

THE REPUBLIC OF TRINIDAD AND TOBAGO

In the High Court of Justice

Claim No. CV2015-01091

CHANTAL RIGUAD

Claimant

AND

ANTHONY LAMBERT

Defendant

Appearances:

Claimant: Alexia Romero instructed by Shelly-Ann Daniel

Defendant: Yuri Saunders instructed by Andre Rudder

Before The Honorable Mr. Justice Devindra Rampersad

Dated the 13th day of April 2016

**Ruling On the Application to
Strike Out the Re-Amended Claim Form and Statement of Case**

Contents

Introduction.....	2
Procedural Background	2
The Application dated 12 January 2016	3
Analysis and Conclusion	6
Order	9

Introduction

1. On 13 April 2016 the court gave its oral ruling granting the defendant’s application to have the re-amended statement of case and claim form filed on the ... struck out. The basis of the striking out was that the re-amended statement of case was filed after the commencement of the first CMC without the court’s permission as required by the CPR.
2. The court now gives full reasons for its decision.

Procedural Background

3. The matter was initiated on 08 April 2015 with the filing of the claimant’s statement of case and claim form. The matter is one founded on breach of contract in relation to an agreement for the sale of an apartment. A defence and counterclaim was filed on 14 July 2015. It is the defendant’s position that the claimant is in breach of contract and committed waste while in possession of the apartment in question.
4. The first case management conference (CMC) was held on 13 October 2015. The defendant was not present. Mr. Saunders indicated that the defendant was out of the jurisdiction on a course of study. The court indicated to Mr. Saunders that the defendant’s presence was required as there were certain aspects of the pleadings that concerned the court. Ms. Romero indicated that she was desirous of seeking the court’s leave to amend the claim form and statement of claim as well as file a reply in light of the defence which was filed on 14 July 2015. As Ms. Romero did not have a draft amendment or reply for the court’s consideration the court

adjourned the first CMC to facilitate the attendance of the defendant and to allow the parties to consider their pleadings.

5. Thereafter the claimant went ahead to file an amended claim form and statement of case on 24 November 2015. The first CMC resumed on 25 November 2015. At that hearing the court inquired of Ms. Romero whether or not her claimant did not have independent legal advice was an issue in this matter. Ms. Romero indicated that the amended statement of case did not address the issue and that she was of the view that the case as pleaded for the claimant was clear. No objection having been raised by attorney at law for the defendant, permission was granted to the defendant to file an amended defence by 04 December 2015 in light of the claimant's amendments made on 24 November and the first CMC was adjourned.
6. The amended defence and counterclaim was filed on 04 December 2015. On that date the claimant, without the leave of the court, also filed a re-amended claim form and statement of case. Thereafter, on 12 January 2016, the defendant filed its application, pursuant to Part 26.2 of the CPR, to have the re-amended statement of case struck out.

The Application dated 12 January 2016

7. The defendant submitted that Part 20.1 of the CPR suggests that amendments to a statement of case during the pendency of the CMC must be done with the court's permission. As such, the defendant averred that the claimant did not comply with Part 20.1 of the CPR, the claimant not having received the court's permission to file the re-amended statement of case. The application was supported by the affidavit of Mr. Andre Rudder who deposed that the claimant was notified of the need to get the court's permission by letter dated 07 December 2015 and failed so to do.
8. Rule 26.2 (b) of the CPR permits the court to strike out a statement of case if it appears to the court that there has been a failure to comply with a rule, practice direction or with an order or direction by the court in the proceedings. Part 20.1 of the CPR provides:

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.

.....

9. The defendant relied on a literal interpretation of the rules in addition to the case of **Paul Guerra v Delta Logistics Limited** CV2009-02074 which was determined 09 May 2011.¹ The defendants contended that the decision of Master Mohammed in that case supported the proposition that not only should permission be sought to amend a statement of case/defence at a CMC but said permission should be sought promptly. In that case Master Mohammed was required to determine an application to amend a defence which was filed a day before the fourth CMC. The application was refused by the Master after making reference to Jamadar JA in the case of **Trincan Oil Ltd v Keith Schnake** Civil Appeal No. 91 of 2009 on the importance of compliance with timelines established by the CPR. The Master was of the view that the application ought to have been made promptly and as such it was refused due to the delay of some four and a half months. In this matter there was no application made by the claimant and as such this case was of little assistance considering the facts for consideration before this court.
10. In opposition to the application Ms. Romero relied primarily on the case of **Hyacinth Seaton v Randy Glasgow Production Limited & Anor** CV2011-02492² in which Seepersad J made the following observations in relation to the first CMC upon granting leave to the claimant to serve an amended statement of case at a case management conference:

“13. It is well settled that the first case management conference does not necessarily come to an end at the conclusion of the matter on the first court appointed date. It depends on whether or not the court on the first court appointed date was able to deal with and dispose of matters referred to under Part 25.

¹ Before the Civil Proceedings (Amendment) Rules 2011 came into effect on 29 June 2011

² Which was intituled with the Court of Appeal court proceeding number **Randy Glasgow Production Limited & Anor v Hyacinth Seaton** CV2011-02492 Civil Appeal No. P113 of 2013. It is worth noting that the appeal was dismissed in circumstances where there was no discussion on the merits of the judge’s ruling.

Therefore it is possible to have the first case management conference extended over several court appointed dates.

14. At paragraph 19 in the decision of *Premnath Bowlah v The Attorney General* (H.C. 4924 of 2008) Rampersad J stated as follows:

‘To my mind the first case management conference is an event, a fact, not a name. The ritualistic administrative function of giving a date does not impose the judicial connotations of case management until there has been an actual exposition of the matters intended to be dealt with as referred to at Part 25. If those matters are not dealt with on the 1st court appointed date I see it necessary to consider at what point a judge has dealt with the matters. It is important to note that Part 25.1 is not a check list but a guide to the matters which a court ought to consider.’”

11. After making those observations the court in that case *went on to grant the leave sought* on the basis of the first CMC not having yet ended as it was simply adjourned. The learned judge said:

“23. This court is of the view that when the Claimant was given leave to amend her Statement of Case on the 2nd of May, 2013, the first case management conference had still not come to an end. The authorities show that the first case management conference can be adjourned several times for many reasons, for example, to give the parties an opportunity to explore the possibility of settlement. A key feature that indicates that the first case management conference has ended is when the court makes the usual orders to file list of documents, witness statements, etc. To date, none of these orders have been made. What the court has done however was adjourn the first case management conference to deal with applications to enter default judgment, set aside default judgment and to amend. To date the pleadings have not closed and the first case management conference has not ended.”

12. The judge went on however to opine:

“24. Inasmuch as the case management conference was not concluded within the meaning of the aforementioned authorities, it remained open to the Applicant pursuant to Rule 20.1 to amend the Statement of Case even without the Court’s permission. Beyond this, Rule 20.1 (2) empowered the Court to grant the application to amend at the Case Management Conference itself. The court being satisfied on the authorities that the words ‘prior to’ in that said Part 20.1 were to be read as meaning “prior to the conclusion of the first case management conference. The court was firmly of the view that the proposed amendment was necessary to ensure that all the relevant factors were before the court. Accordingly permission was granted to amend the statement of case.” [emphasis added]

13. Ms. Romero therefore submitted that the procedure to be adopted when amending a statement of case is subject to the conclusion of the first CMC and only if the first CMC has ended will the court be guided by Rule 20.1(3) and 20.1(3A). In submissions it was noted that, in this matter, the first CMC had not ended but was adjourned as at the filing of the re-amended statement of case. As such, it was submitted on behalf of the claimant that she was entitled to amend her statement of case without the court’s permission and without satisfying the threshold requirements under Rule 20.1(3) of the CPR as the amendment was made prior to the conclusion of the first CMC.

14. In submissions, the claimant went on to contend that the amendments were necessary to ensure that all the relevant factors were before the court and that the claimant met the considerations of rule 20.1(3A) and no prejudice would be caused to the parties as a result of the amendment. Regrettably, no basis for this contention was established on the evidence before the court. It was submitted that further to the last hearing, the claimant's attorney sought further and complete instructions and then came into possession of further information relative to the matter. This contention was not supported on the evidence nor did the claimant's attorney explain to the court in what circumstances the alleged further and complete instructions came after the filing of the claim form and statement of case. It was thus contended that the filing of the re-amended statement of case was necessary for disposing fairly of the matter and the court must therefore engage in a balancing exercise to determine whether it is in accordance with the overriding objective.
15. In response, the defendant submitted that the case of ***Randy Glasgow Productions Limited*** is not authority for the proposition that permission is not required by the litigant to amend their pleading during the CMC. It was noted that permission *had been granted* by Seepersad J in that case pursuant to Rule 20.1(2) of the CPR. The defendant thus suggested that the case is authority for the proposition that the first CMC does not end until trial directions under Part 25 have been given. Further, it was contended that his Lordship's finding that the CMC had not yet ended in that matter was his rationale for permitting the amendment without requiring the claimant to satisfy the strict requirements of Part 20.1(3). It was argued by attorney at law for the defendant in this manner:

“While it is unclear what his Lordship could have meant in his ruling by the phrase, ‘Inasmuch as the case management conference was not concluded within the meaning of the aforementioned authorities, it remained open to the Applicant pursuant to Rule 20.1 to amend the Statement of Case even without the Court’s permission.’, His Lordship’s dicta subsequently that, ‘Beyond this, Rule 20.1 (2) empowered the Court to grant the application to amend at the Case Management Conference itself.’, is sufficiently clear about a litigant having to seek the Court’s leave at a CMC to amend its pleadings under Part 20.1.”

Analysis and Conclusion

16. This court was of the respectful view that there can be no contention, and there was none, that the first CMC had not yet come to an end. The issue for determination, therefore, was whether or not permission was required for the amendment at the stage of the proceedings which had been reached.

17. As has been stated by the Privy Council, if the language of the rules admits of only one interpretation, it must be given that effect.³ A literal interpretation of part 20.1 suggests to this court that there are the following three circumstances to be considered in relation to amendments pursuant to Part 20.1 of the CPR:
- 17.1. Was the amendment sought to be made **before/prior to** the first CMC? If so, this court is of the respectful view that no permission is required pursuant to part 20.1 (1). Adopting a literal interpretation, “prior to” is exactly that and no more. The words of the rule do not go so far as to say “prior to the completion of the first CMC” so that to extend its meaning that far would go beyond the imposed boundary of the rule.
- 17.2. Was the amendment sought to be made **during** the course of the first CMC? If so, then permission **is** required and can be granted at a CMC pursuant to a purposive interpretation of part 20.1(2). However, if the application is made **at** the first CMC, the application for permission does not need to meet the requirements of parts 20.1 (3) and (3A). Consequently, the court has a fairly liberal rein to deal with any application for permission, constrained only by the exercise of its judicial discretion and the furtherance of the overriding objective.⁴
- 17.3. Was the amendment sought to be made **after** the first CMC? If so, then not only is permission required but the court must consider the factors raised in parts 20.1 (3) and (3A). In such an instance, the court has a more restrictive approach imposed upon it under these sub rules than under the preceding situation discussed.
18. In this case, the court was of the respectful view that the second of the situations set out above applied and, therefore, permission was required, without the imposed strictures of parts 20.1 (3) and (3A).
19. The ratio of the decision of Seepersad J in **Glasgow** is in accordance with the court’s approach since the case for consideration before his Lordship was one in which *permission was sought* at the first CMC.
20. In **Bowlah**, this court shared Seepersad J’s obiter suggestion in Glasgow that the words “prior to a case management conference” afforded the parties the luxury of amending the statement of case prior to the completion of the first CMC. In fact, this court said in **Bowlah**:

“Consequently, I do not feel that leave is required or that a change of circumstances is necessary to allow the amendment sought since the first case management conference has not been completed.”

³ See **The AG v Keron Matthews** [2011] UKPC 38 at para 20 per Lord Dyson; see also the case of **Charmaine Bernard v Ramesh Seebalack** [2010] UKPC 15

⁴ This was the position adopted by Rajkumar J in the case of **Tysa Company v Guardian General Insurance Company Limited** HC No.4349/2009 and subsequently upheld by the Court of Appeal in CA No. 116 of 2010

21. Since then, this court has reconsidered its position and has adopted the view that there is no reason why a literal construction of those words should not be applied in the manner set out above. In any event, this court is now of the respectful view that once the court is seized of the matter under the auspices of the first CMC, or any case management conference at all, it makes for the good management of the case and for the furtherance of the overriding objective that permission be sought from the court. Bearing in mind the fact that an amendment may very well impact on the other side's case i.e. whether they wish to pursue a defence or not, or may result in consequential amendments to the defence or other pleadings, such as ancillary claims filed prior to the first CMC, counterclaims against 3rd parties and other matters for consideration, this court can see the wisdom in ensuring that it controls the manner in which amendments are made once the parties are before it in case management conference mode.
22. As mentioned, the test for an amendment *at* the first CMC is not as onerous as the one after the conclusion of the first CMC but it still requires the court to consider the overriding objective at that point and the interests of the parties before it along with the reasons for the amendment being sought at that stage rather than earlier on. The court must, at that stage, consider the impact that any potential amendment would have on the obligations and deadlines in respect of the other parties to the action and therefore must balance the needs of all of the parties in a fair manner in accordance with the overriding objective.
23. The court is of the respectful view that it makes absolute good sense to construe the rule in this manner. Otherwise, there is the potential for a party to attend each adjourned hearing of the first CMC with a new version of their pleading rendering the court powerless to proceed without affording the other side an adjournment to consider whether, for example, a consequential amendment is required. This could not have been the intention of the rule or the rule makers and, to my mind, would be contrary to the court driven approach of the CPR. As pointed out by the claimant, the CMC is designed to treat with many aspects of the case which include identifying the issues and ensuring that no party gains an unfair advantage by reason of his/her failure to give full disclosure of all relevant facts prior to the trial or hearing of any application under rule 25.1. How can the court do this if, as the claimant suggests, a litigant can arbitrarily make amendments to the statement of case before the hearing of every instance of an adjourned first CMC? How can the court meaningfully achieve its goal and address its duty under part 25.1 if the goalposts keep changing?
24. There is no doubt that it is possible that after the court identifies issues at the first CMC which it considers relevant to the case at hand to meet the justice required by the parties, a party may want to consider the full effect of the court's comments and observations on the pleading as it stands. As such, the court can understand a subsequent application for permission to amend – an application which a court might be willing to consider to avoid the costs of re-litigating by means of a fresh action if the party decides to withdraw in order to correct his or her pleading or

even to ensure that all of the issues between the parties are properly dealt with on the pleadings. Any amendment at the first CMC stage, though, cannot be done, to my mind, once so identified by the court or even by a party of their own volition, without the court's permission to ensure fairness to all involved.

25. Therefore, to my mind, an application for permission would be required where a party is desirous of making an amendment after the commencement of the first CMC but before the first CMC has been concluded. In that instance, the court would be called upon to exercise its judicial discretion. In the exercise of its discretion, the court would no doubt find it prudent to consider the factors raised under parts 20.1 (3) and (3A) *without being bound* by those sub rules.
26. As a result, the court accepted the defendant's position and application that the amended claim form and statement of case ought not to have been re-amended without the court's permission.

Order

27. Consequently, the Re-Amended Statement of Case filed on the 4 December 2015 was struck out.
28. The Claimant was ordered to pay to the defendant the costs of the application to be assessed by the Court in default of agreement.

/s/ Devindra Rampersad

Devindra Rampersad
Judge

Assisted by Charlene Williams
Judicial Research Counsel
Attorney at Law