

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO. SLUHCV 2006/0413

BETWEEN:

NICHOLAS FAISAL

Claimant

AND

SAINT LUCIA BANANA CORPORATION
(Formerly Saint Lucia Banana Growers
Association (SLBGA))

Defendant

Appearances:

Mrs. Petra Nelson and Mrs. Esther Greene – Ernest for the Claimant
Mr. Horace Fraser for the Defendant

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2007: November, 15
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DECISION

[1] This is an application by Counsel for the Claimant to add Ranju Farms Ltd as a Defendant to the action, an application being resisted by Counsel for the Defendant.

[2] The Court's duty is to seek to give effect to the overriding objective by the CPR i.e. to deal justly with the case when:

- a) *exercising any discretion given by the Rules; or*
- b) *interpreting any rule*

[3] In this application the court has in effect been asked to do both with respect to Part 19.2 CPR and more particularly Parts 19.2 (3) and (7).

Part 19.2 (3) provides:

"The court may add a new party to proceedings without an application

if –

(a) *it is desirable to add the new party so that the court can resolve all the matters in dispute in the proceedings; or*

(b) *there is an issue involving the new party which is connected to the matters in dispute in the proceedings and it is desirable to add the new party so that the court can resolve that issue*

[4] Counsel for the Claimant is arguing that Ranju Farms Ltd by the Defendant's own admission was the Claimant's employer, and while the Claimant is denying this, it is an issue which the court must resolve, the case being premised on the wrongful dismissal of the Claimant.

Part 19.2 (7) states:

“The court may not add a party (except by substitution) after the case management conference of the application of an existing party unless that party can satisfy the court that the addition is necessary because of some change in circumstances which became known after the case management conference”.

[5] While it is accepted that a judge has a discretion in granting the addition of parties after proceedings have commenced, I am of the opinion that that discretion within the context of Part 19.2 (7) is not an unqualified discretion. The meaning of that rule is very plain.

Unless the stipulations in the rule are satisfied, viz:

- (1) *that the court can be satisfied;*
- (2) *that the addition is necessary*
- (3) *that there is a change in circumstances; and*
- (4) *this change became known after the case management conference*

then it would appear that the court does not have the power to act.

[6] Counsel for the Claimant has not brought to the attention of the court any “change in circumstances” which came to light after the case management conference which would serve to move the court to grant the application for the addition of the party. The only

“change” there appears to be is that new Counsel have been retained who have approached the matter differently and are of the view that Ranju Farms Ltd should be added to the Claim.

- [7] The modern approach is flexible with amendments being granted in accordance with the justice of the case: Blackstone’s Civil Practice 2004 at para. 31.8. Counsel merely seeks to rely on the overriding objective but in the words of May LJ in Vinos v Marks and Spencer plc (2001) 3 AER 784:

“Interpretation to achieve the overriding objective does not enable the court to say that provisions which are quite plain mean what they do not mean; nor that the plain meaning should be ignored”.

- [8] See also Peter Gibson LJ in the same case:

(a) the construction of the CPR, like the construction of any legislation, primary or delegated, requires the application of ordinary canons of construction, though the CPR, unlike their predecessors, spell out in part 1 the overriding objective of the new procedural code. The court must seek to give effect to the objective when it exercises any power given to it by the rules or interprets any rule. But the use in rule 1.1 (2) of the word “seek” acknowledges that the court can only do what

is possible. The language of the rule to be interpreted may be so clear and jussive that the court may not be able to give effect to what it may otherwise consider to be the just way of dealing with the case, though in that context it should not be forgotten that the principal mischiefs which the CPR were intended to counter were excessive costs and delays. Justice to the Defendant and to the interests of other litigants may require that a Claimant who ignores time limits prescribed by the rules forfeits the right to have his claim tried.

A principle of construction is that general words do not derogate from specific words. Where there is an unqualified specific provision, a general provision is not to be taken to override that specific provision.

[9] It would seem therefore that this court is constrained from granting the application by Counsel for the Claimant.

[10] However to repeat the words of Peter Gibson LJ above:

‘It should not be forgotten that the principal mischiefs which the CPR were intended to counter were excessive costs and damages’.

[11] Thus in my opinion the court has in this instance to exercise a balancing act in seeking to give effect to what it considers the just way of dealing with the case.

[12] It is obvious that it is open to the Claimant to institute separate proceedings against Ranju Farms Ltd. This however opens up to the possibility of different tribunals arriving at different conclusions on what are essentially the same facts. If however the addition of Ranju Farms as a party to the existing claim is permitted, this makes for a speedier and more cost effective means of resolving the dispute.

[13] Therefore in furtherance of the goals of the CPR I am minded to go with what seems to me to be the lesser of the two (2) "evils" and allow the addition of Ranju Farms Ltd as a party to this claim for as stated at paragraph 14.2 of Blackstone (op cit): claims involving common questions of law or fact between different parties, or different causes of action involving the same parties, should be dealt with in the same proceedings:

ORDER

1. **Application to add Ranju Farms Ltd as a party to the action hereby granted.**

2. **Continuation of this action will therefore be in accordance with Part 19.3 (7).
The Claimant must however within 14 days file and serve an amended claim and statement of claim and all other supporting documents on the Defendants**

3. Costs will be awarded to the Defendant in the sum of \$1,500.00

SANDRA MASON Q.C.

High Court Judge