

**COMMONWEALTH OF THE BAHAMS
IN THE SUPREME COURT**

**Commercial Division
2021/CLE/GEN 001470**

BETWEEN

BRINDEL PRATT

Claimant

AND

AML FOODS LIMITED

Defendant

Before: The Honourable Madam Justice Camille Darville Gomez

Appearances: Mr Lessiah Rolle for the Claimant
Mr Ryhan Elliott for the Defendant

Hearing Date: March 25, 2024

REASONS FOR DECISION TO AMEND THE WRIT OF SUMMONS

Darville Gomez, J

1. I was asked to consider whether to allow a second amendment to the Statement of Claim filed on December 14, 2021 in the terms as exhibited in the Affidavit of the Defendant in support of the Notice of Application.
2. I thank Counsel for their helpful submissions.
3. The Claimant alleged that the further amendment arises out of the same facts; that the Defendant will not be prejudiced, and, that the amendments will allow the court to consider the merits of the case in the interest of justice.
4. The Claimant is seeking amongst other things, to plead negligence pursuant to section 4 of the Health and Safety Act Chapter 321C which his Counsel submitted merely codified the common law.

5. I have considered the factors as set over in Part 20.1 (3a-f) of the Civil Procedure Rules, 2023 and while I do not agree with all of the submissions made by the Claimant in relation to the factors set out there, I have accepted the following: -

- (i). the further proposed amendment arises out of the “same or substantially the same facts”. There are no new witnesses added, the same persons James Williams and Kevin George who had previously featured in the Statement of Claim filed in 2021 are included in the proposed amendment. The Defendant’s Counsel had disputed this, however, I find this to be true.
- (ii). the Claimant had already pleaded both negligence and damages in the specially endorsed Writ of Summons. Damages claimed included punitive, exemplary and aggravated.
- (iii). Therefore, I see no prejudice to the Defendant as a result of (i). and (ii). Further the claim is sufficiently pleaded to put the Defendant on notice of the nature of the claim.
- (iv). It has been established in the Jamaican case of **Bowers v Gordon [1991]** Court of Appeal Jamaica Civ App No 46 of 1990 (unreported) referred to in the text **Commonwealth Caribbean Civil Procedure 1999** that the jurisdiction to permit an amendment after the expiration of the relevant limitation period where the Writ of Summons and Statement of Claim were filed within the required time had been validly granted.

Further, Bingham JA (Ag) made the point that there can be no injustice or embarrassment to the other side where the amendment is merely in the nature of tidying up the claim which had already been pleaded.

I quote Morgan JA in the **Bowers** case as follows: *“It was the submission of the appellants that an amendment would give rise to loss of his defence under the Limitation of Actions Act. This cannot be so. It is the Writ from which time begins to run. This Writ was filed within the time limited for filing and any amendment of the statement of claim accompanying the Writ cannot therefore, be affected by the Limitation of Actions Act.”.*

6. For these reasons, I accede to the Claimants request to amend the Writ in the terms as set out in the Claimant’s affidavit in support of the Notice of Application.
7. I award any costs occasioned by the amendment to the Defendant to be fixed if not agreed by the parties at the Case Management Conference.

Dated this 24th day of April, A. D., 2024



Camille Darville Gomez
Justice