

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

SUIT NO. C.L. W033 OF 1993

BETWEEN	JOHN WILDISH	RESPONDENT
A N D	BANK OF JAMAICA	1ST DEFENDANT
A N D	RICHARD JONES	2ND DEFENDANT

Mr. R. B. Manderson-Jones appears for Plaintiff

Mr. Douglas Leys appears for the 1st Defendant

Mr. Clark Cousins instructed by Rattray, Patterson
Rattray for 2nd Defendant.

Heard: July 9, & 20, 1994.

Master (Ag.)

Judgment

The affidavit of Mr. R. B. Manderson-Jones in support of this summons for leave to amend statement of claim states at paragraph 3 as follows:

"The proposed amendment of the statement of claim arises out of the same circumstances, facts and matters giving rise to the other cause of action shown in the statement of claim."

The summons is resisted by the 1st defendant on the ground that the claim is an alternative cause of action founded in contract and it ought not to be allowed as coming a year after the writ was filed it is statute barred by virtue of section 2(1) (a) of the Public Authorities Act and if granted would take away the defence afforded under the provisions of that act. He submitted that by virtue of Sections 3 and 5 of the Bank of Jamaica Act the Bank of Jamaica is a public Authority performing a public duty and consequently the claim falls within the province of the Public Authorities Protection Act. He relied on Order 20 rules 5 - 8/20 of the 1938 Supreme Court Practice and submitted that the amendment if granted would be prejudicial to the 1st defendant.

Counsel for the 2nd defendant adopted the submissions made by counsel for the 1st defendant as regards prejudice and submitted further that the 2nd defendants claim indemnity against the 1st defendant in

respect of any liability arising out of the suit and if amendment was granted against the 2nd defendant and judgment entered against the 2nd defendant on the alternative claim, the indemnity would be valueless.

Counsel for the Plaintiff submitted that the relevant sections of the White Book for consideration are rules 20/5, 20 5 - 8/7 and rules 20 5 8/9. He alluded to sub-sections (3), (4) and (5) of rule 20 5 and submitted that even if the application is made after any period of limitation current at the date of issue of the writ has expired the Court could nevertheless grant the amendment "if it thinks it just so to do" and that even if (which he denied) the Public Authorities Protection Act applied the Court could nevertheless still make the order because the amendments so made would have retroactive effect and consequently there could be no prejudice or deprivation of rights. He submitted that under rule 20 5 8/7 the Court is empowered to grant amendments in circumstances where a new cause of action arises and that the Court has unfettered discretion that regard. He discussed at length the rationale and principles underlying the powers of the Court under rule 5 that if the proceedings had been properly formulated or constituted from the beginning in circumstances specified in subsections (3), (4) and (5) the defence of limitation of action would not be available to the defendants and that in the circumstances the Public Authorities Protection Act does not apply and it has no application to the Bank of Jamaica.

The case of Joan Abrahams (by her mother and next friend Gloria Abrahams) and Gloria Abrahams and Attorney General and Hezekiah Ramdatt SCCA No. 3 of 1983.

was cited by Counsel for the 1st defendant but was not particularly helpful because of the particular circumstances of that case.

In the case of JMM Atlantic Line Ltd. and Metal Box PLC Supreme Court Civil Appeal No. 79/87 an application was made to set aside a previous order to amend pleadings to add a defendant in circumstances where the limitation period was involved. In that case reference was made by Carey P. (Ag.) to the decision of Attorney General and others vs Richards SCCA 36/86 where the statute involved was the Public Authorities Protection act and in setting aside the order in that case it was said,

"The statute of limitation provides legal defences and so we would ask what greater injustice could be done to a defendant than to find himself liable to defend a suit which is brought on continued contrary to the prevailing statute of limitation."

The Court referred to the case of Charlton vs Reid and other authorities in holding that the Court has always refused to allow a cause of action to be added where if it were allowed the defence of a limitation statute would be defeated.

Reference was made by Carey P. (Ag.) to order 20 rule 5 as respondent's Counsel had relied on order 20 rule 5 (2) which states,

"Where an application to the court for leave to make the amendment mentioned in para (3) (4) or (5) is made after any relevant period of limitation current at the date of issue of the writ has expired the court may nevertheless grant such leave in circumstances mentioned in that paragraph if it thinks it just to do."

At page 4 of the Judgment Carey P. (Ag.) states,

"In the event that he did Lopez vs Gaddes Refrigeration Ltd. (1968) 10 J.L.R. p. 4 is authority against that approach".

Carey P. (Ag.) also said that that case also -

"demonstrates the care with which editions of the Supreme Court Practice (The White Book) should be relied on in purported compliance of section 686 of the Judicature Civil Procedure Code."

And in the circumstances held that -

"there was no warrant for the exercise of his discretion to allow the amendment."

Mr. Manderson-Jones submitted that in any event the Public Authorities Protection Act does not apply as there is no "action proceeding or prosecution." He brought to the Court's attention after the close of submissions the case of Cooper and Associates Ltd. vs N.W.C - Suit No. C.L. 1985 C171 a judgment of Clarke J. in which on a suit being brought to recover money the Public Authorities Protection Act was invoked and said to be applicable. In rejecting that contention the Court referred to the case of Sharpington vs Fulham Guardians (1904) 2Ch 449 and stated that "the law in my judgment imposes no special duty on the defendant to contract with the plaintiff."

I interpret the decision in that case to be authority for the proposition that not every contract entered in to by a public authority is within the Act. It seems that the question to be considered is whether the contract was merely incidental or amounted to be a private complaint of a private individual in respect of private contract.

Having regard to the objects as set out in Section 5 of the Bank of Jamaica Act and having regard to the matters complained of in the Writ of Summons under consideration I hold that in these circumstances the Bank of Jamaica is a public authority performing a public duty and consequently in accordance with the decision in JMM Atlantic Line Ltd. vs Metal Box P.L.C. it would be prejudicial to deprive the 1st defendant of the defence of the Public Authorities Protection Act.

As regards the 2nd defendant it is pleaded in the writ of summons that he was the servant or agent of the 1st defendant and consequently the same reasons would apply with equal force to the 2nd defendant. Accordingly, leave to amend the writ of summons is refused.