Company Ltd*.

11. Therefore, this court does not have to consider any conditions precedent under the CPR Part 20.1(3) and (3A).

Disposition

12. The amended claim form and amended statement of case filed on the 16th day of March 2020 shall stand as filed.

13. The defendant shall pay the claimant's costs in the sum of \$2,700.00.

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Justice Avason Quinlan-Williams

JRC: Romela Ramberran