COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT

COMMON LAW AND EQUITY DIVISION
2019/CLE/GEN/00678

BETWEEN

ADONNA MORTON

Claimant

AND

SUPER VALUE FOOD STORES LIMITED

Defendant

Before:	**The Honourable Madam Justice Simone Fitzcharles**
Appearances:	**Ms. Myra Russell for the Claimant**
	Ms. Roberta Quant for the Defendant
Heard:	**13 March 2023**

Setting Aside Order – Order 2 Rule 2 of the Rules of the Supreme Court, 1978 - Renewal of Writ – Order 6 Rule 7 of the Rules of the Supreme Court, 1978 - Striking Out – Order 18 Rule 19(1)(a),(b),(c) and/or (d) of the Rules of the Supreme Court, 1978 – No Reasonable Cause of Action – Scandalous, Frivolous or Vexatious – Prejudice, Embarrass or Delay the Fair Trial of the Action - Abuse of the Court's Process

RULING

1. This is a Ruling on three applications: two of them brought by the Defendant, Super Value Food Stores Limited ("**Super Value**"), and one brought by the Claimant, Adonna Morton ("**Ms Morton**") in relation to a personal injury claim. Super Value, by its Summons filed on 6 September 2022, has moved the Court on the following applications:

   (i) an application pursuant to Order 2 Rule (2) of the Rules of the Supreme Court, 1978 ("**RSC**") and the inherent jurisdiction of the Court to set aside an Amended Writ of Summons filed herein on 03 September 2021; and

   (ii) an application pursuant to Order 18 rule 19 (1)(a), (b), (c) and/or (d) of the RSC that the Court strike out the said Amended Writ of Summons and dismiss this action.

2. Ms Morton, by way of a Summons filed on 27 September 2022, applies to renew her Amended Writ of Summons filed on 03 September 2021 pursuant to Order 6 Rule 7 of the RSC.

Background

3. Ms Morton is a homemaker.

4. Super Value is a company incorporated in the Commonwealth of The Bahamas which operates several grocery stores, one of which is located in Cable Beach, on the island of New Providence, one of the islands of the said Commonwealth.

5. On 15 May 2016, Ms. Morton entered Super Value (Cable Beach location) to purchase grocery items. Upon entry, Ms. Morton allegedly slipped and fell on a slip-resistant door mat and contends this caused her to sustain several injuries about the body.

6. On 15 May 2019, Ms. Morton filed a Generally Indorsed Writ of Summons against "*Super Value/Portion Control, Cable Beach Store*", claiming negligence on the part of Super Value (or the entity Ms. Morton believed to be Super Value) for failing to take sufficient precautionary steps to prevent persons visiting the food store from falling or for failing to ensure an efficient slip-resistant door mat was placed at the entrance of the grocery store. Ms. Morton subsequently filed a Statement of Claim on 09 March 2020 detailing the alleged negligence and purported injuries. In this action she claims the following reliefs:

> **"a. Damages in the amount of $2,013.21 and continuing.**
>
> **b. General Damages**
>
> **c. Interest pursuant to Section 3 of the Civil Procedure (Award of Interest) Act, 1992;**
>
> **d. Costs;**
>
> **e. Further or other relief this Honourable Court deems just."**

7. The Writ of Summons was due to expire 12 calendar months from its issue date of 15 May 2019. The Writ was served on the registered office of Super Value Food Stores Limited at Messrs. Harry B. Sands, Lobosky & Co, 50 Shirley Street, Nassau, The Bahamas on 17 January 2020, which was within the expiry period of the Writ. A Notice of Appearance and Memorandum of Appearance were filed on 27 January 2020 by Super Value, notwithstanding that Super Value was referred to as '*Super Value / Portion Control Cable Beach Store*' in the Writ.

8. On 18 September 2020, Ms Morton filed an application for the entry of a judgment in default of defence as Super Value failed to file a defence in the action. Ms Morton did not proceed with her application, and on 18 November 2020, Super Value filed its Defence

denying the allegations made by Ms Morton in her Writ of Summons and Statement of Claim. The Defence was subsequently withdrawn on 21 May 2021 by Super Value.

9. Ms Morton then on 2 June 2021 filed an application to amend the Writ and Statement of Claim. On 24 June 2021, Counsel for Super Value withdrew from the action with the leave of the Court.

10. On 03 September 2021, with leave of the Court, Ms. Morton filed an Amended Writ of Summons and an Amended Statement of Claim in order to amend, *inter alia*, the Defendant Company's name in the action from "*Super Value/Portion Control, Cable Beach Store*" to "*Super Value Food Stores Limited*". In granting leave to amend the Writ the Court indicated that limitation may be an issue in any subsequent proceedings. Thereafter, Ms Morton served Super Value with the amended pleadings.

11. On 6 September 2022, Super Value with leave entered a Conditional Appearance by way of the same Counsel who earlier had withdrawn from the matter. On even date, Super Value also filed the applications currently before this Court, followed on 27 September 2022 by Ms Morton's renewal application currently under consideration.

Evidence

12. Super Value referred to the Affidavit of Shelly Beadle filed on 21 September 2021 (the "Beadle Affidavit") to support its application to set aside the Amended Writ. Ms Beadle set out the timing of the filing of the original Writ (15 may 2019) and pointed out that more than 5 years after the alleged slip and fall accident, Ms Morton sought to "***substitute a new party to this action***". This amendment also occurred more than 2 years after the relevant limitation period had expired for bringing the action. Moreover, Ms Beadle stated, the application to amend was made in excess of a year after the validity of the original Writ had expired.

13. Super Value pointed out in the Beadle Affidavit that Ms Morton purported to serve the Writ outside of its 12 month validity period and neglected to renew it for that purpose. Ms Beadle confirmed that these facts form the basis for the Defendant's application inter alia to set aside the Amended Writ of Summons.

14. Ms Morton placed reliance on the Affidavit of Adonna Morton filed 27 September 2022 (the "Morton Affidavit"). The Morton Affidavit sets out the following:

    (i) Ms Morton commenced this action on 15 May A.D. 2016 for a slip and fall accident which occurred on Super Value's premises;

    (ii) the claim remains unsettled;

    (iii) on 02 June 2021, an application by way of Summons and Affidavit were made to amend the Writ of Summons and Statement of Claim to correct the name of the Defendant after the expiry of the limitation period;

(iv) on 11 August 2021, Justice Winder (as he then was) granted leave to amend the Writ of Summons and Statement of Claim;

(v) the mistake in the pleadings was a genuine mistake and was not misleading or such as to cause any reasonable doubt as to the identity of the person intended to be sued; and

(vi) Ms Morton seeks leave to renew the Amended Writ of Summons.

Application to Set Aside Amended Writ of Summons

Super Value's Submissions

15. Learned Counsel for Super Value, Ms Roberta Quant, submits that Ms Morton's failure to apply for leave to renew the Amended Writ of Summons prior to its service renders such service irregular and thus defective.

16. Counsel cites **Order 2 rule 2** of the **RSC**, which provides:

> **"(1) An application to set aside for irregularity any proceedings, any step taken in any proceedings or any document, judgment or order therein shall not be allowed unless it is made within a reasonable time and before the party applying has taken any fresh step after becoming aware of the irregularity."**

17. Counsel refers to **Order 6 rule 7** of the **RSC** which states:

> **"(1) For the purpose of service, a writ (other than a concurrent writ) is valid in the first instance for twelve months beginning with the date of its issue and a concurrent writ is valid in the first instance for the period of validity of the original writ which is unexpired at the date of issue of the concurrent writ…**
>
> **(3) Before a writ, the validity of which has been extended under this rule, is served, it must be marked with an official stamp showing the period for which the validity of the writ has been so extended."**

18. Super Value's counsel cites **section 9(2) of the Limitation Act, 1995**, which provides:

> **"Subject to subsection (3), an action to which this section applies shall not be brought after the expiry of three years from –**
>
> **(a) the date on which the cause of action accrued…"**

19. Counsel further provides the case of **Payabi and another v Armstel Shipping Corporation and another [1992] 1 Q.B. 907** where Hobhouse J made the following pronouncements at 910F:

"The general principles for extensions of writs were authoritatively stated in Kleinwort Benson Ltd. v Barbrak Ltd [1987] A..C. 597....The plaintiff must show a good reason for extension. Once good reason is shown the balance of hardship may become a relevant consideration. Because the writ expired before the application, the plaintiff must show good reason for extension. Once good reason is shown the balance of hardship may become a relevant consideration. Because the writ expired before the application, the plaintiff also had to show a 'satisfactory explanation for his failure to apply for extension before the validity of the writ expired.' The fact that there were negotiations or that there was a mistake or carelessness by the plaintiff's solicitors is not a good reason."

20. Ms Quant draws the Court's attention to the case of **Eric Anton Newbold Jr. v Island Hotel Company Ltd dba Atlantis [2020] 1 BHS J. No. 98**, where Deputy Registrar Turner opined:

> **"7....Reference at this time can be made to the Bahamian case of Williams v Stubbs Rahming (1989) Supreme Court, The Bahamas, No. 1429 of 1987 (unreported), where it is seen in an action for damages for personal injuries where both the validity of the Writ and the limitation period has expired, Thome J, following Battersby v Anglo-American Oil C. Ltd. [1945] KB noted i.e.: 'the Court would not exercise its discretion in favour of renewing a writ if the effect of doing so would be to deprive a defendant of a right of limitation which had already accrued.**
>
> **8. The above is the correct perspective of the law, considering the current facts in the matter at hand. Also, in making reference to page 32 of the aforementioned case, it is seen that Lord Goddard also notes, i.e.: 'To grant the renewal would therefore be to disregard the statute, which no Court has the right to do merely because its operation works hardship in a particular case.'"**

21. Ms Quant submits for Super Value that Ms. Morton initially filed her Writ of Summons on 15 May 2016, then applied for leave to amend the Writ on 02 June 2021 – some 5 years after the alleged accident occurred. Leave was granted to amend the Writ by which a new party – Super Value Food Stores Limited – was brought into the action in place of 'Super Value/Portion Control Cable Beach Store'. However, although required by law, the Amended Writ of Summons was never renewed before it was served on Super Value.

22. It is argued that it was incumbent on Ms Morton to apply to extend the validity of the Writ as the original Writ of Summons had long expired. Ms Quant further submits that Super Value is entitled to insist on strict compliance with the relevant rules, particularly as the limitation period had expired for bringing the claim. Moreover, the purported

Amended Writ of Summons was served outside the 12-month period mandated by statute.

23. Super Value further asserts that Ms Morton did not provide any satisfactory explanation for her failure to apply for extension of the Writ before its validity expired. There is no reason or justification as to why an application was not made to renew the validity of the Writ in time.

24. Counsel also submits that the Court ought not to exercise its discretion in favor of renewing the Writ if doing so would deprive Super Value of a limitation defence, which has already accrued. It is further argued that Ms Morton is abusing the Court's process by now trying to seek renewal when such renewal should have been sought much sooner. As such, Super Value prays that the Court will set aside the Amended Writ of Summons with costs to Super Value.

Ms. Morton's Submissions

25. Learned Counsel for Ms Morton, Ms Myra Russell, submits that the application to renew the Amended Writ of Summons, is brought so as to keep the action alive until such time as Ms Morton is able to effect service of the renewed Amended Writ of Summons.

26. She highlights **Order 2 rule 1 of the RSC** which provides:

> **"1. (1) Where, in beginning or purporting to begin any proceedings or at any stage in the course of or in connection with any proceedings, there has, by reason of anything done or left undone, been a failure to comply with the requirements of these Rules, whether in respect of time, place, manner, form or content or in any other respect, the failure shall be treated as an irregularity and shall not nullify the proceedings, any step taken in the proceedings, or any document judgment or order thereon."**

27. Ms. Morton's counsel further asserts that the Amended Writ of Summons takes effect, not from the date of the amendment, but from the date of the original document being amended. In other words, the amendment takes effect as though it was inserted from the beginning. To buttress this assertion, she relies on the case of **Eshelby v Federated European Bank [1932] 1 K.B. 254** where Collins M.R. opined:

> ***"The Writ as amended becomes the origin of the action, and the claim thereon indorsed is substituted for the claim originally indorsed."***

28. Counsel further submits that any irregularity in regards to service of the Amended Writ of Summons did not nullify the proceedings. Ms Russell also relied upon the judgment of Charles J in **Soldier Crab Limited t/a Sandy Toes v Aqua Tours Limited** [2016] 2 BHS J No 190 in properly characterizing the amendment of the name of the Defendant in the Writ. Specifically, it was contended for Ms Morton that no new party was added to the action when leave was granted by the Court to correct the name of the Defendant

from "Super Value/Portion Control Cable Beach Store" to "Super Value Food Stores Limited". Ms Russell argued that there was only one possible entity named in the Writ. It was a mere misnomer, and as such, correction of the name did not amount to the joinder of a new defendant.

Discussion and Analysis

29. Super Value's position is that the Amended Writ of Summons is invalid as Ms Morton added a new party and did not renew the Writ before serving it. Ms. Morton's view is that the period of validity of the Writ was 12 months from the initial filing, that is, 15 May 2016 through 15 May 2017. Her position is that the amendment takes effect as if it were initially inserted in the first place.

30. After considering the authorities before me and the present circumstances of this case, I am inclined to agree with Ms Russell. **The Supreme Court Practice, 1995** ("**The White Book**") at page 369 on 20/5-8/2 provides as follows:

> **"Effect of amendment – An amendment duly made, with or without leave, takes effect, not from the date when the amendment is made, but from the date of the original document which it amends; and this rule applies to every successive amendment of whatever nature and at whatever stage the amendment is made. Thus, when an amendment is made to the writ, the amendment dates back to the date of the original issue of the writ and the action continues as though the amendment had been inserted from the beginning: 'the writ as amended becomes the origin of the action, and the claim thereon indorsed is substituted for the claim originally indorsed...An amendment to correct the name of a party relates back to the date of the issue of the writ, even after the expiry of the limitation period (Katzenstein Adler Industries (1975) Ltd. v. Borchard Lines Ltd. (1988) 138 New L.J. 94)."** [Emphasis added].

31. Further, it is also noted at **page 379 by 20/5-8/18 of the White Book** that:

> **"An amendment to correct the name of a party may be allowed, even if made after the expiry of any relevant period of limitation and even if it is alleged that the effect of the amendment will be to substitute a new party, provided the Court is satisfied that the mistake sought to be corrected was a genuine mistake and was not misleading, or such as to cause any reasonable doubt as to the identity of the person intending to sue or to be sued..."**

32. I am also compelled to highlight the express wording of **RSC Order 2 rule 1**:

> **"1. (1) Where, in beginning or purporting to begin any proceedings or at any stage in the course of or in connection with any proceedings, there has, by reason of anything done or left undone, been a failure to comply with the requirements of these Rules, whether in respect of**

time, place, manner, form or content or in any other respect, the failure shall be treated as an irregularity and shall not nullify the proceedings, any step taken in the proceedings, or any document judgment or order thereon." [Emphasis added].

33. In my view, the doctrine of relation back does provide, in essence, that an amendment of this nature (being the correction of the name of the defendant in the action) takes effect as though the corrected name was initially inserted in the original filing of the Writ. I see no reason to depart from this doctrine as I see no prejudice or unfairness to Super Value for allowing such. In fact, the actions of Super Value suggest that it was fully aware that it was the entity intended to be initially sued when the original Writ was filed and served.

34. Super Value sought to renege from service of the Writ on it by withdrawing its Defence and having its Counsel withdraw from the record. Subsequently, the Defendant entered a conditional appearance so as to bring the current challenge. However, prior acts of Super Value, by entering an unconditional appearance on 27 January 2020 and a Defence, undoubtedly fresh steps in the action, waived the right of Super Value to protest that the reference to 'Super Value / Portion Control Cable Beach Store' was not a reference to Super Value Food Stores Limited.

35. The words of Klein J are summoned in the case of **WPC 1896 Maria Daxon v Drexel Armbrister and Another** [2023] 1 BHS J 187 at para 36 where the Court stated:

"Taken together, these provisions [Ord. 19, r. 1 and Ord. 18, r.1] empower the Court to dismiss the action of the plaintiff, or make any other order that it considers just, on an application by the defendant, if the plaintiff fails to comply with the timeline for delivering the statement of claim, which as prescribed by 18, r. 1 is 14 days after the defendant has entered an appearance. This ground does not need any further elaboration in these proceedings. **While it is beyond the pale that the plaintiff did not comply with the rules, it is equally trite that any proceedings to set aside, *inter alia*, any steps taken in any proceedings have to be made within a reasonable time and "before the party applying has taken any fresh step after becoming aware of the irregularity" (Ord. 2, r. 2(1)). As the defendants have elected to plead over the irregularity by filing a defence, this ground is no longer live**." [Emphasis added].

36. The true irregularity or misstep at the heart of this claim taken by Ms Morton was the misnaming of Super Value in the original Writ. However, the conduct of Super Value by filing initially an unconditional memorandum of appearance and a Defence demonstrated that it was aware that it was the party Ms Morton intended to sue, despite Super Value's withdrawal of those pleadings more than 6 months after they were filed.

37. Fundamentally, in such circumstance, the Court is not of the view that a renewal of the Writ was required in this matter. Complaints about service of the Amended Writ and Statement of Claim, therefore, could hardly lie. I turn to deal more fully with that question in the next section of this Ruling where Ms Morton's renewal application is dealt with.

Application to Renew Amended Writ and Amended Statement of Claim

38. Ms. Morton submits that her renewal application ought to be allowed to keep the action alive. Ms Russell then cites **Order 2 rule 1 of the RSC**, which provides:

> ***"1(1) Where, in beginning or purporting to begin any proceedings or at any state in the course of or in connection with any proceedings, there has, by reason of anything done or left undone, been a failure to comply with the requirements of these Rules, whether in respect of time, place, manner, form or content or in any other respect, the failure shall be treated as an irregularity and shall not nullify the proceedings, any step taken in the proceedings, or any document judgment or order therein.""***

39. Counsel submits that any irregularity in relation to the service of the Amended Writ of Summons on Super Value did not nullify the proceedings.

40. Super Value's counsel asserts that the renewal of the Amended Writ of Summons and Amended Statement of Claim ought not to be allowed. Ms Quant cites the cases of **Rodriques v Gorsten Limited T/A Sandals Royal Bahamian Resort [2013] BHS J. No. 31, Payabi and another v Armstel Shipping Corporation and another [1992] 1 Q.B. 907** and **Eric Anton Newbold Jr. v Island Hotel Companies Ltd dba Atlantis [2020] 1 BHS J. No. 98**, which all set out the general principles governing renewal or extension of the validity of a writ of summons for service.

41. Counsel submits that Ms Morton's unreasonable delay in applying to renew the validity of the Writ has not been induced, or contributed to, by the words or conduct of the Defendant or its representatives and cannot be attributed to anything that Super Value did or did not do. Super Value asserts that Ms Morton has not proffered any good reason or justification as to why an application was not made to renew the validity of the Writ in time. It is argued that Ms Morton is obligated to provide a 'satisfactory explanation' for her failure to apply for the extension before the validity of the Writ expired.

42. Ms Quant also submits that the application for renewal is baseless and purely responsive to Super Value's application to have the ineffective service of the purported Amended Writ set aside. Therefore, Super Value prays that the Court will dismiss the renewal application and award Super Value costs.

43. In my judgment, there is no requirement that the Amended Writ be renewed for service. No new party was added who will be prejudiced by having been joined to an action post the expiry of the limitation period of 3 years.

44. The Court of Appeal decision of **Buckeye Bahamas Hub Limited v Pedro Knowles and Syngad Services Limited** SCCivApp & CAIS No. 110 of 2022 comes to mind. In that case Mr Knowles was injured on the job on 10 April 2014. He brought a personal injury claim against Syngad Services and Bahamas Oil Refining Company Limited (BORCO) on 10 April 2017 just before the limitation period expired. In 2022, he sought to amend his pleadings to name Buckeye Bahamas Hub Limited ('Buckeye') as a

defendant in place of BORCO. The Chief Justice allowed the amendment to correct the misnomer.

45. Buckeye appealed that decision, and argued that allowance of the amendment after the limitation period expired was incorrect because *inter alia* it deprived Buckeye of its defence on limitation. The Court of Appeal dismissed the appeal because Buckeye and BORCO had merged, and as such, Buckeye was not a new party. In the Court's view, adding that name instead of BORCO was merely correction of a misnomer. There were not two co-existing parties, with the wrong one being named. The Chief Justice's actions were found to be correct, the Rules of Court having afforded the Court to fix mistakes even if made after a limitation period expires.

46. In the instant case, Winder CJ allowed the correction of the erroneous 'Super Value / Portion Control Cable Beach Store' to 'Super Value Food Stores Limited'. The Court fixed the mistake on application by Ms Morton after:

    (1) the original Writ was filed within the limitation period;

    (2) the original Writ was served on Super Value well within the expiry period for service;

    (3) the proper Defendant, Super Value, entered its appearance and defence to a writ in which it was misnamed 'Super Value/Portion Control Cable Beach Store'.

47. ***Rodrique***s, ***Payabi***, ***Eric Anton*** and ***Kleinwort Benson*** do not apply. Instead, I agree with Ms Russell that only one entity could possibly have been intended to be named in Ms Morton's description of Super Value as '*Super Value/Portion Control Cable Beach Store*'.

48. Passages referred to from the judgment of Stamp J in **F. Goldsmith (Sicklesmere) Ltd. v Baxter** [1970] Ch. 85 by Charles J (as she then was) in the ***Soldier Crab*** case are most helpful, albeit the question involved misnomers in contracts. The Court stated in part:

    "26 F. Goldsmith (Sicklesmere) Ltd. v Baxter [1970] Ch. 85 is a case relied upon by both parties. The facts bear close resemblance to the facts of the present case. The plaintiff sold a piece of land to the defendant. The memorandum of agreement gave the name of the plaintiff company, inaccurately, as Goldsmith Coaches (Sicklesmere) Ltd. There was, in fact, no such company by that name. Then the defendant changed his mind and did not wish to complete. The question was whether, although the contract used the wrong name for the company, the agreement could nevertheless be enforced…".

49. Continuing at para 28 and 29 of **Soldier Crab**, the Court set out salient portions of the reasoning of Stamp J:

    "28 According to him [Stamp J], looking at the surrounding circumstances, there could be only one company, which could be clearly identified, which was party to the contract, and reference to it by an inaccurate name did not render the contract void. It was "no more nor less than an inaccurate description" (at 91G) of the

company, but it was still entirely clear from the surrounding factual circumstances that it was the company who was the other party to the contract.

At page 92, the learned judge [Stamp J] continued:

> **'In the absence of authority constraining me to do so - and none has been cited - I would find it impossible to hold that a company incorporated under the Companies Act has no identity but by reference to its correct name, or that, unless an agent acts on its behalf by that name, or a name so nearly resembling it that it is obviously an error for that name, he acts for nobody. A limited company has, in my judgment, characteristics other than its name by reference to which it can be identified: for example, a particular business, a particular place or places where it carried on business, particular shareholders and particular directors. If there are two limited companies having the same characteristics, then it is hardly to be supposed that each of them was incorporated on the same day, and owns the same property...'."** [Emphasis added].

50. There is an establishment popularly known in The Bahamas as Super Value. It has a store in Cable Beach, New Providence. At that location, it is in the business of selling groceries. The registered office of Super Value was in 2019 located at 50 Shirley Street, Nassau, The Bahamas. That office was served with and received the original Writ. A perusal of the averments in the original Writ and Statement of Claim reveal that Super Value's Cable Beach store is clearly identified by Ms Morton. There is no real confusion. Super Value's name was simply corrected because that entity was intended to be named, but was somehow misnamed in the original Writ. Moreover, for reasons already stated, the amendment took effect from the filing of the original Writ. The original Writ, having been served within time on Super Value, no limitation defence accrues to it.

51. In the circumstances, there is no basis to set aside the Amended Writ of Summons in this action for a failure to renew the same or extend its validity. Super Value's application on those grounds is therefore refused.

52. Ms Morton's application to renew the Amended Writ is equally misconceived, as it is unnecessary. That application is therefore refused.

Application to Strike Out the Amended Writ of Summons and Amended Statement of Claim

53. Super Value submits that the Amended Writ of Summons and its indorsement ought to be struck out because: (i) there is no reasonable cause of action; (ii) they are frivolous scandalous and/or vexatious; (iii) they prejudice, embarrass or delay the fair hearing of the trial; and/or (iv) they are an abuse of the Court's process.

54. Counsel cites **Order 18 rule 19 of the RSC** which provides:

> **"19. (1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action, or anything in any pleading or in the indorsement, on the ground that —**
>
> **(a) it discloses no reasonable cause of action or defence, as the case may be; or**
>
> **(b) it is scandalous, frivolous or vexatious; or**
>
> **(c) it may prejudice, embarrass or delay the fair trial of the action; or**
>
> **(d) it is otherwise an abuse of the process of the court,"**

55. Counsel then cites **The Supreme Court Practice 1997 Volume 1 18/19/13 p. 331** which states:

> **"The expression 'frivolous or vexatious' includes proceedings which are an abuse of process…".**

56. Reliance is also placed on **The Supreme Court Practice 1997 Vol. 1 18/19/15 p. 332** which reads:

> **"The Court will prevent the improper uses of its machinery, and will, in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation."**

57. Ms Quant asserts that, Ms. Morton's failure to take the requisite step (that is, renewing the Writ) to have properly served Super Value with its Amended Writ of Summons is an abuse of the process of the Court. It is argued that such missteps render any Amended Writ or its service, a nullity.

58. For Ms Morton, Ms Russell submits that the Court's power to strike-out, whether exercised partially or for the entirety of an action is reserved only for the most clear and obvious cases. Counsel further submits that the power is draconian. She relies on the case of **Wenlock v Maloney [1965] 1 W.L.R. 1238** where Danckwerts JC opined:

> **"There is no doubt that the inherent power of the court remains; but the summary jurisdiction of the court was never intended to be exercised by a minute and protracted examination of the documents and facts of the case in order to see whether the Plaintiff really has a cause of action. To do that, is to usurp the position of the trial Judge and to produce a trial of the case in chambers, on affidavits only, without discovery and without any evidence tested by cross examination in the ordinary way. This seems to be an abuse of the inherent power of the court and not a proper exercise of that power."**

59. Ms. Morton's counsel also highlights the case of **Hubbuck & Sons v Wilkinson Heywood & Clark [1898] 1 QB at page 86** for the following pronouncement:

"Two courses are open to a defendant who wishes to raise the question whether, assuming a statement of claim to be proved, it entitles the plaintiff to relief. One method is to raise the question of law as directed by Order xxv., r.2; the other is to apply to strike out the statement of claim under Order xxv., r. 4. The first method is appropriate to cases requiring argument and careful consideration. The second and more summary procedure is only appropriate to cases which are plain and obvious so that any master or judge can say at once that the statement of claim as it stands is insufficient, even if proved, to entitle the plaintiff to what he asks."

60. Counsel concludes by submitting that Ms. Morton does have an arguable case given that she was a lawful visitor of the premises on 15 May 2016. Accordingly, the case is not scandalous, frivolous, vexatious, prejudicial or an abuse of the process of the Court, and ought not to be struck out.

Discussion and Analysis

61. Under the RSC, apart from **Order 18 rule 19**, the Court's power to strike out pleadings is derived from **Order 31A rule 20(1)(a), (b), (c), (d)**. The latter provides:

"20. (1) In addition to any other powers under these Rules, the Court may strike out a pleading or part of a pleading if it appears to the Court —

(a) that there has been a failure to comply with a rule or practice direction or with an order or direction given by the Court in the proceedings;

(b) that the pleading or the part to be struck out is an abuse of the process of the Court or is likely to obstruct the just disposal of the proceedings;

(c) that the pleading or the part to be struck out discloses no reasonable grounds for bringing or defending a claim; or

(d) that the pleading or the part to be struck out is prolix or does not comply with the requirements of any rule. "

62. In this application, however, Super Value sought only to invoke the Court's power under Order 18 rule 19 of the RSC, thus the Court will focus on such authority.

Disclosing No Reasonable Cause of Action

63. According to RSC **Order 18 Rule 19(2)**, no evidence shall be admissible on an application under paragraph (1) (a). Thus, the Court is only empowered to consider the bare pleadings.

64. Based on my review of the Amended Writ of Summons and Amended Statement of Claim, there appears to be a triable issue which Super Value ought to answer. The main crux of the case is the presence of a door mat which allegedly caused Ms. Morton to slip and fall resulting in purported injuries about the body.

65. I see no reason why such a claim would not be seen as legitimate, regardless of the degree of severity of the alleged injuries caused. I do not find this as disclosing no reasonable cause of action. In my view, there appears to be a case on the face of the pleadings which Super Value must answer.

Scandalous, Frivolous and Vexatious

66. As was noted in **AG v Barker [2000] 1 FLR 759 at page** 764 by Lord Bingham of Cornhill:

> **"Vexatious is a familiar term in legal parlance. The hallmark of a vexatious proceeding is in my judgment that it has little or no basis in law (or at least no discernible basis); that whatever the intention of the proceeding may be, its effect is to subject the defendant to inconvenience, harassment and expense out of all proportion to any gain likely to accrue to the claimant; and it involves an abuse of process of the court, meaning by that a use of the court process for a purpose or in a way which is significantly different from the ordinary and proper use of the court process."**

67. I do not see how this claim can be canvassed as scandalous, frivolous or vexatious. Ms. Morton has alleged negligence on the part of Super Value due to her alleged slip and fall while on Super Value's premises and allegedly due to the non-slip mat at the entrance of the food store. There appears to be a case which needs to be answered. On that basis, I am not prepared to strike out the Amended Writ or its indorsement as I do not find them to be scandalous, frivolous or vexatious.

Prejudice, Embarrass or Delay the Fair Hearing of the Trial and Abuse of Process

68. The Court was not directed to any authority in relation to this ground (save and except Order 18 Rule 19 of the RSC). In any event, I will traverse it. The Court relies on the explanation as provided in the **White Book at page 343 at 18/19/32** which reads:

> **"Tend to prejudice, embarrass, or delay the fair trial of the action – The Court is "disposed to give a liberal interpretation" to these words (Berdan v Greenwood (1878) 3 Ex.D. 251, p. 256). At the same time parties must not be too ready to find themselves embarrassed. The rule that the Court is not to dictate to parties how they should frame their case, is one that ought always to be preserved sacred. But that rule is, of course, subject to this modification and limitation, that the parties must not offend against the rules of pleading which have been laid down by the law; and if a party introduces a pleading which is unnecessary, and**

it tends to prejudice, embarrass, and delay the trial of the action, it then becomes a pleading which is beyond his right" (per Bowen L.J. in Knowles v Roberts (1888) 38 Ch. D. 263, p. 270)..."

69. On the issue of abuse of process, **The White Book at page 344 at 18/19/33** provides:

> **"Abuse of the process of the Court – Para (1)(d) confers upon the Court in express terms powers which the Court has hitherto exercised under its inherent jurisdiction where there appeared to be "an abuse of the process of the Court." This term connotes that the process of the Court must be used bona fide and properly and must not be abused. The Court will prevent the improper use of its machinery, and will, in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation (see Castro v Murray (1875) 10 Ex. 213; Dawkins v Prince Edward of Saxe Weimar, Willis v Earl Beauchamp (1886) 11 P. 59, per Bowen L.J. p. 63)....The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed but depend on all the relevant circumstances and for this purpose considerations of public policy and the interests of justice may be very material."**

70. I find no aspect of this case thus far to rise to the level of prejudice to Super Value, and no sufficient reason to strike out the claim on the basis of embarrassment or delay of a fair hearing. Equally, I find no sufficient reason to strike out the claim on the ground of abuse of process. The application to strike out the Plaintiff's case on such grounds is therefore refused.

71. In light of the refusal of each of the applications of the Plaintiff and Defendant as set out in this Ruling, each party shall bear their own costs.

72. Finally, Ms Morton and Super Value must receive directions to get this case heard and decided. At this juncture, that is all that is needful for a fair disposal of this action. The Court will therefore require the attendance of Counsel for the parties at 10:00 am on 29 November 2024 for case management.

Dated 1 November 2024

Simone I. Fitzcharles

Justice