



[2025] JMSC Civ.67

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**IN THE CIVIL DIVISION**

**CLAIM NO. SU2023CV03819**

<b>BETWEEN</b>	<b>DEBORAH BENNETT</b>	<b>CLAIMANT</b>
<b>A N D</b>	<b>KINGSTON &amp; ST. ANDREW MUNICIPAL CORPORATION</b>	<b>DEFENDANT</b>

**IN CHAMBERS (VIA ZOOM PLATFORM)**

**Ms. J’Nae Peart instructed by Knight, Junor & Samuels for the Claimant/Applicant**

**Ms. Sidia Smith instructed by Bennett Cooper Smith for the Defendant**

**DELIVERY DATE: May 15, 2025**

***Civil Practice and Procedure – Application to Amend Particulars of Claim – Application to Amend Particulars of Claim to Add New Cause of Action Outside of Limitation Period – Whether New Cause of Action Founded Upon Same Facts as Already Pleaded – Whether Amendment at this Stage Should be Allowed.***

**DALE STAPLE J**

## **BACKGROUND**

- [1] This claim arises as a result of a slip and fall incident that occurred on or about the 17<sup>th</sup> September 2018. The Claimant avers that she slipped on the stairs and fell while walking along the breezeway between the PANJAM building and the Tourism Centre connecting Knutsford Boulevard and Grenada Way. She now claims against the Defendant negligence and/or breach of statutory duty under the Occupier’s Liability Act.

- [2] The Claim Form and Particulars of Claim were filed on November 30, 2023. A Defence was filed on February 26, 2024 and a Reply to the Defence was filed on September 12, 2024. Thereafter, an Amended Defence was filed on November 14, 2024, and later an Amended Claim Form was filed on November 19, 2024. This Amended Claim Form is the subject of the Notice of Application filed on March 31, 2025, as it was filed outside of the limitation period.
- [3] The Notice of Application and supporting affidavit were filed by the Claimant seeking the following orders:
- (a) That the Claimant be granted permission to amend her Statement of Case after the limitation period in terms of the Amended Claim Form filed on the 19<sup>th</sup> of November 2024 that is attached.*
  - (b) That the Claimant be granted permission to make directly consequential amendments to her Statement of Case in the manner prescribed by the Supreme Court Civil Procedure Rules 2002 Rule 20.3.*
  - (c) That the Amended Claim Form be deemed properly filed and served as of the date that it was filed and served or alternatively as of the date of this Honourable Court's Order.*
  - (d) That cost of this application be costs in the claim.*
  - (e) Such further and/or other relief as this honourable Court deems just.*
- [4] There was much debate on either side as to when this application was served. Counsel for the Claimant contends that said application was filed and served on November 19, 2024, however, the firm's bearer failed to obtain a stamp as proof of service. They state that they later re-served the Amended Claim Form on 4<sup>th</sup> March 2025 as a precautionary measure. While Counsel for the Defendant states that they were never served with the application until March 4, 2025.
- [5] It should be noted that the amendments were made to the Claim Form before leave was sought from the court.
- [6] Skeleton submissions and authorities were filed on April 29, 2025, in support of the said application.

- [7] In response, the Defendant filed an affidavit on April 15, 2025, submissions and authorities on May 13, 2025, opposing the application.

### CLAIMANT'S SUBMISSION

- [8] The Claimant submits that, based on Part 20.4(3) of the Civil Procedure Rules, the Court can give permission to amend a statement of case. That, whilst all actions in tort must be commenced within six years of the cause of action, the Civil Procedure Rules Part 20.6 provides instances where the statement of case can be amended after the period of limitation and this rule is not exhaustive.
- [9] The case of ***Beep Beep Tyres, Batteries and Lubes Limited v. DTR Automotive Corporation***<sup>1</sup> was submitted as providing helpful guidelines for the court to consider when granting permission to amend a statement of case after the limitation period has passed.
- [10] It is the Claimant's submission that the amendment to add misfeasance (outside of the limitation period) is a new cause of action arising out of the same and/or substantially the same facts on which the claim had originally been filed (***Jamaica Railway Corporation v. Azan SCCA No 115/05; Attorney General of Jamaica v Abigaile Brown (By Next of Friend Affia Scott)***<sup>2</sup>).
- [11] It was also submitted that the Claimant is only seeking to better particularize her case and even though the amendment is being made outside of the limitation period, it is within the court's power to do so; there was no delay in filing the Amended Claim Form and there will be no prejudice suffered by the defendants.

---

<sup>1</sup> [2022] JMCA App 18

<sup>2</sup> [2021] JMCA Civ 50

## DEFENDANT'S SUBMISSIONS

- [12] The Defendant contends that the amendments made after the Case Management Conference are void and without legal effect.
- [13] Additionally, the Defendant opposes the application on the grounds that the Claimant amended the Claim Form to include a new cause of action after the limitation period has expired and same introduces an essentially distinct allegation which requires entirely new facts to be pleaded by the Claimant. (*Three Rivers District Council v. Bank of England (No.3)*<sup>3</sup>; *Florencio Martin and Jose Coyo v The Attorney General of Belize*<sup>4</sup>)
- [14] It was submitted by counsel that the authorities establish that the court will not generally allow for an amendment to be made after the limitation period has passed due to prejudice to the Defendant. However, it is entirely within the discretion of the court to do same. The cases of *Beep Beep Tyres, Batteries and Lubes Limited v DTR Automotive Corporation*<sup>5</sup> and *The Attorney General of Jamaica and Aaron Hutchinson v Cleveland Vassell*<sup>6</sup> were relied on by counsel to outline what ought to be considered by the Court when exercising its discretion on whether or not to allow an amendment after the limitation period has already passed.

### Can Pleadings Be Amended to Add A New Cause of Action after a Limitation Period has Expired?

- [15] The Court of Appeal in *Jamaica Railway Corporation v Azan*<sup>7</sup> stated that there was no provision in our rules for the substitution or addition of a new cause of

---

<sup>3</sup> [2003] 2 AC 1

<sup>4</sup> [2011] CCJ 9 (AJ)

<sup>5</sup> id

<sup>6</sup> [2015] JMCA Civ 47

<sup>7</sup> Unreported, Court of Appeal of Jamaica, SCCA No. 115/2005, judgment delivered on February 16, 2006 at para 27

action after the expiration of the limitation period. The question before the Court is whether the Claimant intends to add a new cause of action.

[16] This was also the position in the case of ***Judith Godmar v Ciboney Group Limited***<sup>8</sup>. *Godmar* was followed in the case of ***Peter Salmon v Master Blend Feeds Limited***<sup>9</sup> which was considering the new provisions of the Civil Procedure Rules concerning amendments to particulars of claim. There was also the case of ***George Hutchinson v Everett O’Sullivan***<sup>10</sup>. But the recent case of ***AG of Jamaica v Abigaile Brown et al***<sup>11</sup>, has, in my view, cast doubt on *Godmar* if not overruled it outright.

[17] In the ***Godmar*** case, the Court of Appeal decided that it was not permissible to amend a particulars of claim to add what were deemed “new injuries” outside of a limitation period<sup>12</sup>. This is because pleading a new injury was tantamount to setting up a “fresh claim” outside of the limitation period which meant that the Defendant would be deprived of a limitation defence.

[18] Now along comes ***AG of Jamaica v Brown***. In that case, a judge of the Supreme Court had granted (among other things) permission for a Claimant to amend her particulars of claim to add further particulars of injuries outside of the limitation period. The argument was that the further particulars of injuries were in fact “new injuries” being pleaded for the first time. The learned judge ruled that the amendments did not constitute a “new case” or a “fresh claim” and so allowed the amendments and allowed for the doctor to be called as an expert. It is important to note that in ***AG of Jamaica v Brown***, there had already been an amended

---

<sup>8</sup> Unreported, Court of Appeal, Jamaica, SCCA No. 144/2001 judgment delivered April 11, 2003.

<sup>9</sup> Unreported, Supreme Court of Jamaica CL 1991/S 163, judgment delivered October 26, 2007.

<sup>10</sup> [2017] JMSC Civ 91 where Harris J (as she then was) adopted and accepted the principles from *Godmar* and *Salmon* where she said at page 8, “There is a distinction between amendments to disclose greater details or particulars about an injury that was not pleaded during the said period. The former may be allowed while the latter will not be.”

<sup>11</sup> [2021] JMCA Civ 50

<sup>12</sup> See n(1) supra at para 29 per Smith JA.

Particulars of Claim filed and the application was **both** for the expert to be called and for the amended Particulars of Claim to stand. This is different from the case at bar.

[19] The Court of Appeal decided, following the decision of ***Jamaica Railway Corporation v Mark Azan***<sup>13</sup>, that these were the principles that should guide a court in determining whether or not a new cause of action was being added:

- (a) If the new plea introduces an essentially distinct allegation, it will be a new cause of action;
- (b) Whether the only difference between the original case and the case set out in the proposed amendments is a further instance of breach or the addition of a new remedy, there is no addition of a new cause of action;
- (c) A new cause of action may be added or substituted if it arises out of the same facts or substantially the same facts as give rise to a cause of action already pleaded.

[20] This position was confirmed in the case of ***AG of Jamaica et al v Cleveland Vassel***<sup>14</sup>. The Court of Appeal in the ***AG v Brown*** case attempted to treat with *Godmar* at paragraph 59. As I understand it, Brown JA (Ag) (as he then was), did not expressly state that *Godmar* was wrongly decided. Indeed, he seemed to suggest that *Godmar* was decided on the correct principle established in ***Weldon v Neal*** (and affirmed by our Court of Appeal in ***Sandals Resorts International Limited v Neville L Daley & Company Limited***<sup>15</sup>) that the Court should not allow a plaintiff to amend its statement of case by setting up a fresh claim in respect of a cause of action that has been statute barred.

[21] In my view, the critical separation point was what is meant by “a fresh claim”. In *Godmar*, Smith JA said at page 27 of his judgment:

---

<sup>13</sup> Unreported, Court of Appeal of Jamaica, SCCA No. 115/2005, judgment delivered on February 16, 2006

<sup>14</sup> [2015] JMCA Civ 47

<sup>15</sup> [2018] JMCA App 24

*“The authorities seem to show that in the case of the tort of negligence, the cause of action (emphasis as in original) consists of two things: the wrongful act and the consequent damage – see Earl Jowitt’s “The Dictionary of English Law”, page 325. Thus, the cause of action accrues when there has been a wrongdoing by the Defendant from which loss or damage is suffered by the plaintiff. Thus, the loss or damage or injury must be pleaded within the limitation period. Time runs from the accrual of the cause of action. The authorities seem to indicate that this is so irrespective of the plaintiff’s knowledge of such loss or damage.”*

- [22] It is a truly powerful and compelling statement. It would also seemingly be in line with the first principle stated by Brown JA (Ag) (as he then was) in the **AG v Brown** decision where he said that if the new plea introduces an essentially distinct allegation, it will be a new cause of action. So if you are going to “allege” that you suffered a particular injury for the first time, then it would appear as though you are raising a “fresh claim”. This is important to emphasise, in my view, because **AG of Jamaica v Brown** did not say that *Godmar* was an incorrect decision. And, if we recall, *Godmar* said that pleading a new injury is pleading a new cause of action in negligence claims.
- [23] **AG of Jamaica v Brown** introduces, however, a new principle or rather, two new considerations to this question of what is a “fresh claim”. Principle two says, “where the only difference between the original case and the case set out in the proposed amendments is a further instance of breach, or the addition of a new remedy, there is no addition of a new cause of action.”
- [24] Then we come to principle 3 which, according to Brown JA (Ag) (as he then was) is that a new cause of action may be added or substituted if it arises out of the same facts, or substantially the same facts, as give rise to a cause of action **already pleaded** (emphasis mine). In my view, this principle contradicts *Godmar* as well as *Sandals Resorts*. Yes; it was adopted by **AG of Jamaica et al v Vassel**, but that does not change the fact that there is a contradiction as far as I see it.
- [25] Brown JA (Ag) (as he then was) has seemingly resolved this tension between the *Godmar* line of authorities and the *Azan* and *Sandals Resorts* lines of authorities

whilst somehow simultaneously approving *Godmar*. He said this at paragraphs 56  
- 60:

*“[56] The appellant has sought to rely on the case of Peter Salmon v Master Blend Feeds Limited that adopted the position in Judith Godmar v Ciboney Group Ltd, where the Court of Appeal found that a court should not allow an amendment of a new cause of action after the expiration of the limitation period. In Judith Godmar v Ciboney Group Ltd, the appellant’s claim was one for negligence as a result of injuries on 3 July 1995 while swimming in the sea on the north coast of the island as a guest at the Shaw Park Hotel. She was on vacation on the island at the time of the incident. As a result of her injuries, she had undergone an extended period of recuperation. As a result of this, during the period of incapacity, the sums chargeable for the medical and other incidental expenses increased over time. The appellant’s statement of case pleaded several particulars of injuries in relation to fracture and wounds she sustained. She also pleaded special damages. [57] Counsel for the appellant, in the Supreme Court, sought an amendment to the statement of case to increase the special damages and to add the category of posttraumatic stress disorder. Both applications in relation to the post-traumatic stress disorder and special damages were refused by the judge. On appeal, the appellant sought to set aside the decision to the judge. [58] Smith JA found that the limitation period does not apply to a claim for additional special damages as such damages are consistent with the ongoing treatment of the appellant in respect of the injuries pleaded. Also, the court held that these amendments need not be made within the six-year limitation period. [59] As it relates to post-traumatic stress disorder, the court accepted the principle that the cause of action accrues when there has been wrongdoing by the defendant from which the loss or damage is suffered by the plaintiff. Thus, the loss or damage had to be pleaded within the relevant limitation period. The court held that this amendment if granted would allow the plaintiff to plead an injury long after the expiration of the limitation period. The court relied on the principle of Weldon v Neal that the court should not allow a plaintiff to amend its statement of case by setting up a fresh claim in respect of a cause of action that has been statute barred. [60] Phillips JA cogently demonstrated in Sandals Resorts that this court has consistently applied the position laid down in Weldon v Neal that a new cause of action should not be allowed after the expiration of the limitation period as this would unjustly deny the defendant an accrued defence under the limitation of actions statute. **Equally, the cases demonstrate that although an amendment may result in a new cause of action, it may be granted if it is founded upon the***



***same or substantially the same facts upon which the claim was originally filed” (emphasis mine).***

- [26] I sincerely apologise for the extensive quote, but I felt it necessary to capture the point that Brown JA (Ag) (as he then was) was making. So it seems to me then that ***AG of Jamaica v Brown*** has overruled *Godmar* (in principle if not expressly) by stating that even if an amendment results in a new cause of action, it can be granted if founded upon the same or substantially the same facts upon which the claim was originally filed.
- [27] One of the cornerstones of the *Azan* decision was the case of ***Lloyds Bank plc v Rogers***<sup>16</sup> where Hobhouse LJ said, “if factual issues are in any event going to be litigated between the parties, the parties should be able to rely upon any cause of action which substantially arises from those facts.” This was quoted at paragraph 29 of *Azan* and incorporated at paragraph 40 of ***AG of Jamaica v Brown***. But the foundation of Hobhouse LJ’s quote above was section 35 of the 1980 UK Limitation of Actions Act. This statute revolutionized the concept of limitations of actions and gave the Court discretion to allow causes of action to be added after limitation periods had expired.
- [28] Indeed, this seems to have been the basis upon which the Court of Appeal in ***AG of Jamaica v Brown*** upheld the judge’s decision to allow the amendment with the new pleadings to stand. At paragraph 62, Brown JA (Ag) (as he then was) said,

*“The instant case remained one in negligence. There was no new claim or new facts or any injustice or prejudice suffered by the appellant who at all times was aware of the nature of the matter against it and filed a defence in that regard. The court [sic] is of the view that there was no new cause of action added after the limitation period. The amendments proceeded by way of particulars of injuries on the same facts. Therefore, the learned judge correctly exercised*

---

<sup>16</sup> (1996) *The Times* 24 March 1997; [1997] TLR 154

*her discretion in granting the amendments. Consequently this ground must fail”*

- [29] But I contrast this line of reasoning (starting with *Azan*) with the case of ***Tikal Limited et al v Walker***<sup>17</sup>.
- [30] In *Tikal*, the Court of Appeal had to grapple with the question of whether a Defendant could be added to a claim after the expiration of a limitation period. The Court of Appeal (Morrison P, Brooks JA and Pusey JA(Ag)), held that rules 19.4 and 20.6 could not apply to add or substitute, or correct the name of the Defendant as the learned Master had ordered.
- [31] In coming to their decision, the Court of Appeal confirmed a long line of authority (starting with *Salmon* above) that unless given statutory power, the Court cannot, by rules, extend a limitation period<sup>18</sup>.
- [32] After examining these various authorities, I was left with this question: “If the Court of Appeal has said, in essence, that *Godmar* was correct (and they even went so far as to show authorities that upheld the principles espoused in *Godmar*), how then can you go on to hold that a new injury is not a new cause of action and an amendment to add it is permissible so long as it arises out of the same facts of the cause of action originally pleaded?”
- [33] The only way this seems to be possible, in my respectful view, is an interpretation that says that *AG of Jamaica v Brown* has made it that *Godmar* is no longer the law insofar as *Godmar*’s holding that pleading a new injury in a claim for negligence is pleading a new cause of action. This is my view of the decision.

---

<sup>17</sup> [2020] JMCA Civ 33

<sup>18</sup> Ibid at paras 22-24

## Should the Claimant's Amendment be Allowed to Stand?

- [34] Ms. Peart relied on the authorities of *Mavis Smith v The Chief Technical Director et al*<sup>19</sup> to say that the Defendants are liable for Misfeasance. The Claimant asserts that the Particulars of Negligence, already pleaded, are sufficient pleading to establish the Tort of Misfeasance. Therefore, it was already pleaded, even if not expressly done.
- [35] However, the problem with this assertion is that there is no pleading that the Defendants built the building or the stairs. It makes no sense to have particulars of negligence in the manner of doing something, when it is not stated that they even did the thing. To plead that the Defendants either built the building or the stairs would be an entirely new factual allegation. Misfeasance would be founded on this new allegation. In that regard, it would be entirely new and not permissible.
- [36] In my view, the amendment must be refused and the amended portions of the Claim and Particulars of Claim struck out as it is a new cause of action. The Claimant is now trying to set up the additional cause of action of Misfeasance. However, this is being done well after the limitation period has expired. This is conceded by the Claimant.
- [37] The Civil Procedure Rules makes no provision for the amendment to the pleadings to add a new cause of action after a limitation period has passed. This was affirmed by the Court of Appeal in the cases stated above.
- [38] Contrary to the view of counsel for the Claimant, in my view, *Azan* did not state that the addition of a new cause of action after a limitation period had passed was permissible. At paragraph 27 of the judgment in *Azan*, the Court of Appeal expressly said our rules did not permit of such an amendment. In fact, the finding

---

<sup>19</sup> (Unreported) Supreme Court of Jamaica, CL 2002/S094, March 6, 2009 Mangatal J.

of the Court of Appeal in *Azan* was that there was **no new cause of action** (emphasis mine) added. It was their finding that there were no new facts being introduced.

## **CONCLUSION**

[39] The Claimant's Amendments amount to averments of new factual allegations and a new cause of action founded upon these new factual allegations. These new factual allegations must be that the Defendant built the stairs and in building them, built them negligently. There was no pleading initially that the Defendant built the building or stairs they are said to occupy. In the circumstances they cannot be said to be liable for building them negligently.

[40] Accordingly, the Claimants assertion in their submissions that the cause of action of misfeasance arose implicitly on the old pleadings is not correct.

[41] In the circumstances, since these new averments arise outside of a limitation period, they are not permissible.

## **DISPOSITION**

- 1 The Claimant's Application for Amendments to the Claim Form and Particulars of Claim are refused.
- 2 Costs to the Defendant to be taxed if not agreed.

.....  
**Dale Staple**  
**Puisne Judge**