IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE, A.D. 2023

CONSOLIDATED CLAIMS:

CLAIM No. CV339 of 2023

BETWEEN:

[1] BLADES CONSTRUCTION LTD.
Claimant/Respondent

and

[1] THE COMMISSIONER OF LANDS (Talbert Brackett)
First Defendant/Applicant
[2] THE MINISTER OF NATURAL RESOURCES (Cordel Hyde)
Second Defendant//Applicant
[3] THE ATTORNEY GENERAL OF BELIZE
Third Defendant/Applicant

CLAIM No. CV340 of 2023

BETWEEN:

[1] C.A. TECHNOLOGIES LTD.
Claimant/Respondent

and

[1] THE COMMISSIONER OF LANDS (Talbert Brackett)
First Defendant/Applicant
[2] THE MINISTER OF NATURAL RESOURCES (Cordel Hyde)
Second Defendant//Applicant
[3] THE ATTORNEY GENERAL OF BELIZE
Third Defendant/Applicant

CLAIM No. CV349 of 2023

BETWEEN:

[1] VRK2 CONSTRUCTION LTD.
Claimant/Respondent

and

[1] THE COMMISSIONER OF LANDS (Talbert Brackett)
First Defendant/Applicant
[2] THE MINISTER OF NATURAL RESOURCES (Cordel Hyde)
Second Defendant//Applicant

[3] THE ATTORNEY GENERAL OF BELIZE

Third Defendant/Applicant

Appearances:

Mr. Orson J. Elrington for the Claimants/Respondents
Mrs. Magali Marin Young, SC and Ms. Kristy P. Lopez for the Defendants/Applicants

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2024: May 05;

October 01.

RULING

Pleadings – Civil Practice & Procedure – Fixed Date Claim Form – Claim for Prerogative Remedies, and Equitable/Private Law Remedies – No Application Made for Leave for Judicial Review Under CPR 56.6(3) – Time for Permission Expired – First Hearing Convened – Striking Out Application – Abuse of Process – Claimant Filed an Amendment Changing Fixed Date Claim Form to an Ordinary Claim Form – Abandonment of Prerogative Remedies but Relief for Damages Retained – No Permission of Court Sought to Change from Form 2 to Form 1.

[1] **ALEXANDER, J.**: Poorly drafted pleadings by the claimants are the cause for the two applications in the consolidated matters that are before this court. These claims were commenced by way of fixed date claim forms on 2nd June 2023 and, though related, are in respect of different properties, so were filed as separate claims.

[2] By their fixed date claim forms each titled as a "PART 56 Application For Declaration Against a Public body", the claimants sought declarations against the decisions of the first and second defendants and asked for certain prerogative reliefs and private law remedies. In response, the defendants applied to strike out the claims as an abuse of process (together "the first application"). The first application was filed on 12th July 2023.

[3] The first application stated as a main ground that the fixed date claims were replete with errors and improperly before the court. The claims were in part for prerogative remedies and in part for equitable/private law remedies. All parties filed submissions and in the claimants' reply-submissions filed on 10th December 2023, they opposed the strike-out

applications, stating that they sought the equitable and private law remedies of specific performance and, in the alternative, damages for the breach of contract of the defendants.

[4] Each of the three matters was initially listed before different judges for first hearings. The issue of consolidation was raised and was being pursued, so the first application was adjourned pending assignment of all three matters to a single judge. The approval for the matters to be placed before one judge was somewhat delayed but, eventually, all three matters were assigned to me.

[5] Several adjournments after the first hearing, the claimants filed an amendment of their pleadings. The fixed date claim forms were converted to ordinary claim forms. By the amendment, the original claims for prerogative remedies were abandoned as were the claims for specific performance and injunctive relief. The claimants only kept the claim for damages, which they had described in the original fixed date claim as “a declaration for damages for breach of contract” but did not correct in the amendment. This purported conversion formed the basis for the second application, which was made orally for leave to amend, if necessary, and came long after the first hearing was convened before different judges.

[6] When the hearing of the fixed date claims, not yet consolidated, came up before me on the 17th January 2024, the claimants’ counsel indicated that they had amended their substantive claims and an advanced copy was sent to the defendants. The amended claim forms were filed on the 16th January 2024. Their position was that permission, to make the change from one claim form to another and/or to abandon all reliefs save for damages, was not necessary. The first case management conference was not, as yet, convened by the court and the defendants had not filed their defences.

[7] Essentially, the amendment discontinued all original claims save for the declaration as to the claimants’ entitlement to damages for breach of contract. The court was required to now facilitate time for the filing of defences and/or replies before fixing a case management conference as well as time for updated/further skeleton arguments on the strike out application, if still necessary. Almost as an afterthought, and in response to

arguments advanced by the defendants' counsel, the oral application was belatedly made to the court, for permission to rectify the claimants' procedural missteps.

[8] I refuse the claimants' oral application for permission to amend their pleadings, which they have made to avoid a decision on the defendants' strike out application. The amendments were filed without the court's leave and without any application being made prior to their filings. These matters are before the court by way of first hearings and parties have appeared on more than one occasion for purposes of disposing of certain preliminary issues including the strike out application. The defendants are entitled to a decision on their strike out application in relation to which the claimants have not advanced any viable defence or answer.

[9] I also reject the claimants' position that, at this stage of the proceedings, they can disregard the court's power to dispose of this matter and simply amend their claims without first seeking permission.

[10] Further, in Belize, leave to file for a judicial review is a prerequisite under Rule 56.5(3) Supreme Court (Civil Procedure) Rules, 2005 ("CPR"). The claimants, who did not expressly claim for judicial review, filed their "PART 56 - Applications" without first asking for leave. I find the claimants' substantive applications were inaptly for the judicial review of the first and second defendants' decisions. As filed, the applications are a circumvention of the procedural process for obtaining a judicial review and are patently unsustainable. I find, also, that the claimants did not file their applications for judicial review in a timeous manner and/or within the obligatory three-month period as required under CPR 56.5(3). It is an egregious delay that was neither explained nor was it reasonable. In the circumstances, even if leave had been sought, it would have been refused.

[11] I, therefore, grant the application to strike out the claims as an abuse of process and order costs against the claimants.

[12] These claims were formally consolidated by order dated 5th May 2024. In the circumstances, I will below treat with the claims as singular, unless expressly stated

otherwise, albeit they relate to different properties. Any reference to the “claimant” or “claim” includes all claimants and all claims in the three matters.

Background

[13] The original claim filed on 2nd June 2023 sought declarations that the claimant is entitled to specific performance of a written contract for the sale and purchase of certain parcels of land. The claimant also sought orders for mandamuses, an injunction and, in the alternative, a declaration of entitlement to damages for breach of contract.

[14] The original claim was an odd mixture of an administrative claim and an ordinary claim, without observing the proper procedure for bringing either one of these individual claims. Given the reliefs sought in the original fixed date claim (i.e. administrative orders) and the form used to bring the claim (i.e. a Form 2), it was set down for a first hearing. The defendants filed affidavits in response to the claim and an application to strike it out.

[15] Mrs. Marin Young, counsel for the defendants, submitted that the original fixed date claim circumvented the procedure for seeking an administrative order from the court. She argued that the original claim is essentially a judicial review application that was brought without first seeking the leave of the court. Mrs. Marin Young also submitted that the original claim was filed some two years and six months **after** the first and second defendants’ decisions were made. It meant, therefore, that at the time of the filing of the original claim, the three-month period for seeking leave for judicial review under CPR 56.5(3) had long expired. And, in any event, the claimant did not seek any permission to file for judicial review.

Issues

[16] The court finds as issues for resolution in this matter the following:

i. Whether the original claim, as pleaded, should be struck out?
ii. Whether the amendment was properly filed and should be allowed?

Discussion

[17] I find it convenient to commence with the disposal of the strike-out application, as it is first in time before me.

Issue No. 1: Whether the Original Claim, as Pleaded, Should be Struck Out?

[18] Under CPR 26.3 (1) (b) & (c), the court is empowered to strike out a claim if it is an abuse of the process of the court, or it is likely to obstruct the just disposal of the proceedings or where it discloses no reasonable grounds for bringing or defending a claim.

[19] Mrs. Marin Young submitted that the original claim is an abuse of the process and should be struck out. In her submissions, she outlined several reasons for granting the defendants' strike-out application.

[20] First, Mrs. Marin Young stated that in the original claim, the claimant sought declarations, mandamuses and private law remedies. It was a judicial review application that artfully circumvented CPR 56 and the requirement to satisfy time limits. She relied on the case of **O'Reilly** v **Mackman**[1], which established that a claim under public law for a prerogative writ or declarations must be brought by way of judicial review and that proceedings by ordinary action for those reliefs amounted to an abuse of the court's process.

[21] An examination of the original fixed date claim form shows that it is titled as a "**PART 56 – Application For Declaration against a Public Body**" [Emphasis Original]. Further, at paragraph 5, the pleading is "**In the alternative a declaration that the Claimant is entitled to damages for breach of contract** equal to the difference between the present market value of the land and the contract price together with a refund of the contract price". [My Emphasis]. In my judgment, the claim labelled as a "**Part 56 – Application**" is, indeed, for an administrative order for which prior permission was neither sought nor obtained, or even considered necessary by the claimant. Moreover, there was an

[1] [1983] 2 A.C. 237.

extraordinary delay in making the judicial review application, which is likely why permission to file for judicial review was not pursued.

[22] The amendment (discussed further below) effectively abandoned this substantive application for a judicial review, which in any event, would not have progressed beyond the application stage. The original claim was filed some two years and six months after the defendants' decision. Thus, it exceeded the prescribed time limit in the rules to secure an order for leave to apply for judicial review. The original claim allowed the claimant to bypass the requirement for permission, before proceeding with the substantive claim. I agree with Mrs. Marin Young that the failure to bring the claims via judicial review amounts to an abuse of the court's process. Moreover, it is an abuse of process that I will not approve.

[23] In my view, the claimant was aware that it wanted an administrative order for judicial review since its claim was filed under CPR 56. It was aware that it would not get an order for leave for judicial review because of the egregious delay, so tailored its approach by making a claim for a strange mixture of reliefs, without seeking the necessary leave. To allow this is to give the claimant an unfair advantage in accessing the fast-track process of a first hearing without following the proper procedure for a judicial review.

[24] Mrs. Marin Young also submitted that the claimant's claim for "a declaration of damages" is unknown in law and misplaced. Further, the claim failed to particularise the breach of contract or the damages flowing from the alleged breach, while maintaining a right to have the court declare that the claimant is entitled to damages. Whatever the claimant's intentions, it is not for the court to plead its case. This court's role is to do justice between the parties drawing on their respective pleaded cases.

[25] In response, Mr. O.J. Elrington, counsel for the claimant, dismissed the arguments of Mrs. Marin Young. He maintained that by the amendment, the procedural errors are now rectified, and the claimant is entitled to proceed with its ordinary claim. He did not address the submissions that the claim has failed to particularise the breach or the damages that flowed from it. Instead, he littered his reply-submissions with numerous quotes taken from cases in this jurisdiction, and elsewhere, to justify his request for a dismissal of the strike-

out application. I will set out below two of these statements, which I find no disagreement with but, in my view, these are unable to rescue the claimant in the present proceedings. These are:

> [1] Arana J (as she then was) in **Dwayne Evelyn et al v The AG of Belize et al**.[2]
>
> … the initial approach of the courts should not be to Strike Out the Statement of Case …
>
> The court can also impose the sanction of an adverse Costs Order against the Claimants as an alternative to Striking Out.
>
> [2] Young J in **Bruce Cho** v **Salvio Paquil**.[3]
>
> … to my mind striking out the claim at this stage of the proceedings (pre-trial) is pre-emptive, premature and plainly wrong. It denies the possibility of an application, pre-determines its failure and goes against the overriding objective…
>
> To accede to this application in fact militates against the overriding objective, as it cannot be an appropriate use of time or resources and would certainly obstruct the just disposal of these proceedings.

[26] I have set out in its entirety at paragraphs 34 to 37 below the amended claim. Whilst the cause of action is identified as a material breach of contract, there is a clear failure to particularise the damages being claimed.

[27] In my judgment, the original claim, as filed, is plainly just bad in law and so unsustainable. There is much to be concerned about the claimant's pleadings but that is a matter for the claimant and its counsel. In my view, the defendants are entitled to a decision on their strike out application.

[28] The proceedings are struck out as an abuse of the process.[4]

[29] Given my ruling above, I will treat with the issue of the amendment for guidance.

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[2] Claim No. 304 of 2019.

[3] Claim No. 552 of 2016.

[4] Baldwin Spencer v The Attorney General Antigua and Barbuda Civil Appeal No. 20A of 1997, Dennis Byron CJ (Ag).

Issue No. 2: Whether the Amendment was Properly Filed and Should be Allowed?

[30] The amendment was filed on the 16th January 2024 and was a bid to correct the poor pleadings and avoid a decision on the defendants' strike out application. By its amended claim, the claimant simply changed the fixed date claim form to an ordinary claim form and abandoned the administrative reliefs. No permission was sought or granted by the court to make the amendment, as the claimant relied on CPR 20.1 (1) and CPR 26.9(3).

[31] Mr. Elrington insisted that the already filed amendment was correctly done as the first case management conference ("CMC") had not taken place and that the claim before me was now only an ordinary claim for damages. Mr. Elrington also submitted that since a claim for damages for breach of a written contract must come by way of an ordinary claim form, the amendment cured the procedural error.

[32] Mrs. Marin Young argued that the amendment went to the root of the matter by significantly changing the nature of the claim, so judicial oversight and approval were required to ensure procedural fairness. These were substantive changes made to the original claim, and not merely procedural corrections, and as the matter was already before the court, its permission was required before filing the amended claim.

[33] I have considered the submissions of both counsel on amendments and thank them for their assistance in helping me to dispose of the issue before me. Both have advanced arguments that caused me to interrogate the rules to find how best to resolve the present issue justly. I find that materially both parties are *ad idem* that the court has the power to correct errors of procedure and in employing its case management powers, a court can exercise its discretion to put right matters arising before it. In fact, there is persuasive jurisprudence that confirms this power of the court: see the Privy Council judgment of **Antonia Webster (Appellant)** v **The Attorney General of Trinidad & Tobago (Respondent)**.[5]

[5] [2011] UKPC 22.

[34] I find it convenient, at this stage, to set out the reliefs claimed in the amended claim form and statement of claim and the pleadings. These reliefs are:

1. A declaration that the Claimant is entitled to damages as a result of breach of the contract dated 5th November 2020 for the sale of Caribbean Shores Block 16 Parcel 5128 &
2. A declaration that the Claimant is entitled to damages for breach of contract equal to the difference between the present market value of the land and the contract price together with a refund of the contract price;
3. Such further or other relief as the Court deems just; and
4. Costs.

[35] The amended statement of claim briefly stated that the claimant received an offer to purchase national lands on the 5th November 2020 through a Land Purchase Approval Form ("LPA Form"). On the 10th November 2020, the claimant accepted the offer by executing the LPA Form. On the 11th November 2020, a general election was held and there was a change of the administration of government. On the 12th November 2020, when the claimant attempted to pay the outstanding balance, the account was locked, and payment could not be made. The dates above are similar in all three matters, only the description of the parcels and the part payments made by each claimant differed, but this information is not necessary for disposal of the application before me.

[36] The claimant alleged that by letter dated 14th January 2021 to the first and second defendants, the defendants were notified that their refusal to accept the outstanding payment was a material breach of the contract. It was also pleaded that despite several attempts to make the outstanding payment and repeated requests to re-open the account, the defendants refused. At a meeting on 3rd December 2021 of the House of Representatives, the Prime Minister of Belize is reported to have spoken about the parcels of land in issue in these proceedings and stated, "Well, I can tell you right now we are going to take back that land and we are going to give it to the people of Freetown that deserves (sic) that land and I will put on record right now that People's United Party will not pay a single dollar for those people." A copy of the news transcript was attached to the amended claim.

[37] Based on the above, the claimant is seeking a "declaration that the Claimant is entitled to damages for breach of contract …" as set out at paragraph 34 above. The above paragraphs constitute the entirety of the pleadings in the amended claim.

[38] Leaving aside the form of the pleadings, I find that the amendments are not mere procedural corrections. They are substantive changes to the original claim and reliefs as sought via the fixed date claim form, albeit the term "declaration" is retained. Essentially, by the amended claim, the claimant has completely abandoned the administrative law reliefs and its claims for specific performance, mandamuses and an injunction. It kept the claim for a declaration that it is entitled to damages.

[39] Mr. Elrington maintains that the claimant, in all three matters, did not see anything as being wrong with their amended pleadings because they really want a declaration that their contracts were breached and damages for that breach. Counsel argues further that since the ordinary claim form (Form 1) is now being used, a CMC date is to be fixed after the defendants filed their defences. The rules allow for such an amendment to be made without permission of the court since the first CMC is still to be fixed by the court.

The Law

[40] I turn now to examine CPR 20.1 (1) and CPR 26.9(3), which the claimant relies on to do what it did.

[41] CPR 20.1(1) provides that "A party may change a statement of case **at any time before the case management conference without the court's permission** …" [My Emphasis].

[42] CPR 26.9(3) provides that:

> (3) Where there has been **an error of procedure** or failure to comply with a Rule, practice direction, court order or direction, **the court may make an order to put matters right**. [My Emphasis].

[43] Mr. Elrington relies on the first rule to say that the claimant is entitled to change its claim form, without permission and without consequences, and on the second rule to argue

that, in the event that he is wrong, the court can use its discretion to make right the claimant's errors.

[44] In oral submissions, Mr. Elrington then made three arguments. First, he stated that "the amended claim is for damages for breach of contract and not for a declaration." That may be his intention. However, the pleadings as currently drafted do not adequately particularise any such plea.

[45] Secondly, Mr. Elrington submitted that the claimant is "not discontinuing the substantive claim but merely amended the claim to reflect the remedies sought for breach of contract." I understand this argument to concede that the original fixed date claim form did not include a claim for a finding of a breach of contract. I also assume that he wants me to believe that the removal of the judicial review reliefs is not a discontinuance because the claimant somehow still wants to "review" the defendants' decision. These arguments are mere sophistry, and, in my view, they are unconvincing.

[46] Thirdly, Mr. Elrington submitted that under CPR 20, a claim can be amended before a CMC. There has been no CMC in this matter, so no permission of the court is required to file an amended claim. These two statements are not disputed and the necessity for reiterating them is uncertain. This submission does not address the question whether the defendants are entitled to a decision and costs on their strike out application in relation to which the claimant has not advanced any viable answer. Relatedly, the claimant has not explained why the defendants are not entitled to a decision on their strike out application given, in particular, that the claimant has not advanced any viable defence and have in all but name abandoned its case, which forms the basis of the defendants' strike out application. In response to the defendants' submissions, Mr. Elrington made an oral application for permission to amend the claim, as an aside and in case it is found necessary.

[47] Mrs. Marin Young countered the arguments advanced by Mr. Elrington by stating that the amendments in issue are not mere procedural corrections but substantive changes to the claim. CPR 20.1(1) is intended for amendments that do not alter the substantive nature of the claim. In those circumstances, the court is empowered to correct procedural errors.

As part of its powers, the court can convert proceedings from an ordinary claim to a fixed date claim under CPR 26.9 and vice versa. I accept Mrs. Marin Young's submissions.

[48] Regarding the rules relied on by Mr. Elrington, these are clear. CPR 20.1(1) allows a party to amend a statement of case at any time before a CMC without seeking the permission of the court. I also do not think that there is any disagreement between counsel for the parties that the court has a general power under CPR 26 to correct a procedural error or any failure to comply with a rule.

[49] There is clear authority, also, that where an incorrect form is used to bring a claim, the court has the power to make an order to convert the claim to the correct form. This discretion is exercised frequently where the error is a mere technicality. The court would act, in the interest of the overriding objective to deal with cases justly, to avoid delay and settle technical squabbles, by correcting the procedural errors. The court's general power to make an order to put matters right is not questioned but acknowledged in the jurisprudence. However, in the present case, the court's permission was not sought before filing the amendment. Moreover, the matter was before the court, which was actively engaged in managing it, via a first hearing, which is to all intents and purposes similar to a case management conference.

[50] Was the amendment and/or conversion of a claim already before the court, without the court's permission proper? Mr. Elrington identifies the case of **Latitud 20 Architecture Ltd.** v **Carlton Watson**[6] as supporting his position that the claimant could amend the claim, without the permission of the court. In **Latitud**, Farnese J restated the rule that amendments before a CMC generally do not require the court's permission. As stated above, the rules are clear, and parties do not disagree on the interpretation of CPR 20.1(1). This, however, does not remove the defendants' right to a decision on their strike out application and to consideration of any costs arising on that decision.

[51] Mr. Elrington advanced also that now that the claimant has done this amendment, the defendants should be allowed time to file their defences and then a CMC can be fixed,

[6] Claim No. 436 of 2021.

where the court can start to manage the case. I assume by his argument that Mr. Elrington was inviting the court to agree that it was not managing the case before it. In fact, Mr. Elrington simply asked the court and counsel on the other side to ignore previous proceedings, and not to rule on the defendants' strike out application since the claimant, having now "fixed" the procedural errors, is entitled to a restart of the claims before the court.

[52] By his arguments, also, Mr. Elrington conveniently ignored the fact that the matter was long before the court by way of first hearing and that several applications, inclusive of consolidation and strike out, were either disposed of or in the process of being determined. In fact, an order for consolidation was granted by this court on the 5th May 2024. Additionally, Mr. Elrington seems to have "technically" disposed of the first application (the strike out for abuse) without the court having to render any ruling, even on costs. Indeed, by this approach, the claimant on the advice of its counsel, Mr. Elrington, has sought to vaporise the defendants' strike-out attack on the claimant's deficient pleadings.

[53] Mr. Elrington also relies on **Michael Bogaert** v **Commissioner of Lands et al**.[7] In **Bogaert** James J converted the proceedings from an ordinary claim to a fixed date claim to correct a procedural error. James J used CPR 26.9 that provides for a court to make an order "to put matters right" in cases where there are procedural errors.

[54] The instant case raises several issues that do not fit into the **Bogaert** line of decisions, where a change of claim forms was allowed, to correct a procedural error and so "to put matters right". In **Bogaert**, there was a claim for possession of land that ought to have come by way of a fixed date claim. The conversion order that changed the ordinary claim to a fixed date claim did not alter the nature and tenor of the claim. In **Bogaert**, the reliefs sought remained the same, and the amendment made no substantive alteration to the claim itself. Basically, the original cause of action and substantive issues were maintained in **Bogaert**.

[7] Claim No. 317 of 2019.

[55] **Bogaert** is unlike the instant claim. In the present matter, the amendment made dramatic and substantive changes to the claim and reliefs sought. The amendment abandoned the nature of the substantive reliefs initially sought and kept an inadequately pleaded alternative relief. It placed the claimant's case on a completely divergent procedural track.

[56] Therefore, I agree with Mrs. Marin Young that **Bogaert** is distinguishable from the instant case. In the instant case, this court did not exercise its discretion to order a conversion of the claim. The claimant did the conversion of its own volition under the misapprehension that it did not need the court's permission to make the amendment and to avoid a hearing on and determination of the defendants' strike out application.

[57] The case of **Floyd Homer et al** v **Stanley Dipsingh et al**[8] from Trinidad and Tobago, not referenced by attorneys in this matter, is also instructive because of the similarities in procedural errors made in a claim relating to a mixture of administrative reliefs and tort (trespass). In **Homer**, the claim was brought by fixed date claim form and the issue arose as to whether this error can be cured or rectified to continue as a regular claim. The defendants filed a defence and an application to strike out and orally raised several preliminary points. In response to arguments, the claimants removed the third defendant as a party on the first day and, subsequently, discontinued the judicial review claim against the second defendant. They sought only to maintain the trespass claim against the first defendant. In **Homer**, while there was no issue of an amendment without permission, the approach of the court on the change of a fixed date claim form to a regular claim is noted.

[58] In **Homer**, Donaldson-Honeywell J stated that, "the Claimants have outlined their case sufficiently in the Statement of Case in order for it to be converted to a regular Claim without injustice." In deciding that it was a fit case to exercise her discretion, Donaldson-Honeywell J considered not only the issue of injustice to the defendants, but the fact that there was early identification of the error so parties would not have suffered prejudice by the use of the wrong claim form. Ultimately, the claim in **Homer** was dismissed because the claimants had failed to establish any grounds for bringing the claim.

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[8] Claim No. CV2015-01715 delivered on 21st September 2015.

[59] As acknowledged above and confirmed in the several cases cited, the court has the power to make right errors of procedure. However, the present matter was not a mere amendment to continue the progress of the matter. It was a substantive and substantial change to its causes of action, without permission, while the matter was proceeding before the court for resolution of the defendants' strike out application. The amendment completely changed the colour of the pleaded case from one that sought administrative orders to a claim for only the non-particularised remedy of breach of contract. The amendment altered the very essence of the original claim. Having obtained the benefit of a first hearing date and judicial oversight, the claimant now asks that the matters await defences and/or reply before being set down for a CMC, whereby the court can begin to manage the case.

[60] The question here is whether the claimant needs permission to amend or not.

Did the Claimant Need Permission for the Amendment?

[61] In my judgment, the claimant needs permission to make the amendment. For several reasons, I rejected the position taken by Mr. Elrington that he was entitled to avoid the determination by this court of the defendants' strike out application by unilaterally amending the claimant's claim, without first seeking permission to file the amended claim.

[62] The claim was already before me for first hearing. I was disposing of applications inclusive of a consolidation order, when the amendment was made without permission. In my view, the substantive difference between a first hearing and a CMC is that one claim form gives to litigants a jump-start on the other claim form, by providing an earlier and swifter hearing date. At a first hearing, the court is placed in a position to dispose of the substantive matter. Consequently, the claimant by filing a fixed date claim for judicial review secured an advantage by having its matter marked for fast-track disposition. This was done without complying with the CPR 56 requirement to get leave to even file for judicial review and knowing that, in any event, permission to file for judicial review was not available to the claimant since the timeframe for that application was long expired. In my view, the

claimant is not entitled to circumvent the system to its advantage and at the expense of the defendants and the court.

[63] The case of **Latitud** provides the answer to what transpired in the instant case. In **Latitud**, Farnese J found that the claimant needed the court's permission to amend the pleadings **after** the applications for summary judgment and strike out were filed. Since no permission was sought or received to file the amended claim form, the amended claim was struck out. This is a case relied on by the claimant in the present proceedings, but the ruling actually works against the claimant in this matter.

[64] I will quote the reasoning set out in **Latitud** at paragraph 11, page 6, which I find helpful:

> … **justice and fairness mandate that parties are unable to amend their pleadings without the court's permission after the court has been put in the position to decide the substantive claim**. Attendance at the first hearing of a fixed date claim where the court is in a position to dispose of the substantive claim, or upon the filing of an application for summary judgment or strike out in a regular claim, triggers the requirement for permission. The rationale for this conclusion is described in the *Attorney General (St. Lucia) v Montrope*.[9]
>
>> In the context of an adversarial system, were this to be approached differently, it would defeat the overriding objective as **a defendant attacking a claimant's pleading could be faced with a claimant constantly shifting the goal post of his pleaded case and neutralizing the defendant's attack. The ability to strike out weak or unviable pleadings would be rendered a toothless tiger**. Equally, a claimant would be absolved of its duty to assist the court in furthering the overriding of (sic) objective by, in the first place, pleading viable claims in a manner that is in keeping with the CPR.
>
> Filing of a summary judgment or strike out application triggers the requirement because the court has the authority to consider an application without a hearing. Furthermore, the requirement for permission is triggered even if a defence or a reply have (sic) yet to be filed. [My Emphasis].

[65] In the instant case, the amended claim was filed after the defendants had filed opposing affidavits in response to the fixed date claim, a strike-out application and written submissions. The first hearing was convened, putting the court in a position to dispose of the entire matter. Moreover, the courts' time and resources were engaged to consolidate

[9] SLUHCVAP2019/0021 AT PARA. 36

the three matters. It is impossible to unsee the fact that the court was actively managing the case. In my judgment and for these reasons alone, leave of the court is required for an amendment to be filed.

[66] Further, the claimant and its counsel, Mr. Elrington, were notified early in the proceedings by the filing of the strike-out application that the pleadings were deficient but maintained their hardline position that an amendment was not necessary. The claimant, on the advice of its counsel, continued to have the matter progress through the system, requiring the defendants to respond to unviable claims for administrative orders. This caused injustice to the defendants in the incurring of unnecessary cost, utilized an unfair chunk of the court's resources and so militated against the overriding objective. In the instant case, the court did not exercise its discretion to order a conversion of the claim. The claimant did the conversion under the misconception that it did not need the court's permission to make the amendment.

[67] In my judgment, the claimant did need the permission of the court. Consequently, I find that the amendment is not properly before the court. This matter involved the use of the wrong form to initiate a claim but, unlike the authorities cited above, concerned more than just a mere administrative technicality. The amendment has effectively withdrawn the substantive claim for an administrative order and left only the deficiently pleaded alternative claim for a "declaration" of entitlement to damages.

[68] Given the above, it is unclear why Mr. Elrington has taken a very rigid approach to the amendment. No permission was sought and received prior to the filing of the amended claim, which is unfair to the defendants. The overriding objective of doing justice between the parties requires that I must consider the case advanced by both sides and seek to do justice to both. The claimant is not entitled to ignore proceedings before the court by taking steps without permission and then holding steadfastly to its unwieldy position that the court was not expending time and resources on these proceedings towards disposal.

[69] Regarding the late oral application for permission to amend the pleadings and/or to rectify the procedural missteps, this is refused. The defendants are entitled to a decision on their

strike out application in relation to which the claimant has not offered any viable answer and have, in all but name, conceded the merits thereof by abandoning their claims.

Costs

[70] Costs usually follow the event, and in the circumstances of this case, I will order the claimant to pay the defendants' costs. However, the defendants seek two separate orders for costs, one for the striking out application and the other for the implied discontinuance of the original claim. I order one set of costs in these proceedings for all matters covered herein.

Disposition

[71] It is ordered as follows that:

i. The claimants' claims are struck out.
ii. The claimants' amended claims are dismissed.
iii. The claimants are to pay the defendants' costs, in equal proportions, to be agreed or taxed by the Registrar, if not agreed.

Martha Alexander
High Court Judge