[2013] JMSC Civ 58

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2008HCV03952

BETWEEN	**EDNA TATE (Suing as next of kin of Mahan Tate, deceased)**	**CLAIMANT**
AND	**WEST INDIES ALUMINA COMPANY (WINDALCO) (A Joint Venture of Glencore Alumina Jamaica Ltd. and Jamaica Bauxite Mining Ltd.)**	**1ST DEFENDANT**
AND	**GLENCORE ALUMINA JAMAICA LTD**	**2ND DEFENDANT**
AND	**JAMAICA BAUXITE MINING LTD**	**3RD DEFENDANT**

Cecil J. Mitchell, instructed by Cecil J. Mitchell & Co. for the Claimant

Christopher Kelman and Krishna Desai, instructed by Myers Fletcher & Gordon for the Defendants

Heard: **March 1, 2 and 30, 2012, November 21, 2012, January 8 and April 26, 2013**

Road Traffic Accident Death – Claim under Fatal Accidents Act – Claim under Law Reform (Miscellaneous Provisions) Act – Application to Amend Claim Form and Particulars, made after close of parties' evidence at trial

Anderson, K., J

Judgment on Claim

[1] In this claim, as it presently exists both in form and in substance, the claimant, who is undisputedly, the widow of the deceased, has sued the defendants to recover damages arising from there having been a vehicular collision which resulted in the death of her husband – Mr. Mahan Tate. That vehicular collision took place on the 17th day of August 2005, at Flagman Crossing, Gutters, Bushy Park, in the parish of St. Catherine. The claimant has alleged that all of the defendants were negligent in various and sundry respects and that it was such negligence which caused that collision and ultimately also, the untimely death of the claimant's husband.

[2] The claim has been instituted by the claimant in her own name and solely on her own behalf. In her particulars of claim, the claimant has not even so much as remotely suggested that she has, at any time, been declared by this court, as being entitled to act as the personal representative of the deceased's estate or for that matter, that anyone else has been lawfully appointed to so act. Furthermore, the claimant has not made any allegation in her particulars of claim, as regards who are the, 'near relations' of the deceased and the claim has not been brought for and on behalf of any of those near relations other then the claimant herself. It is to be noted that the term -'near relations' has been defined by the relevant statute, that being the Fatal Accidents Act, as being, in relation to a deceased person, 'the wife, husband, parent, child, brother, sister, nephew or niece of the deceased person.' Accordingly, the wife of the deceased, is one of his, near relations for the purposes of the relevant provisions of the Fatal Accidents Act, but this court is unaware as to whether any other near relations exists and by virtue of the failure by the claimant to have, to date, provided any particulars in respect thereof, this court is very much unclear in its mind, as to why this claim, which has been brought pursuant to the provisions of both the

Fatal Accidents Act and the Law Reform (Miscellaneous Provisions) Act, has been brought solely in the name of, and for and on behalf of, the claimant. In the absence of particulars of claim having been filed, which clearly go to show that the claimant is the only 'near relation' of the deceased that is now alive, the claimant is not lawfully entitled, in the particular circumstances of this particular case, to pursue this claim, solely on her own behalf.

[3] A claim for damages arising from the alleged commission by a defendant, of the tort of Negligence, even when brought pursuant to the Provisions of the Law Reform (Miscellaneous Provisions) Act, must be brought within the otherwise statutory established limitation period of six years, which is established by Jamaica's Limitation of Actions Act. The Law Reform (Miscellaneous Provisions) Act does not derogate from, nor does it alter in any respect whatsoever, that limitation period. On the other hand, claims founded on the Tort of Negligence, but which are instituted pursuant to the provisions of the Fatal Accidents Act are required by virtue of the express provisions, of Section 4(2) of that Act, to be commenced within three years after the death of the deceased person, or within such longer period as a court may, if satisfied that the interests of justice so require, allow.'

[4] In respect of the claim now at hand, the deceased suffered death immediately, as a consequence of the aforementioned collision. Accordingly, his date of death was August 17, 2005. This claim was filed, by means of claim form and accompanying particulars of claim, which were filed on August 14, 2008. Both in the headings of that claim form and particulars of claim, as well as, of course, in all subsequent court filed documentation pertaining to this claim, the claimant has set out the following wording just below her name – 'Suing as next of kin of Mahan Tate, deceased.' Additionally, the claimant has stated in paragraph 1 of her claim form that she, 'sues as next of kin of Mahan Tate, deceased.' Bearing in mind, the provisions of Rule 8.9 (1) of the Civil Procedure Rules (CPR) read along with Rule 8.9A, it is very clear that the claimant is, *inter alia*, relying on the allegation, for the purpose of proving her claim, that she is suing as the next of

kin of Mahan Tate, deceased. The question to be answered at this juncture is – **Can the claimant properly maintain her claim, suing as next of kin of the deceased, pursuant to the provisions of either the Law Reform (Miscellaneous Provisions) Act or the Fatal Accidents Act, or both**? The simple answer to this question is 'No.' Quite rightly, neither counsel has even so much as sought to demur from this particular legal proposition. In fact, it is a proposition which has been expressly relied on by the defendants through their counsels' closing submissions, which were submitted pursuant to a court order and in lieu of oral closing submissions having been presented to the court.

[5] The reason for this is obvious, based on the very clear provisions applicable to a consideration of that issue, as are contained in Section 2(1) of the Law Reform (Miscellaneous Provisions) Act and Section 4(1) of the Fatal Accidents Act. For the sole purpose of brevity therefore, I will summarize in that regard. Section 2(1) of the Law Reform (Miscellaneous Provisions) Act, in essence, provides that in a situation such as the one applicable to the present claim, the claim must be instituted from the benefit of the deceased's estate. It follows from this, that a claim under that Act, must and can only lawfully be instituted by the person or persons with lawful responsibility for administering the deceased's estate, that being either an administrator or an executor, or an agent thereof. A person who is next of kin of a deceased person may, for various reasons, not be appointed as executor or administrator of that deceased's estate. In any event, until one has been lawfully so appointed, by Order of this Court, one cannot lawfully represent the interests of the deceased's estate - whether at court or otherwise.

[6] Insofar as the Fatal Accidents Act is concerned, it is a general rule and starting point that a claim under that Act, is to be brought by and in the name of the personal representative of the deceased person. Where, however, the office of the personal representative is vacant, or where no claim under said Act, is instituted by the personal representative within six months of the date of death of the deceased person, then such claim under the Fatal Accidents Acts, can be brought, 'by or in the name of all or any of the near relations of the deceased

person and whether the claim under said Act is brought by the deceased's personal representative or in the name of all or any of the near relations of the deceased person, such claim shall be for the benefit of the near relation of the deceased person.' The Fatal Accidents Act defines the term 'personal representative' in relation to a deceased person as meaning either the executor or administrator of a deceased person.

[7] Rule 8.9 (1) read along with rule 8.9A of the CPR, make it clear that a person may not rely on any allegation which is not set out in his claim form or particulars of claim, unless this court was to permit same to be done upon application having been made to it by that party, for that purpose. This claim has now reached the stage where the evidentiary aspects of the trial have been concluded, written closing submissions have been filed by the respective parties and judgment on the claim is reserved. It was only sometime fairly long after judgment had been reserved, that I had, as the presiding trial judge, determined that it would be best, in the interest of justice, for the parties to be called in to appear before me in open court, whereat and when I could explain to the respective parties' counsel, the concerns which I then and still do harbour as to whether the claimant even so much as presently has, a proper claim before this court. My concerns in that regard, although not having been assuaged in the slightest, have been accepted by the respective parties as being justifiable. For the purpose of letting the parties know what my concerns in that regard were, the parties had appeared before me in open court on November 21, 2012 and I had then, made my concerns known to them. A further court date was thereafter scheduled, in order to have the parties then formally indicate what their respective responses would be, to my expressed concerns. That further court date was on January 8, 2013 and the claimant's counsel, who had from amongst counsel, addressed me first on that date, accepted as valid, the court's earlier expressed concerns as regards the claimant's claim/statement of case and in light thereof, applied to be permitted to amend his client's particulars of claim.

[8] The amendments to same, which were then sought, are as follows:

That paragraphs 2 and 3 of the particulars of claim, be replaced as follows and that the paragraphs presently stipulated being paragraphs 2 and 3, be renumbered as being paragraphs 4 and 5 and all other consecutive paragraphs be renumbered accordingly –

(2) 'The claimant is the holder of letters of administration in the estate of the deceased, said letters of administration having been granted out of the Supreme Court of Judicature of Jamaica on August 22, 2011.'

(3) 'This Action is brought for the benefit of the estate and the near relations of the deceased.'

[9] This court takes the view, firstly, that unless the amendments as sought, are granted by this court, then the claimant's claim both under the Fatal Accidents Act, as well as under the Law Reform (Miscellaneous Provisions) Act, must, by virtue of reasons given above, of necessity, fail *ab initio*.

[10] Secondly, as the claimant's counsel has expressly accepted, without any demur thereto, having been forthcoming from the defence counsel, if the amendments were to be granted and thereafter, the defendants were to put the claimant to proof of the assertion as made in the amended paragraph 2 of the claimant's amended particulars of claim, this would necessitate that, in order for the claimant to succeed in proof of her claim as brought on behalf of the estate and near relations of the deceased person, she would have to apply to re-open the claimant's case, for the purpose of being permitted to lead further evidence in support of her then amended paragraph 2 of her amended particulars of claim. This would then have to be considered, just as will the application for the amendments, in the context of this claim being before this court for no less than four years now and judgment in respect of same having already been reserved, since it would have correctly been understood by all the parties, as of March 30, 2012, that the evidence at trial was, by then, completed. Alas, had the court not brought its concerns to the parties' attention, the same would indeed have been completed and undoubtedly, the claimant would have utterly failed in proof of her claim, as the claimant would have had no lawful authority, based on that which

she has, up until now, certified in her statement of case, to even so much as lawfully pursue her claim.

[11] Thirdly, there ought, in the particular circumstances regarding this claim, as presently exist, also to have been an application to amend the claimant's claim form, so as to include therein, the wording as set out in the proposed amendments of the particulars of claim. This should be so not only in order to make these documents (claim form and particulars of claim), entirely consistent with one another, but also so as to, from the very onset of the claim, by virtue of the claim form document, even though it can only now be properly particularized at this very late stage, by way of amendment, make it clear therein, what is the legal footing upon which the claimant rests the institution of her claim. The claimant has not, however, even at this late stage, applied for her claim form to be amended. This court though, notwithstanding the claimant's failure to do so, is not of the view that such failure should be fatal to her application, since, it would follow logically and as a matter of the overall application of the interests of justice, that even though not expressly applied for, if this court were to permit the amendments as sought to the claimant's particulars of claim, it would and should also permit, amendments '*ipassima verba'* to the claimant's claim form*;* since collectively, those documents would constitute the claimant's statement of case.

[12] Fourthly, the claimant has not yet, disclosed the Grant of Letters of Administration in the deceased's estate, to her. By that, this court means that the same has never been set out in a list of documents; this even though said document is 'directly relevant' as that term is defined by Rule 28.1(4) of the CPR, this because the claimant intends to rely on it in proof of her claim, as indeed she must, if she is thereafter permitted by this court so to do. Such failure to disclose is not only in breach of Civil Procedure Rule 28.4(1), but also is in breach of a court order. Furthermore, it must never be forgotten by litigants and their counsel, that the duty to disclose is a continuous one. In that regard, see Rule 28.13(1) of the Civil Procedure Rules. As such, whilst it is certainly the case that as at the date when this claim was filed, that being August 14, 2008, the claimant

then had no lawful capacity to claim pursuant to the provisions of the Law Reform (Miscellaneous Provisions) Act, as she did not then have the capacity to bring this claim on behalf of the deceased's estate. Nonetheless, from the moment when this court gave her the capacity to do so, by means of the grant to her, of Letters of Administration, the same ought to have been disclosed. In the circumstances, the same ought to have been disclosed, by means of immediate notification, as of August 22, 2011, to opposing counsel, but in addition, within 14 days after August 22, 2011, a supplemental list of documents ought to have been served, specifying therein as a document, the Grant of Letters of Administration. See Rule 28.13(1, 2 and 3) of the CPR, in that regard. To date, however, as far as this court presently knows, no such disclosure has yet been made by the claimant. This is perhaps because the claimant's counsel has taken the view that such disclosure would only be necessary if this court were to grant the amendments as sought. If that is so, then such, it must be stated, is clearly a mistaken view, since Rule 28.12(1) of the CPR, expressly states that: *'The duty of the disclosure in accordance with any Order for standard or specific disclosure continues until the proceedings are concluded*.' In the case at hand, an Order for standard disclosure was made by this court on May 5, 2011 and it is very clear that 'proceedings' in respect of this claim are not yet concluded, as a final judgment in respect of same, has still not, as of yet, been rendered by this court. Thus, this court was expecting that certainly by now, such disclosure would have been made. Alas, same was not to be. The failure to disclose that relevant document in a timely manner and in accordance with the applicable rules of court, must of necessity, be considered by this court very carefully, when this court is addressing its mind as to whether or not the proposed amendments ought to be granted. As such, this court will address the significance of the failure to disclose, upon the claimant's application to amend, at a later stage in this judgment.

[13] At this stage, it would be appropriate to set out, in brief a summary of the respective arguments advanced by the parties as to why the proposed amendments ought or ought not to be granted (as the case maybe). For the

claimant, the arguments as to why the proposed amendments ought to be granted were as follows. They are set out in random order:

i No undue prejudice would arise.

ii The proposed amendments would not impact upon the defendant's liabilities, nor would the defendants need to file a new Defence or can any witnesses, if the amendments as sought, were to be granted.

iii Court can exercise its case management powers and grant the amendments as sought.

iv Costs thrown away could be awarded to the defendants and this would more than adequately compensate the defendants for any inconvenience suffered.

v Defendants would not be prejudiced by the claimant's failure to disclose the grant to the claimant of letter of administration and in any event, it should be borne in mind by the court, that the failure to disclose was not wilful. As such, this court should waive non-compliance by the claimant with Rule 28.13 of the Civil Procedure Rules.

vi Rule 8.4 of the CPR is applicable to the present situation and the claim should not fail because, 'a person who should have been made a party was not made a party to the proceedings.' (Rule 8.4(1) (b) of the CPR), or because a person was added as a party to the proceedings who should not have been added.' (Rule 8.4(1) (a) of the CPR)

[14] The defendant's arguments in opposition to the claimant's application to amend, in summary, were as follows:

i The proposed amendments relate to liability, since as the defendants had pointed out in their written closing arguments, as the claim presently stands, the claimant has no proper basis upon which to pursue her claim, either under the provisions of the Fatal Accidents Act, or under the provisions of the Law Reform (Miscellaneous Provisions) Act.

ii Rule 8.4 of the CPR has no applicability to the present situation with which the claimant is faced.

iii The amendments would if granted, cause serious prejudice to the defendants, which could not adequately compensated for, by an award of costs.

iv The claimant has failed to comply with Rule 8.9(1) – duty to fulsomely set out nature of case in statement of case and also Rule 28.13 – continuous duty of disclosure, and the claimant seeks to make a mockery of those rules of court.

v The claimant has, throughout, acted in a very dilatory manner insofar as the proper framing of her claim is concerned, in that to date, it is only after the respective limitation periods for claims under the Fatal Accidents Act (three (3) years) and claims under the Law Reform (Miscellaneous Provisions) Act which would be the limitation period applicable to claims in tort generally, that being six (6) years, has expired and that the amendments, which are a *sine que non* of the claim, are now, for the first time, being sought. Such dilatory conduct on the claimant's part, is highlighted by, *inter alia,* the claimant's failure to disclose the grant to her of letters of administration in the deceased's estate.

vi The court does not have discretion to waive non-compliance by a party with Rule 28.13 of the CPR and two, insofar as there has been a failure by the claimant to disclose the Grant of Letters of Administration in the deceased's estate, to her, the claimant cannot rely on said grant for the purpose of assisting her in proof of her claim.

vii The claimant would, if permitted by means of the proposed amendments, be introducing fresh causes of action outside of the applicable limitation periods pertaining to same, and this is, in law, impermissible.

viii This court does have the power to vary any Order by another Judge of this court, such as, for instance, as was made in this claim - an Order for standard disclosure. Such general power cannot be successfully relied on, to derogate from the special rules *vis-a-vis* disclosure, as set out in Rule 28.13 (2 and 3)

[15] In rejoinder, the claimant's counsel submitted that since Rule 28.13 is silent as to whether this court has any power to extend time for compliance with the duty to disclose, his client relies on the general rule of court, that this court can extend time for compliance with a court order, this of course, being a power which can be exercised

even after the time for compliance has passed (Rule 26.1(2) (c) of the Civil Procedure Rules. The claimant's counsel also submitted in rejoinder, that the proposed amendments do not seek to introduce a new or fresh claim. Instead, they are sought solely for the purpose of regularizing the claimant's position. There are no new allegations regarding the circumstances which resulted in the deceased's death and thus, the proposed amendments can and ought to be permitted.

[16] I will now address each of those arguments in turn, as by doing so, this court will best be able to determine whether or not the amendments as sought, ought to be granted.

Whether Proposed Amendments Will Affect Liability Of The Defendants

[17] There is no doubt whatsoever, in this court's mind, that the proposed amendments are absolutely necessary if the claimant is to establish liability under either of the relevant statutes, on the part of either of the defendants. I therefore agree with the defence counsel's submission that the proposed amendments are a, '*sine qua non'* of the claimant's claim. It is therefore with this at the forefront of this court's mind and considered carefully in the context of all other relevant factors, not the least amongst which being, the extent of prejudice (if any at all), which would be caused to the defendants if the amendments as sought, were to be granted, that this court will consider for the purpose of deciding on the application made by the claimant.

Whether The Defendants Would Need To File A New Defence Or call Any Witnesses If The Amendments As Sought, Were To Be Granted

[18] There is no doubt that if the amendments as sought, were to be granted, an amended defence would be required to be filed, in order for the defendants to respond to the new allegations/assertion as would be made in the amended particulars of claim. The defendants in that amended defence, would likely have to either put the claimant to proof of those new allegations/assertions, because those allegation/assertions are not within their personal knowledge, this especially since there has not yet been any

disclosure to the defence of any Grant of Letters of Administration in the deceased's estate, to the claimant, or alternatively, admit to those new allegations/assertions.

[19] It is correct though to state that the defendants would not need to call any witnesses in order to respond to those new allegations/assertions, but there can be no doubt whatsoever, that if the claimant was to be put to proof of the new allegations/assertions made in an amended particulars of claim (this if amendments as sought, are permitted), then the claimant would have to seek this court's permission to re-open her case, if those new allegation/assertions are to possibly be proven. Even prior to any further testimony being provided to this court presumably by the claimant in that regard, this court would have to permit the claimant to amplify her witness statement. All of this would be being sought to be done, it must be recalled, long after both the claimant and the defendants have closed their respective cases and during a period of time wherein judgment on the claim was reserved by the court. Accordingly, additional trial time and additional costs for the parties, in particular, the defendants – who oppose the amendment application, would inevitably ensure if the amendments as sought, were to be granted. This will be of relevance to consider insofar as overall prejudice to the defendants is concerned.

Whether Defendants Would Be Gravely Prejudiced If Amendments as Sought, Were to Be Granted And Whether This Court Can And Should Exercise Its Case Management Powers And grant the Amendments As Sought

[20] There is no doubt that this court can, in appropriate circumstances, grant amendments to a party's statement of case, at any stage of the proceedings in respect of a claim. Where amendment of a party's statement of case is to be sought subsequent to the case management conference, then an application must be made to the court, and granted by the court, for that amendment to be lawfully made. See Rule 20.4 of the CPR in that regard. Rule 20.4 simply states that amendments subsequent to case management conference can be made with the court's permission. That rule of court does not go on to state what factors should be considered by this court in deciding on whether such permission ought to be granted. In exercise of its overall case

management powders, therefore, this court should apply the 'over-riding objective' in deciding whether a proposed amendment should be permitted. As a general rule, this court should allow amendments to be made to a party's statement of case, so as to enable the real matters in controversy between the parties, to be determined. In that regard though, this court must consider whether the proposed amendment (s) can be made without injustice to the opposing party. If the opposing party can be adequately compensated by an award of costs, then there would be no injustice to the other side. See **Charlesworth v Relay Roads Ltd** [2000] 1W.L.R. 230, **Clarapede & Co. v Commercial Union Association** [1883] 32 W.R. 26 262; **National Housing Trust & Y.P. Seaton & Associates Co. Ltd.** – Claim No. 2009 HCV05733.

[21] Of necessity, it must follow though, that the later in time that the proposed amendment is sought and the more fundamental to the entire claim or defence (as the case may be), that proposed amendment is, would likely be the greater the degree of prejudice that would be caused to the party opposing the amendment application and therefore, the greater likelihood that party could not be adequately compensated by an award of costs in his/its favour, as a consequence of such amendment (s) to a party's statement of case, having been permitted by the court. This does not mean, however, that late amendments of a party's statement of case ought never to be permitted by this court. Instead, what it means is that, if an application for such is made at a very late state of court proceedings in respect of a claim, then this court must consider whether, in view of the nature of the amendment and the stage at which such is being sought, the likelihood of irremediable prejudice to the opposing party exists. The court must consider such though, on a case by case basis, since, quite appropriately, Jamaica's rules of court as they presently exist and in particular Rule 20.4, does not prevent this court from granting a late or even very late amendment of a party's statement of case. There was a case decided on by Jamaica's Court of Appeal which, although decided on pursuant to the provisions of the then existing Civil Procedure Code, which was replaced in 2002 by the CPR, would likely still be decided in the same way today, as the same overall legal principles now to be applied in considering any application for an amendment of a party's statement of case, where applied by the court of trial and the

appellate court, in that case, wherein the amendments were permitted during trial, at the close of submissions. See **The Attorney General v Maurice Francis** SCCA 13/95 (Judgment delivered on March 26, 1999). There are cases though, in which late amendment applications were refused by courts. Thus, in **Christofi v Barclays Bank Plc**. [2000] 1W.L.R. 937, an amendment sought at a late stage, in an attempt to save a claim that would otherwise have been struck out as disclosing no reasonable claim, was refused in accordance with the over-riding objective. See also **Ketteman v Hansel Properties Ltd** (H.L.) – [1987] A.C. 189.

[22] In this claim, as earlier stated in this Judgment, there can hardly be any doubt that the claim as presently exists, has absolutely no prospect of success. I am buttressed in this view, by virtue, also, of Rule 8.7(6) of Jamaica's Civil Procedure Rules (CPR) which requires that, '*A claimant who claims in a representative capacity must state what that capacity is.'* In order to properly pursue a claim under either the Fatal Accidents Act or the Law Reform (Miscellaneous Provisions) Act or as in this claim, both of those Acts, the pursuer must do so in a representative capacity. The failure to state what that representative capacity is, in such a circumstance as the one concerning the claim now before this court, is to my mind, in and of itself, fatal to the claim, since the claimant cannot lawfully pursue a claim under either of those relevant statutes, on her own behalf, in her own name. She could only properly/lawfully have pursued same, if she had the requisite legal capacity to do so, as a representative of the estate and if so, pursuant to the provisions of the Law Reform (Miscellaneous Provisions) Act, or as a representative of the deceased's near relations (Fatal Accidents Act), or as a representative of both the deceased's estate and his near relations (where the claim is brought pursuant to both of those Acts of Parliament).

[23] In the circumstances, the case at hand, insofar as the claimant is concerned, is similar to the **Christofi** case (op.cit.) and in all likelihood, from an interests of justice perspective, the amendments as are now being sought by the claimant, ought not to be granted.

[24] There is though, one other compelling reason why it is this court's considered opinion that the amendment as sought by the claimant ought not to be granted and it is as simply put, that to do so, would it seems to me, deprive the defendants of a limitation defence which otherwise they would now have. This is because, if the amendments as sought, were to be granted, this would then result, for the first time, once such amendments to the claimant's statement of case have been duly filed, in the claimant actually being lawfully able to pursue a claim which would then have, at least, some reasonable prospect of success. The amended statement of case would be considered as having amended the claimant's original statement of case and that amended statement of case would then be considered as dating back to the claimant's original statement of case. As such, if the amendments as sought, were to be granted, the defendants would each be deprived of a limitation defence, this being three (3) years for the Fatal Accidents Act, aspect of the claim and six (6) years for the Law Reform (Miscellaneous Provisions) Act, aspect of the claim – six (6) years being the general limitation period for claim in tort.

[25] Although England has in place, through statute, a provision which Jamaica does not, that generally prohibits the granting of an amendment which would serve to deprive a party of a limitation defence – See **Limitation of Actions Act** [1980], Section 35(3), nonetheless, the question to be answered by this court now is: Would irremediable prejudice be caused to the Defendants of the amendments as sought, were to be granted? In answer to that question, for reasons already given in this Judgment, as also on the basis that if the amendments as sought, were to be granted, the defendants would be deprived of a limitation defence, this court is of the view, that the unequivocal answer to that question is – 'Yes.' For cases on this limitation point, *vis-a-vis* proposed amendments, See **Weldon v Neal** [1887] XIX Q.B.D. 394; **Gleaner Co. Ltd v Arnorld Foote** – [1982] 19 J.L.R. 124.

[26] In the circumstances, for all of the reasons provided herein, the application by the claimant to amend her statement of case is denied. Had there been a proper management of this claim by counsel and the court up until now, it is likely that this

unsavoury consequence could have been avoided and considerable time and cost would undeniably have been saved. The defendants should have applied for Summary Judgment in respect of this claim, at case management conference. Regrettably, they did not do so. The defendants are though, not to be punish by granting the amendments as sought, if in doing so, as at this stage when the application for amendment is now before this court for the first time, it is apparent to this court that irremediable prejudice would be caused to them if the amendments as sought, were to be granted. The objective of this court is not to punish, but rather, to do justice. In considering how costs of the claim should be awarded though, the fact that this claim as is, has been pending before this court as long as it has been, is a very important factor to be considered. As such, I will now hear from the respective parties, as to the issue of costs.

ORDER

1. Application by claimant to amend her statement of case, is denied.

2. Judgment on this claim is awarded to the defendants.

3. Costs in the claim are awarded to the defendants, to the extent of 75% of same, with such costs to be taxed, if not sooner agreed.

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Honourable Kirk Anderson, J.