

IN HIGH COURT OF BELIZE, A.D. 2023

CLAIM No. 436 of 2021

BETWEEN

LATITUD 20 ARCHITECTURE LTD.

CLAIMANT/RESPONDENT

AND

CARLTON WATSON

DEFENDANT/APPLICANT

BEFORE The Honourable Madam Justice Patricia Farnese

HEARING DATE: March 23, 2023

APPEARANCES

Ms. Payal B. Ghanwani for the Claimant/Respondent

Mr. Darrell Bradley for the Defendant/Applicant

DECISION ON APPLICATION FOR STRIKE-OUT

Introduction

[1] Mr. Carlton Watson has applied for this Court to strike-out Latitud 20 Architecture Ltd.'s (Latitud) Amended Claim Form and Amended Statement of Claim on the basis that they were filed without the Court's permission after the first case management conference contrary to Rule 20.1 of the *Supreme Court (Civil Procedure) Rules, 2005* (CPR). Latitud argues that their actions do not violate Rule 20.1 because

case management has yet to occur. They are free to amend their pleadings as they see fit.

[2] I have taken the extraordinary step of issuing a written decision on what is otherwise a straightforward, procedural matter because there appears to be confusion in Belize concerning the correct interpretation of Rule 20.1. This confusion can undoubtedly be attributed to the fact that, unlike many sections of the CPR, Rule 20.1 differs between Caribbean Commonwealth jurisdictions. This decision aims to offer clarity and certainty on the correct interpretation of Rule 20.1 to ensure consistent application of the Rule in the High Court.

[3] I find that the court's permission to amend pleadings is required after the court has been put in a position to decide the substantive claim or has issued any case management orders. The court's permission is not required if the matter has been adjourned for mediation or settlement negotiations without further case management orders.

Issues

[4] Latitud has not asked this Court to permit the amendment, if I find that permission was required. They have also not requested relief from sanction. Therefore, the sole question the Court must answer to decide this application is:

1. When does case management occur for the purpose of deciding when pleadings can no longer be amended without the court's permission?

If I find that case management has occurred, I will grant Mr. Watson's application.

Analysis

[5] The Parties do not dispute the chronology of events leading up to the present application. Shoman J, as she then was, listed and called up this matter 4 times. The first hearing was listed as a *Case Management Conference* and was adjourned when Shoman J. ordered the parties to attend mediation. The matter then came up for a *Report* where the Parties indicated that mediation was not successful. Notes in

the court's file for this date state that Shoman J "advises counsel for the claimant to narrow issues after the cmc." The Parties next returned to court for a hearing listed as a *Case Management Conference* where the matter was again adjourned after Shoman J made orders to receive submissions and hear summary judgment and/ or strike out applications filed by the Parties. The applications were heard and dismissed at a final hearing with Shoman J. After the file was transferred to me, I called the Parties in for a *Report* where the date was set to hear the present application.

[6] Mr. Watson argues that after attending the first hearing listed as a *Case Management Conference*, Rule 20.1 operated to close the pleadings. Latitud was required to seek the Court's permission to amend their claim form and statement of claim. Rule 20.1(1) provides:

20.1 (1) A party may change a statement of case at any time before the case management conference without the court's permission unless the change is one to which –

(a) Rule 19.4 (special provisions about changing parties after the end of a relevant limitation period); or

(b) Rule 20.2 (changes to statements of case after the end of a relevant limitation period); applies.

(2) An application for permission to change a statement of case may be made at the case management conference.

(3) The court may not give permission to change a statement of case after the first case management conference unless the party wishing to make the change can satisfy the court that the change is necessary because of some change in the circumstances which became known after the date of that case management conference.

[7] Mr. Watson exclusively relies on jurisprudence from the Eastern Caribbean Court of Appeal, including a decision from Blenman JA, as she then was, in support of his position:¹

¹ *Comodo Holdings Limited v. Renaissance Ventures Limited et al.* BV1HCMAP2014/0032.

Once the date of the first case management conference arises, there can be no amendment of pleadings without first obtaining the permission of the court. In **George Allert et al v. Joshua Matheson et al** this court held it is of no moment that the case management conference was adjourned and in fact no directions were given; What triggers the need to obtain the permission of the court is the arrival of the date of the first case management conference which had occurred and since Comodo's desire to amend its pleadings after that date, it was necessary to first obtain leave of the court to do so. [footnote removed].

Rule 20.1 of the Eastern Caribbean's *Civil Procedure Rules 2000*, however, contains significant differences from Belize's CPR:

20.1(1) A statement of case may be amended once, without the court's permission, at any time prior to the date fixed by the court for the first case management conference.

(2) the court may give permission to amend a statement of case at a case management conference or at any time on an application to the court.

The court must act cautiously when considering applying Eastern Caribbean jurisprudence on the interpretation of Rule 20.1. The Eastern Caribbean CPR allows only one amendment prior to the date "fixed" for the first case management conference. An adjournment of the first case management conference does not extend the time for pleadings in the Eastern Caribbean. Belize's CPR allows multiple amendments and does not tie permission to the date the first case management is fixed.

[8] Latitud offers a different interpretation of Rule 20.1. They argue that case management has not been held because of the hearings listed as *Case Management Conferences* were adjourned without the court issuing any of the mandatory orders required by Rule 27.5 at a case management conference. Adjournments can extend the time permitted to amend pleadings without permission. Rule 27.5 provides

27.5 (1) The general rule is that at a case management conference the court must consider whether to give directions for –

- (a) standard disclosure and inspection;
- (b) service of witness statements; and
- (c) service of expert's reports (if any);

by dates fixed by the court.

(2) The court may also give directions for the preparation of –

- (a) an agreed statement of facts;
- (b) an agreed statement of issues;
- (c) an agreed statement of the basic technical, scientific or medical matters in issue; and
- (d) an agreed statement as to any relevant specialist area of law, which statement does not bind the trial judge.

(3) The court must fix a date for a pre-trial review unless it is satisfied that having regard to the value, importance and complexity of the case it may be dealt with justly without a pre-trial review.

(4) The court must in any event, fix –

- (a) the trial date; or
- (b) the period within which the trial is to commence; and
- (c) the date on which a listing questionnaire is to be sent by the court office to the parties.

(5) The court office must serve an order containing the directions made on all parties and give notice of –

- (a) the trial date or trial period;
- (b) the date of any pre-trial review; and
- (c) the date on which the listing questionnaire is to be sent out by the court office.

I do not find the mere listing of a hearing as a *Case Management Conference* significant to determining when the court's permission must be sought for amendments. I can only interpret the language used in the Belize's CPR as a conscious decision to provide parties with more opportunities to amend their pleadings because the Eastern Caribbean's CPR predates Belize's. While I agree with

Latitud that what matters is the court actively managing the case at a hearing of the parties, I do not find their interpretation entirely satisfactory.

[9] Interpretation of the CPR must further the overriding objective to deal justly with cases, which includes ensuring that parties are on an equal footing and cases are dealt with expeditiously.² Parties have a duty to assist the court with furthering the overriding objective.³ Amendments made prior to the case management conference better guarantee that only viable claims are plead and the real question in dispute between the parties is before the court. The court can then fulfill its duty to actively manage the case.⁴

[10] Rule 20.1 must be interpreted in a way that makes sense for claims initiated as regular claims and fixed date claims. The first hearing of a fixed date claim can be treated as the trial of the claim if the claim is undefended, or the matter can be treated summarily.⁵ For regular claims, applications for summary judgment and strike out can be filed that may likewise dispose of the claim.

[11] I find that justice and fairness mandate that parties are unable to amend their pleadings without the court's permission after the court has been put in the position to decide the substantive claim. Attendance at the first hearing of a fixed date claim where the court is in a position to dispose of the substantive claim, or upon the filing of an application for summary judgment or strike out in a regular claim, triggers the requirement for permission. The rationale for this conclusion is described in the *Attorney General (St. Lucia) v. Montrope*:⁶

In the context of an adversarial system, were this to be approached differently, it would defeat the overriding objective as a defendant attacking a claimant's pleading could be faced with a claimant constantly shifting the goal post of his pleaded case and neutralizing the defendant's attack. The ability to strike out weak or unviable pleadings would be rendered a toothless tiger. Equally, a claimant would be absolved of its duty to assist the court in furthering the overriding of [sic] objective by, in the first place, pleading viable claims in a manner that is in keeping with the CPR.

² CPR Rule 1.1(1) and (2)(a) and (d).

³ CPR Rule 1.3.

⁴ CPR Rule 25.1.

⁵ CPR Rule 27.2(3)

⁶ SLUHCVAP2019/0021 at para 36.

Filing of a summary judgment or strike out application triggers the requirement because the court has the authority to consider an application without a hearing.⁷ Furthermore, the requirement for permission is triggered even if a defence or a reply have yet to be filed. Rule 27.3 expressly contemplates this scenario by allowing a party to apply for case management before a defence is filed.

[12] The decision to not tie the permission to amend requirement to the listing and fixing of the date for the case management conference in the CPR means, however, that if a court declines to engage in case management by adjourning a hearing, a case management conference or a first hearing, pleadings can continue to be amended.

[13] This interpretation of Rule 20.1, however, is very narrow and only contemplates situations where a party or the court is unable to proceed at the scheduled time or where continuing with case management would be unjust. Examples of such circumstances include where a party is ill, unexpectedly absent, requires translation, or an attorney has just recently been retained and needs time to prepare. If the court issues any case management orders save for fixing the date for the parties to return, filing their initial pleadings, or an order for costs for the appearance, a case management conference is deemed to have occurred. This finding holds whether the hearing is listed as a case management conference or not.

[14] Rule 27.7 offers the only other circumstance where amending pleadings without the permission of the court may still be permitted after an adjournment:

27.7 (1) The court may not adjourn a case management conference without fixing a new date, time and place for the adjourned case management conference.

(2) Where the court is satisfied that –

(a) the parties are in the process of negotiating, or are likely to negotiate, a settlement; or

(b) the parties are attending, or have arranged to attend, a form of ADR procedure; the court may adjourn the case management conference to a

⁷ CPR Rule 11.14.

suitable date, time and place to enable negotiations or the ADR procedure to continue.

(3) Where the case management conference is adjourned under paragraph (2), each party must notify the court office promptly if the claim is settled.

(4) The court may give directions as to the preparation of the case for trial if the case management conference is adjourned.

(5) So far as practicable, any adjourned case management conference and procedural applications made prior to a pre-trial review must be heard and determined by the judge or the Registrar who conducted the first case management conference.

[15] A close reading of Rule 27.7(2) reveals that the court may adjourn “the” case management conference to encourage settlement. The use of the definitive article “the” indicates an explicit intention to postpone the court’s involvement with readying the case for trial.⁸ The intentional postponement is confirmed by subrule (4) where the court has discretion to give directions to prepare a case for a trial. Where the first hearing or case management conference is adjourned to facilitate settlement, including through court-ordered mediation, and no further case management orders are made save for fixing the date for the parties to return, filing their initial pleadings, or an order for costs for the appearance, the adjournment postpones the date for requiring the court’s permission to amend pleadings. To hold otherwise may undermine the overriding objective by discouraging participation in mediation or settlement negotiations early in the litigation process before positions become entrenched and resolution is made more difficult.

[16] To be clear, applications with respect to service and notice of a case management conference or first hearing will logically not trigger the permission requirement. The filing of an application for an interim injunction alone will also not normally trigger the permission requirement because the application does not put the court in a position to decide the substantive claim. It follows, therefore, at any hearing where the court issues any case management orders in preparation of hearing and deciding these applications alone does not qualify as a case management conference for the purpose Rule 20.1.

⁸ Compare subrule (4) with subrule (2) where the indefinite article “a” was used. The use of the indefinite article in (2) refers to any hearing that is listed as a case management conference or where case management occurs, not the idea of a case management conference for the purpose of Rule 20.1.

Application to the present case

[17] I find that Latitud was required to seek the court's permission to amend their pleadings after the applications for summary judgment and strike out were filed. As no permission was sought or received to file the Amended Claim Form and the Amended Statement of Claim, Mr. Watson's application is granted.

Disposition

[18] It is ordered that:

1. Latitud 20 Architecture Ltd.'s Amended Claim Form and Amended Statement of Claim are struck out.
2. Latitud 20 Architecture Ltd. shall pay costs of the application to Mr. Watson as agreed or assessed.

August 11, 2023

Patricia Farnese
Justice of the High Court