



[2024] JMSC Civ. 58

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. SU2020CV00085

BETWEEN	MAXINE WATTS	CLAIMANT
AND	OMAR CLARKE	1ST DEFENDANT
AND	LOANS UNLIMITED LIMITED	2ND DEFENDANT

IN CHAMBERS

Mr. Joseph Jarrett instructed by Joseph Jarrett and Co. for the Claimant

Ms. Symone Mayhew K.C instructed by Mayhew Law for the 1st and 2nd Defendants

Heard: April 22 and May 13, 2024

Civil Procedure – Application for Permission for Defendants to Amend Defence – Whether Proposed Amendment to Defence Raises a Different Case than that Originally Pleaded – Principles to be Applied in Determining Whether to Grant Application- Rules 20.4(2), 1.1(2) (d) and 1.3 of the Civil Procedure Rules, 2002, as Amended.

MASTER L. JACKSON (AG)

INTRODUCTION

[1] The Claimant, Ms. Maxine Watts avers in her Particulars of Claim filed January 13, 2020 that on the 1st of November 2019, at approximately 12:20pm, she exited onto Trafalgar Road from the Small Business Association with the intention of crossing the road and in a bid to returning to her place of work which

is located at the University of the Commonwealth Caribbean (UCC), 17 Worthington Avenue, Kingston 5.

- [2] She further stated in her Particulars of Claim that before starting to cross the road she looked to make sure that the road was clear of vehicles and that there were no approaching vehicles. Having satisfied herself that it was safe to cross the road she commenced her crossing and continued to watch out for any approaching vehicles.
- [3] The Claimant had almost reached the median in the middle of Trafalgar Road, a four lane road, with two lanes going up and two lanes going down on the opposite side of each other, when she heard the sound of a motor vehicle in very close proximity. She immediately spun around to her right when she saw a vehicle exiting from Advantage General Insurance Company and coming right at her. She held out her right hand and began shouting “Hey hey” whilst taking action to get out of the way but unfortunately it was too late and the vehicle collided into her. As a result, she was taken to Suretime Medical Facility a short distance away where she was treated.
- [4] The Defendants filed a Defence on February 10, 2020 where they disputed the claim of the Claimant and set out their version of events at paragraph 6. Paragraph 6 states:

“In further answer to paragraph 6, the Defendants will say that on the day in question, the 1st Defendant was exiting premises occupied by Advantage General Insurance Company onto Trafalgar Road to travel in an easterly direction towards the intersection with Lady Musgrave Road. After the 1st Defendant safely exited onto Trafalgar Road and established the 2nd Defendant’s vehicle into the roadway, the Claimant suddenly stepped out into the path of the 2nd Defendant’s vehicle thereby causing a collision. The Defendants will say that the collision was caused and/or contributed to by the negligence of the Claimant herself”.

The particulars of negligence attributable to the Claimant were also detailed as follows:

PARTICULARS OF NEGLIGENCE OF CLAIM:

- a. Attempting to cross the road at a place and time when it was not safe to do so.
- b. Failing to pay due care and attention to her surroundings
- c. Failing to have regard to vehicular traffic entering the roadway and or already proceeding along the roadway
- d. Failing to have any or any sufficient regard for her own safety
- e. Stepping out into the path of traffic lawfully proceeding along the roadway.

THE APPLICATION TO AMEND DEFENCE

[5] On January 31, 2024, the Defendants filed an application pursuant to rule 20.4(2) of the CPR seeking an amendment to the Defence filed on February 10, 2020. They sought to amend paragraph 6 of the Defence to now read as follows (the amended portions are underlined):

“In further answer to paragraph 6, the Defendants will say that on the day in question, the 1st Defendant was exiting premises occupied by Advantage General Insurance Company onto Trafalgar Road to travel in an easterly direction towards the intersection with Lady Musgrave Road. Whilst the 1st Defendant was in the process of exiting onto Trafalgar Road, the Claimant suddenly stepped out into the path of the 2nd Defendant’s vehicle thereby causing a collision. The Defendants will say that the collision was caused and/or contributed to by the negligence of the Claimant herself”:-

PARTICULARS OF NEGLIGENCE OF CLAIM:

- a. Attempting to cross the road/path of the 2nd Defendant’s vehicle at a place and time when it was not safe to do so.
- b. Failing to pay due care and attention to her surroundings

- c. Failing to have regard to vehicular traffic entering the roadway and or already proceeding along the roadway
- d. Failing to have any or any sufficient regard for her own safety
- e. Stepping out into the path of traffic lawfully proceeding along the roadway.

[6] The application was supported by an affidavit sworn to by Mr. Omar Clarke the 1st Defendant. In his affidavit, he said that subsequent to filing the Defence and whilst corresponding with his Attorney to prepare the witness summary, he discovered the slight variation in the Defence. The Defence filed indicated that the accident occurred on Trafalgar Road but he wishes to clarify his Defence to say that the car had not yet exited Advantage General Insurance Company and that it was not positioned along the roadway. He said the previous location stated was an error as he did not keenly read through the document at the time.

[7] The Claimant objected to the application and filed an affidavit in response. The Court invited the parties to file submissions which they both did. I am indeed grateful to both parties for the cases submitted.

SUBMISSIONS ON BEHALF OF THE DEFENDANTS

[8] The Defendants' submission was succinct and to the point. They relied on the authorities of **National Housing Development Corporation Claims No 2004 HCV 000361 & 000362, Jamaica Redevelopment Foundation Inc v Clive Banton and Anor [2019] JMCA Civ 12 and Hutchinson v O'Sullivan [2017] JMCA Civ 91** to bolster their arguments. Counsel for the Defendants argued that the Court should exercise its discretion and grant the application on the basis that:

- a. *The application for amendment is not late as the trial date can be met. They relied on the authority of **National Housing Development Corporation** which confirms that an application to amend the statement of case before trial cannot be said to be late.*

- b. *The amendment is not being made having viewed the Claimant's witness statement; the amendment is being made to clarify an error as the 1st Defendant did not keenly read the Defence when he signed it.*
- c. *The amendments will allow the Defendants to advance their Defence and allow the Court to deal with the matter justly.*
- d. *The Claimant will not suffer any prejudice and in relying on **Hutchinson v O'Sullivan [2017] JMSC Civ 91** urged the Court in interpreting and applying rule 20.4 of the CPR to give effect to the overriding objective of the CPR which is to deal with cases justly and take a multi-dimensional (or liberal) as distinct from narrow approach as long as it is necessary to decide the real issues in controversy and will not do any injustice to the opponents of the party seeking the amendment.*

SUBMISSIONS ON BEHALF OF THE CLAIMANT

[9] Mr. Jarrett passionately opposed the application. Whilst he relied on the same authorities cited by the Defendants, he relied on them in his favour. He started by stating that the application was very late in the day. Not only was it being made after Case Management, but after the Claimant filed her witness statement and that of her independent witness. He further contended that, as such, the Defendant having seen the statements wishes to now change his Defence. He also noted that the application was being made 4 years after the Defence was filed and that delay is egregious.

[10] The amended Defence he stated, was not seeking to correct an error but was a major change to what was originally pleaded by the Defendant. The Defendant originally admitted to being on the roadway when the incident occurred. He now wishes to say that he was exiting and not yet on the road. This would not be in the interest of justice or giving effect to the overriding objective of the CPR to grant the application as prayed.

[11] Mr. Jarrett further argued that the Defendants had many opportunities before now to make the amendment. First was when the Claimant filed a reply which restated the position of the vehicle when it collided into her. The second

opportunity was when the 1st Defendant filed a witness summary August 2023, but yet no application to amend the Defence was filed then.

[12] Finally, he stated that granting this amendment will be prejudicial to the Claimant and the award of costs to the Claimant will not be sufficient if the Court decides to grant the application to amend.

ISSUES

[13] Having reviewed the submissions by the parties, the issues in relation to determining the application are as follows

a. Whether or not the proposed amendment is necessary based on the circumstances of the case?

b. Is the amendment needed to determine the real issue in controversy between parties?

c. Would the Claimant suffer any prejudice if the application is granted?
and

d. Whether permitting the amendment would be in keeping with the overriding objective of the CPR and within the interest of justice.

THE LAW

[14] The following rule of the Civil Procedure Rules 2002 as amended play a role in addressing this application;

PART 20

AMENDMENTS TO STATEMENT OF CASE

“20.4 (1) An application for permission to amend a statement of case may be made at the Case Management Conference. (2) Statements of case may only be amended after a Case Management Conference with the permission of the Court. (3) Where the Court gives permission to amend a statement of case it may give directions as to – (a)

amendments to any other statement of case; and (b) the service of any amended statement of case.”

- [15] It is evident from this rule, that the Court has the discretion whether to permit an amendment to a statement of case after the Case Management Conference. This rule however, does not provide any guidance as to what principles the Court should apply in determining whether to grant an amendment to a statement of case. It is on this basis, that guidance is gleaned from the relevant case law dealing with the principles to be applied in deciding whether to grant an amendment to a statement of case.
- [16] I have examined the authorities cited by both counsel to include the case of **National Housing Development Corporation v Danwill Construction Limited and others Nos 2004 HCV 000361 and 00362 and Jamaica Redevelopment Foundation v Clive Banton and another [2019] JMCA Civ 12** where it was established that the paramount consideration for the Court is to ensure that, having balanced the scales, justice is dispensed between the parties. Other principles established by the authorities also include that dealing with cases justly in an application of this nature, incorporates that an amendment may be allowed where it is necessary to decide the real issues in controversy; it will not create any prejudice to the other party (such as presenting a new case) and it is fair in the circumstances. **(See Hutchinson v O’Sullivan [2017] JMCA Civ. 91** per V. Harris J (as she then was).
- [17] The authorities have also shown that applications to amend, must necessarily turn on the particular facts of each case and so, no hard and fast rules are possible. Therefore, the outcome of an application to amend will depend on a fact-based assessment of various considerations, which may be relevant in light of the facts of the case **(see Jamaica Redevelopment Foundation, Inc, paragraph [26] vi)**. This will involve examining the time the application was made, any prejudice that the other party will endure, whether the award of costs will suffice and whether the amendment provides better particulars of the Defence which will clarify the issues between the parties.

[18] I have examined other authorities in and outside of this jurisdiction on the amendment of statement of case and have found that the principles as cited above are the same.

[19] In the pre-CPR decision of **Moo Young and another v Chong and others (2000) 59 WIR 369**, Harrison JA said at pages 375 to 376:

“In the instant case, the amendment granted may be permissible if: (1) it is necessary to decide the real issues in controversy, however late, (2) it will not create any prejudice to the appellants, and is not presenting a 'new case' to the appellants, (3) is fair in all the circumstances of the case, and (4) it was a proper exercise of the discretion of the trial judge on the state of the evidence. However late may be the application for amendment, it should be allowed in the above circumstances if it will not injure or prejudice the applicant's opponent. Different considerations, however, govern each case, and it is a matter in the discretion of the trial judge.”

[20] Straw JA in **Juici Beef (Trading as Juici Patties v Yenneke Kidd [2021] JMCA Civ 29** applied the principles enunciated in **National Housing Corporation Limited and Jamaica Redevelopment** and stated that while it is true that *“amendments should be allowed to enable the real matters in controversy between the parties to be determined, there has been an expansive understanding of the factors that are to guide a Court in its deliberations, as to whether to allow an amendment”*. (see **Jamaican Redevelopment Foundation, Inc v Clive Banton and anor [2019] JMCA Civ 12** per McDonald-Bishop JA, at paragraphs [26] and [27]).

[21] In the decision of **Beep, Beep Tyres Batteries and Lubes Limited v DTR Automotive Corporation [2022] JMCA App 18** McDonald-Bishop JA, in examining a number of authorities to include **National Housing Corporation and Jamaica Redevelopment** and Stuart Sime the author of the text a Practical Approach to Civil Procedure, 14th edition, at paragraph 53 stated;

53. Although a judge is imbued with wide discretion to determine whether to grant or refuse a proposed amendment, in the exercise of that

discretion a judge must seek to achieve fairness and justice between parties. That end is achieved by taking account of all relevant factors in the particular case and, in so doing, having regard to the Court's overriding objective. The factors for the Court's guidance in its quest to dispense justice and to further the overriding objective of the Court can also be derived from the relevant authorities. Some relevant factors for the judge's consideration are listed below. This list is, however, by no means exhaustive and is merely intended as a guide.

(i) the importance of the proposed amendment in resolving the real issue(s) in dispute between the parties;

(ii) the nature of the proposed amendment, that is, whether it gives rise to entirely new and distinct issues or whether it is an expansion on issues that were already pleaded or otherwise foreshadowed;

(iii) the stage of the proceedings at the time the application to amend is made. If the application to amend is made at a late stage, for example close to the trial date with the result that there may need to be an adjournment or if the application is made after trial has commenced, it should be considered with greater scrutiny;

(iv) whether there was delay in making the application to amend, the extent of the delay and the reason(s) for the delay;

(v) the prejudice to the respective parties to the claim, consequent on the decision to grant or refuse the proposed amendment;

(vi) whether any prejudice to the parties may be appropriately compensated by an order for costs;

(vii) the arguability of the proposed amendment;

(viii) the potential effect of the proposed amendment on the public interest in the efficient administration of justice;

*(ix) the reason(s) advanced by the applicant for seeking an amendment;
and*

(x) the importance of having finality in litigation.

[22] By way of comparison similar principles were enunciated in **Mark Brantley v Dwight C. Cozier [2015] ECarSC 195**. The full panel of the Eastern Caribbean Court of Appeal held that in exercising its discretion with regard to an application to amend a statement of case,

“the Court should be guided by the general principle that amendments should be made where they are necessary to ensure that the real question in controversy between the parties is determined, provided that such amendments can be made without causing injustice to the other party and can be compensated in costs. The amendment should be allowed regardless of how negligent or careless the omission from the statement of case may have been, and no matter how late the proposed amendment is.”

[23] In **MS Amlin Corporate Member Limited v Buckeye Bahamas Hub Limited 2020/COM/adm/00016 (4 December 2023)**, the Court held that, on an amendment of statement of case application, the Court must bear in mind the following factors: (a) how promptly the applicant has applied to the Court after becoming aware that the change was one which he wished to make; (b) the prejudice to the applicant if the application was refused; (c) the prejudice to the other parties if the change were permitted; (d) whether any prejudice to any other party can be compensated by the payment of costs and or interest;(e) whether the trial date or any likely trial date can still be met if the application is granted; and (f) the administration of justice.

[24] From the foregoing, I will now examine the Defendants’ application using the following guidelines; (i) the time of the application/delay in making the application; (ii) the reason for the delay in the making of the application; (iii) the proposed amendment and any prejudice to Ms. Watts; (iv) the real question in controversy between the parties.

ANALYSIS

The time of the application/Delay in making the application

[25] The Defendants filed their Defence on February 10, 2020. The first Case Management Conference was held on September 29, 2022 and the orders therein included that witness statements were to be filed and exchanged on or before August 31, 2023. The 1st Defendant filed a witness summary on August 31, 2023 but the application to amend the Defence was not filed until January 31, 2024. The Defendants were at liberty to amend their Defence without permission prior to the Case Management Conference as set out in the rules. It did not do so. One of the considerations the Court should take into account in assessing whether an amendment should be allowed, is the opportunity the applicant had to formulate his statement of case adequately at an earlier stage. The Defendants had many opportunities to adequately formulate its Defence at earlier stages of the proceedings. This is evident from when the Claimant filed her Claim and Particulars of Claim clearly setting out her version of events. Then when the Defence was filed, she replied to the Defence. Thereafter, the parties attended Case Management Conference which was held on September 29, 2022 and Pre-Trial Review which was held on October 2, 2023. Yet, I reiterate here, the application to amend the Defence, was not filed until January 31, 2024.

[26] There is a delay of four years between the filing of the Defence and the application to amend the Defence. There is also a delay of five months between when the 1st Defendant discovered the error in the Defence for which the application relates, and when the application for amendment was made. Notwithstanding this, the Court is reminded of what Harrison JA said in **Moo Young and another v Chong and others (2000) 59 WIR 369**, that is;

“however late may be the application for amendment, it should be allowed in the above circumstances if it will not injure or prejudice the applicant's opponent. Different considerations, however, govern each case, and it is a matter in the discretion of the trial judge”.

[27] The Court also bears in mind McDonald-Bishop JA in **Beep, Beep Tyres Batteries and Lubes Limited v DTR Automotive Corporation**, where she observed that the delay in the application is just one factor to consider. If the application to amend is made at a late stage, for example close to the trial date with the result that there may need to be an adjournment or if the application is made after trial has commenced, it should be considered with greater scrutiny. Since delay by itself is not the determinative factor of the application, I will now move on to examine the other factors to see whether the Court ought to exercise its discretion and grant the application.

The reason for the delay in the making of the application

[28] Mr. Omar Clarke, the 1st Defendant in his affidavit in support of the application, indicated that it was when his witness summary was being finalised that he realised that there was an error in the Defence and as such the need to amend the Defence arose. If the error was discovered upon the preparation of the witness summary which was filed as far back as August 31, 2023, it is not clear why the application took so long to be filed. That is almost five months after the error was discovered. The Defendants have not provided an explanation for this delay between the discovery of the error and filing the application.

[29] The 1st Defendant maintains that it is while dialoguing with his Attorney in preparing his witness statement, that he realised this error in his Defence. Mr. Jarrett in opposing the application maintains that it is because the 1st Defendant has seen the witness statement of the Claimant as to where the accident occurred why the application for the amendment is being made.

[30] I do not agree with this submission made by Mr. Jarrett. The Claimant in her Claim, Particulars of Claim and Reply to the Defence, definitively stated where she said the incident occurred; which is on Trafalgar Road. As such, the Claimant's version as to where the incident occurred was known from the outset by the Defendants and was not just revealed in witness statements filed by the Claimant.

[31] Mr. Clarke in his affidavit states that his failure to keenly read through the Defence is the reason for him not identifying the error. At this juncture I wish to

remind litigants that Court proceedings are serious and are to be taken as such. This is evident by the fact that the Civil Procedure Rules require that a statement of case (which includes Defences), signed by the party is to be verified by a statement of truth. This states that the facts set out in the statement of case are believed to be true. Where the person is unable to sign, the Attorney can do so on his behalf. The purpose of the statement of truth is to eliminate a claim in which a party had no honest belief and to discourage claims unsupported by evidence which are put forward in the hope that something may turn up.¹ It is therefore important for all the parties to the proceedings to state honestly what they believe the facts to be and not to indulge in what is called sporting theory of justice. See Simmons J (as she then was), **Shonique Clarke v Omar Palmer and Accent Marketing Jamaica Limited [2019] JMSC Civ 106 paragraph 51.**

- [32] In addition, rule 10.5 of the CPR addresses the duty of the Defendant to set out his case which includes stating if there is any aspect of the claim he admits or denies and putting out his or her own version of events before signing the statement of truth. The Defendants have counsel in this matter that signed below the statement of truth, which invariably means, that counsel must have explained to the Defendants the purpose of the verification. As a result, stating that one did not keenly read the Defence is unacceptable to say the least. Furthermore, this behaviour is not in keeping with Rule 1.3 of the CPR that provides that it is the duty of the parties to help the Court to further the overriding objective of enabling the Court to deal with cases justly and expeditiously.

The proposed amendment and any prejudice to Ms. Watts

- [33] The amendment seeks to change the position of the vehicle that the 1st Defendant was driving at the time of the accident. That is from

...the 1st Defendant was exiting premises occupied by Advantage General Insurance Company onto Trafalgar Road to travel in an easterly direction towards the intersection with Lady Musgrave Road. After the 1st Defendant safely exited onto Trafalgar Road and established the 2nd Defendant's vehicle

¹ Stuart Sime, A Practical Approach to Civil Procedure 18th edition, page 148

into the roadway, the Claimant suddenly stepped out into the path of the 2nd Defendant's vehicle thereby causing a collision. The Defendants will say that the collision was caused and/or contributed to by the negligence of the Claimant herself.

to now to read-

...the 1st Defendant was exiting premises occupied by Advantage General Insurance Company onto Trafalgar Road to travel in an easterly direction towards the intersection with Lady Musgrave Road. Whilst the 1st Defendant was in the process of exiting onto Trafalgar Road, the Claimant suddenly stepped out into the path of the 2nd Defendant's vehicle thereby causing a collision. The Defendants will say that the collision was caused and/or contributed to by the negligence of the Claimant herself.

Under Particulars of Negligence to add -

- a. Attempting to cross the road/path of the 2nd Defendant's vehicle at a place and time when it was not safe to do so.

[34] Counsel for the Defendant has argued that the amendment is to align with the witness summary of the 1st Defendant, for the judge to know where the 1st Defendant was positioned at the time of the accident and is really geared towards resolving the real issues in dispute between the parties. She further submitted that on the evidence, the 1st Defendant failed to properly and accurately articulate the circumstances surrounding the accident in his Defence therefore warranting the amended Defence filed on January 31, 2024.

[35] In the Defence filed in 2020, the Defendants aver that when the 1st Defendant had safely exited Advantage General Insurance Company and established the vehicle in the road, the Claimant suddenly stepped out into the path of the vehicle. The amendment seeks to remove this version and now say that the 1st Defendant was exiting Advantage General. According to the 1st Defendant at paragraph 5 of his affidavit in support of the application, the purpose of the amendment is because he

“wishes to indicate that the accident occurred at the exit of Advantage General Insurance Company which was located along Trafalgar Road and that at the time of the accident, the car was not positioned along the road way”.

- [36] Harrison JA in **Moo Young** said at page 380 that a proposed amendment should not be allowed *“if it is in conflict with and contrary to a specific allegation of fact previously made”*. In the matter of **Index Communications v Capital Solutions and others [2012] JMSC Civ. No. 50**, Mangatal J considered whether an amendment of the claimant’s statement of case was to be disallowed on the basis that it was made in bad faith or amounted to “backtracking on allegations of fact”. In summary, Mangatal J considered the following: 1) the original pleadings, previous amendments, and the nature and number of proposed amendments; 2) whether an explanation was offered for the proposed amendments; 3) whether the amendments served some useful purpose; 4) whether a reason was offered as to why the claimant should be allowed to make the proposed (further) amendments; and 5) whether the claimant put forward evidence that would lead to the view that it had a real prospect of successfully arguing its case based on the proposed amendments.
- [37] Mangatal J said at paragraph 49 that an application to amend a statement of case *“to plead something contrary to a specific allegation of fact previously made... [was] impermissible and [A] Court will not countenance an application for an amendment not made in good faith”*.
- [38] It is to be noted that these factors can fit within the same factors as enunciated by the Court in **National Housing Development Corporation, Jamaica Redevelopment Foundation Inc. v Clive Banton and Beep, Beep Tyres Batteries and Lubes Limited v DTR Automotive Corporation**. In the latter, **McDonald-Bishop JA stated** *“the nature of the proposed amendment, that is, whether it gives rise to entirely new and distinct issues or whether it is an expansion on issues that were already pleaded or otherwise foreshadowed should be examined by the Court”*.

[39] A reading of the amendment does not reveal a situation where the Defendants are seeking to clarify the pleadings or expand on issues previously pleaded. It is evident, that the Defendants are seeking to present a different version of events concerning the position of the vehicle at the time of accident.

[40] What is interesting, is that although the Defendants are seeking to amend the position that the vehicle was in when the Claimant according to them walked and collided into the vehicle, under the particulars of negligence outlined by them, the following pleading is still present in the proposed amended Defence.

e. stepping out into the path of traffic lawfully proceeding along the roadway.

[41] If the Defendants are seeking to amend their Defence to now say, that the 1st Defendant was exiting Advantage General when the Claimant collided into his vehicle and had not yet proceeded onto the roadway, this particulars of negligence is inconsistent with the proposed amendment. It also questions the coherence of the amendment being sought. The Defendant in his affidavit states that the purpose of the amendment is to clearly indicate where he was when the accident occurred. However, the proposed amendment “whilst in the process of exiting”, does not even make it any clearer based on the foregoing where the vehicle was exactly positioned.

[42] As it relates to the issue of prejudice, it would not be fair to the Claimant to grant an amendment that has inconsistent aspects. The likely prejudice that the Claimant would endure from this, is that it makes it difficult to determine what version exactly the Defendants are asserting, and what then should the Claimant be responding to. This cannot be cured with the imposition of a cost order.

The real question in controversy

[43] In the **18th edition of the text A Practical Approach to Civil Procedure by Stuart Sime**, the learned author at page 244 states: -

“Changes in the parties’ knowledge of a case as it progresses and straightforward drafting errors make it necessary on occasion to make amendments to their statements of case. The underlying principle is that all amendments should be made which are necessary to ensure that the real question in controversy between the parties is determined, provided such amendments can be made without causing injustice to any other party”.

- [44] In a plethora of cases on the issue of whether the Court should allow an amendment to a statement of case, both pre and post CPR, it is stated that the foremost consideration is whether the amendment is needed in order to determine the real issues in dispute between the parties in light of all the relevant circumstances. See for example McDonald-Bishop JA in **Jamaica Redevelopment Foundation Inc v Clive Banton and Anor**; Brooks J (as he then was), in **National Housing Development Corporation**, and Harrison K JA in **Moo Young**. Most recently in **Beep, Beep Tyres Batteries and Lubes Limited v DTR Automotive Corporation** McDonald-Bishop JA stated it as *“the importance of the proposed amendment in resolving the real issue(s) in dispute between the parties.”*
- [45] The Defendants have only merely stated in written submissions that the amendment is needed to allow the “Defendants to advance their Defence and allow the Court to deal with the matter justly”. In her oral submissions counsel expanded on this point by saying that the amendment is important for the trial judge to know the position of the vehicle when the accident occurred.
- [46] It is to be noted that the authorities use the word real question in issue. This is to demonstrate that the issue must be genuine and actual not just fanciful. A reading of both the Particulars of Claim and the Defence (to include the proposed amended Defence), reveals that based on the circumstances of this case, the **real** issue to be tried is whether the Claimant walked out into the path of the 2nd Defendant’s vehicle which was being driven by the 1st Defendant or whether the 1st Defendant drove negligently and collided into the Claimant.

[47] The Defendants have not clearly demonstrated to this Court that whether the 1st Defendant was at the exit at Advantage General Insurance Company or not, will assist in advancing the case for the Defendants or prevent the court from properly assessing the case before it in order to justly and fairly determine the matter or issues in the case. Whilst it is important for the trial judge to know where the vehicle was when the accident occurred, as stated earlier, the proposed amendment has not made this any clearer.

CONCLUSION

[48] While there was some amount of delay in the filing of the application by the Defendants to amend the Defence, when considered within the context of the case law, this application is not considered to be significantly late. However, having regard to the circumstances of the case, the Defendants have not satisfied this Court, that it ought to exercise its discretion and grant the amendment being sought. There is no cogent reason for the delay in making the application and the Defendants are seeking to present a different version of events from that previously pleaded. They have also not demonstrated that the amendment is needed to determine the real issues in controversy between the parties and based on the circumstances as examined, there will be prejudice to the Claimant if the application is granted that no order for cost can cure.

ORDERS

1. The Application filed January 31, 2024 is refused
2. Cost awarded to the Claimant/Respondent to be agreed or taxed
3. Leave to appeal is granted
4. The Defendants/Applicants are to prepare, file and serve Formal Order herein

**MRS. LUCIANA JACKSON
MASTER IN CHAMBERS (AG)**