

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
COMMON LAW AND EQUITY DIVISION**

2017/CLE/GEN/00633

BETWEEN

ROMEO J. BANNISTER

Plaintiff

AND

SGT #2675 ARNOLD STRACHAN

1st Defendant

THE COMMISSIONER OF POLICE

2nd Defendant

ATTORNEY GENERAL

3rd Defendant

Before: The Honourable Justice Camille Darville Gomez

Appearances: Miss Palincia Hunter for the Plaintiff

Ms Kenria Smith for the Defendants

Hearing Date: 10th October, 2021

Amendment of a writ – after close of pleadings – whether too late

1. This is an application by the Plaintiff to amend the Writ of Summons filed on 23rd May, 2017 pursuant to Order 20 rule 5 of the Rules of the Supreme Court.
2. It is undisputed that the Court has the discretion to amend a Writ at any stage of the proceedings on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct pursuant to Order 20, rule 5 of the Rules.
3. The Court will for reasons hereinafter set out accede to the Plaintiff's application to amend the Writ subject to the payment by costs to the Defendant which will be fixed by the Court if the parties are unable to agree the same.
4. The Court was greatly assisted by both parties with the miscellany of authorities on this issue however, it is worth setting out the pleadings in this matter as follows:

- (i) The Writ of Summons was filed by Lex Justis Chambers on 23rd May, 2017;
- (ii) The Memorandum of Appearance was filed by the Office of the Attorney (OAG) on 21st June, 2017;
- (iii) The Notice of Appearance was filed by the OAG on 21st June, 2017
- (iv) The Defence was filed by OAG on 25th October, 2017;
- (v) The Notice of Referral to Case Management was filed by Lex Justis on 23rd February, 2018
- (vi) The Notice of Change of Attorney was filed by Munroe and Associates on 2nd April, 2019
- (vii) An Affidavit of Sergeant Arnold 2675 Strachan was filed by the OAG on 18th October, 2019
- (viii) The Summons was filed by Munroe and Associates on 4th February, 2020 for leave to amend the Writ of Summons
- (ix) An Affidavit of Krystian Butler was filed by Munroe and Associates on 5th February, 2020.

5. The parties completed two pre-trial reviews on 5th April, 2019 and 16th October, 2019.

6. The Plaintiff's affidavit in support of its summons for leave to amend addressed the reason for amendment as follows:

- “2. That the Plaintiff was previously represented by Messrs. Lex Justis Chambers.*
- 3. That the Writ of Summons filed herein May 23rd, 2017 was filed by Messrs. Lex Justis Chambers.*
- 4. That Messrs. Munroe & Associates was subsequently retained by the Plaintiff as evidenced by the Notice of Change of Attorney filed herein April 2, 2019.*
- 5 That the instructions and factual matrix told to Messrs. Munroe & Associates by the Plaintiff differ from that which is alleged in the Writ of Summons.*
- 6. That the Plaintiff requests leave to amend the said Writ of Summons to avoid the advancement of an false statements or inconsistencies.*
- 7. That the proposed amendments do not cause an injustice to the Defendant. Exhibited hereto and marked “KB-1” is a true copy of the proposed Amended Writ of Summons.”*

7. The Defendant has objected to the amendment on the basis that the pleadings have been closed and during the pre-trial review that all interlocutory applications should have been filed and served on or before Monday, 19 August, 2019 unless the leave of the court was obtained with respect to another date. That was never done.

8. Further, the Defendants submitted (amongst other things) that the Defendants have filed their Witness Statements and that they would be prejudiced because the amendment sought has added another cause of action which did not accrue at the issuance of the Writ.

9. The Defendants have relied upon **CIP Properties (AITP) Limited v Galliford Try Infrastructure Limited Anors (No. 3) [2015] EWHC1345 (TCC)** in support of their argument against the amendment and summarized the proper approach to amendments as set out by Coulson, J in the aforementioned case.

10. The Plaintiff relied on Order 20 which clearly provides for an amendment at any stage of the proceedings subject to costs (if any) and various cases on this point including **Cropper v Smith {1887} 26 Ch D 700** where Bowen LJ posited:

“It is a well-established principle that the object of the court is to decide the rights of the parties, and not to punish them for mistakes they make in the conduct of their cases by deciding otherwise than in accordance with their rights... I know of no kind of error or mistake which, if not fraudulent or intended to overreach the court ought not to correct, if it can be done without injustice to the other party. Courts do not exist for the sake of discipline, but for the sake of deciding matters in controversy, and I do not regard such amendment as a matter of favour or grace.”

11. While the Court finds some favour with the argument of the Defendants regarding the amendments being sought and the cumulative effect it will have on the future conduct of this action including the trial date, this objection is but one of the factors to be weighed when considering whether to permit an amendment.
12. The Court has reviewed the amendments being proposed which included the removal of two of the Defendants and reduced the claim for relief to six items instead of the original nine items excluding interest, costs and further or other relief. However, the substantive arguments and relief remains unchanged. The remaining question is whether an order for costs would adequately compensate the Plaintiff. The Court found for the reasons hereinbefore set out that it would.
13. Finally, the Court may have taken a different view of the reason for the delay in seeking the amendment had the Plaintiff’s existing attorneys commenced the action. However, that was not the case.
14. Accordingly, the Court has acceded to the Plaintiff’s application to amend the Writ of Summons with costs of the amendment to be paid by the Plaintiff to the Defendant. These costs will be fixed by the Court, in the event that the parties are unable to agree the same.

Dated the 4th day of November, 2021

Camille Darville Gomez
Justice