



[2023] JMSC Civ 183

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2017 HCV 02271

BETWEEN MARK DOUGLAS CLAIMANT
AND KARNACK HARDWARE LIMITED DEFENDANT

**Jamar Clarke on 20 March & 1 May; and Ramon Clayton on 6 July 2023
instructed by Jacobs Law for the claimant**

**Ms Karen Russell and Ms Cherie Russell instructed by Karen O Russell &
Associates for the defendant**

HEARD: 20 MARCH & 1 MAY, 6 JULY & 29 SEPTEMBER 2023

**Civil Procedure – Part 20 of the Civil Procedure Rules – application for
amendment of claim – expiry of limitation period – whether amendment should
be granted – application to add special damages – whether affixing documents
to the particulars of claim amount to pleading items of special damages**

MASTER C THOMAS

INTRODUCTION

[1] There are two applications before this court: the defendant's application for summary judgment and/or to strike out the claim; and the claimant's application to amend his statement of case. The claim form and particulars of claim were filed on 13 July 2017. The crux of the claim is to be found at paragraphs 2 and 3 of the particulars of claim (which comprise 3 paragraphs) as follows:

2. The defendant is and was at all material times, a business duly incorporated under the laws of Jamaica with company number 79977 and registered address at Salem Runaway Bay, in the parish of St Ann.

3. The claimant claims for property damages and loss of income arising from a motor vehicle accident that occurred along the Llandoverly Main Road in the parish of St Ann on March 1, 2016 involving the claimant's white 2000 Isuzu motor truck registered CH7362 and a white Isuzu Juston motor truck registered CJ9908 own[ed] by the defendant and was being driven by an agent/and or servant of the defendant, Donovan Daye, of Charles Town District, St Ann's Bay in the parish of St Ann who died as a result of the accident.

[2] The prayer for relief claimed the following reliefs:

1. Property Damage
2. Loss of earnings
3. Costs and Attorney's Cost
4. Interest pursuant to the Law Reform (Miscellaneous Provisions) Act
5. Such further or other relief as this Honourable Court deems fit

Despite the claim for property damage and loss of earnings, no sums comprising special damages were pleaded. The claimant, however, included the following in his particulars of claim:

AND TAKE NOTICE THAT pursuant to Rules 8.9(3) of the Supreme Court of Jamaica Civil Procedure Rules 2002 and Section 31E of the Evidence Act, the Claimant hereby identifies and attaches the following supporting documents to this Particulars of Claim and notifies the Defendant that they intend to tender the said documents at the trial of the matter:

- i. Police Accident Report dated January 13, 2017
- ii. MSC McKay Valuation Report dated April 26, 2016
- iii. Contract from Industrial Sales Limited (Seprod) dated September 7, 2015
- iv. Receipt from Scotts Wrecking dated March 13, 2016.

The listed documents were attached to the particulars of claim.

PROCEDURAL HISTORY

[3] On 13 September 2017, a defence was filed. At paragraphs 4 and 5 of the defence, it is stated:

4. The Defendant denies that the claimant is entitled to be compensated for property damage and/or loss of income arising from the accident and asserts that it was the employee, servant and/or agent of the said claimant who drove recklessly and/or negligently, therefore, causing the motor vehicle accident.

5. That on the [sic] or about the 1st day of March 2016, the defendant's employee was driving its Isuzu Juston motor truck registration CJ 9908 in a westerly direction along the Llandovery main road when upon reaching a section of the road, an Isuzu motor truck, registration number CH 7362 which was at the material time being driven by the employee, servant and/or agent of the defendant in an easterly direction along the said road and in the process of overtaking a line of traffic collided in the defendant's motor truck.

It appears that there was an error in paragraph 4 in that the reference to the defendant's employee/servant or agent driving the truck registered CH 7362 should have been to the claimant's employee/servant or agent. It was also pleaded that the employee, servant and/or agent of the claimant was negligent, and seven particulars of negligence were set out.

[4] Mediation took place on 25 May 2018 but the parties were unable to arrive at an agreement. The matter was therefore scheduled for a case management conference ("CMC") on 12 November 2018, on which date a request for default judgment that had been previously filed was withdrawn; an extension of time was granted for the filing of an acknowledgment of service; case management orders were made, for among other things, standard and specific disclosure, the filing and exchange of witness statements; and pretrial review was set for 18 May 2022. Trial

was also set for 10 and 11 January 2023. On 1 October 2021, the defendant filed an application seeking summary judgment against the claimant or in the alternative that the claimant's statement of case should be struck out. The pretrial review was adjourned for the hearing of the defendant's application.

The application

[5] On 26 August 2022, the claimant's application was filed seeking to amend his "statement of case" in accordance with draft amended particulars of claim which were exhibited and to permit the parties to "make directly consequential amendments to their respective statements of case in the manner prescribed by the Supreme Court Civil Procedure Rules, 2002, Rule 20.3". The application was supported by an affidavit of Courtney Rowe, an attorney-at-law of the firm of attorneys on record for the claimant exhibiting the draft amended particulars of claim. The critical amendments appear at paragraph 3 of the draft amended particulars of claim where it is stated:

3. On or about the 1st day of March 2016 along the Llandovery Main Road in the parish of St Ann, the servant and/or agent and/or permitted driver of the defendant so negligently drove, managed and/or controlled the defendant's white Isuzu Juston motor truck registered CJ9908 that [sic] drove into the path of the Claimant's white 2000 Isuzu motor truck registered CH7362 and violently collided into the said white 2000 Isuzu motor truck registered CH7362. As a consequence, the claimant suffered loss, damage and incurred expense.

Particulars of negligence were set out alleging nine ways in which the defendant "by vicarious liability" was negligent. Particulars of special damages were also set out as follows:

Police Accident Report	\$3,000.00
MSC McKay Valuation Report	\$22,000.00
Wrecking Services	\$70,000.00
Value of loss of motor truck	\$950,000.00

Total \$1,045,000.00

[6] The prayer also included a claim for “special damages” and loss of income and loss of property was removed. In his affidavit, Mr Rowe stated that the amendments arise on the facts set out in the statement of case and of which the defendant is already aware. He deponed that due to the oversight of counsel with conduct of the file at the time of the filing of the initial claim form and particulars of claim, the “Particulars of Negligence and Special Damages were not adequately outlined and the Amendments are necessary to further particularise the breaches by the defendant through his servant, agent and/or authorized driver and allowing for damages resulting from the said breaches”. He also deponed that the proposed amendments do not prejudice the defendant and would not take the defendant by surprise since the proposed amendments are matters which he had stated in the earlier claim form and/or witness statement of Mark Douglas and that of Mr Owen Johnson (the driver of the claimant’s vehicle) already given in the matter.

[7] I determined that the application to amend ought to be determined first as its outcome may well determine whether the defendant’s application would be necessary. The trial dates were vacated to allow for the determination of the applications.

THE APPLICATION TO AMEND SUBMISSIONS

[8] Mr Clarke on behalf of the claimant submitted the following:

- i. Rule 20.4 of the Civil Procedure Rules empower the court to grant permission to a claimant to amend his statement of case, if the amendment is being made after the case management conference.
- ii. The amendments do not substantially change the issues that are being claimed by the claimant. To support this submission, Mr Clarke referred to the prayer of relief in the original particulars of claim, in particular to the loss of earnings and property damage.

The only pleading missing, he argued, was the particulars of negligence.

- iii. There would be no prejudice to the defendant as the documents annexed to the particulars of claim are substantially the same as those pleaded in the original claim.
- iv. Even though the claimant wished to particularise the acts of negligence, the claim was indeed properly grounded in negligence and the claimant had from the outset specifically pleaded the particulars of his claim. The application to amend was made out of an abundance of caution.
- v. In furtherance of the overriding objective, the defendant should have raised the issue earlier. The defendant had taken part in the proceedings by filing a defence, attending mediation, attending case management conference and filing witness statements and it was after participating in these several hearings that it raised the issue of whether the claimant failed to comply with Part 8 of the Civil Procedure Rules ("CPR").
- vi. In an effort to do justice, the claimant should be permitted to amend his pleadings especially since the trial dates have been vacated.

[9] Ms Karen Russell submitted that the claimant was attempting to amend the claim after the expiry of the limitation period. She accepted that the court has the power to permit an amendment to the claim even though the limitation period has expired, but this, she submitted, was where there is a change in the cause of action and the facts giving rise to the cause of action to be included in the amended claim are the same as those already included in the claim. She submitted that the proposed amended claim is seeking to introduce new facts that would require the defendant to find answers and respond to the new pleadings as no particulars had been included in the claim as originally filed; therefore, these amounted to new facts. In fact, the claimant had put nothing before the court to ground the cause of action in negligence prior to the filing of the claimant's application. The defendant would incur real out-of-pocket expenses to pursue the additional pleadings and for the filing of additional documents in response. She pointed out that the draft amended

claim now has particulars of special damages and the original claim merely attaching the documents without any specific pleadings in relation to special damages would not be sufficient. She also submitted that participation in the litigation process and compliance with previous orders of the court did not mean that the defendant had acquiesced. In addition, the defendant's application had been filed from 2021.

DISCUSSION AND ANALYSIS

[10] Part 20 of the CPR empowers the court to grant amendments to a statement of case. By rule 20.4, a statement of case may only be amended after a case management conference has taken place where the court has granted permission to do so. The rules do not contain any factors that the court ought to consider in its determination of the application to amend. Where the permission to amend is being made after the limitation period, no provisions address these circumstances except for rule 20.6 which provides for amendments to parties to a claim in limited circumstances. There are authorities from our Court of Appeal which have demonstrated that the provisions of Part 20 are not exhaustive of the circumstances in which an amendment to a statement of case may be made (see **Jamaica Railway Corporation v Azan** SCCA No 115/05 (delivered 16.2.06)) and also that rule 20.6 is subject to the substantive law that amendments are not to be allowed to add a defendant where to do so would deprive the defendant of a limitation defence (**Tikal Limited v Chen & Walker** [2020] JMCA Civ 33). This application must therefore be determined in accordance with the common law.

[11] The claimant is seeking to rely on the cause of action of negligence. It is beyond dispute that the accident giving rise to the claim having occurred on 1 March 2016, the limitation period in relation to negligence would have expired on or about 28 February 2022. It is I think also beyond dispute that to allow an amendment to a statement of case to add a new cause after the limitation period is prejudicial as it deprives the defendant of a limitation defence. In **Jamaica Railway Corporation v Azan**, Harrison JA adumbrated the following principles applicable in determining what amounts to a new cause of action, which he stated, are not exhaustive:

- (i) If the new plea introduces an essentially distinct allegation, it will be a new cause of action. In **Lloyds Banks plc v Rogers** (1996) *The Times*, 24 March 1997, Hobhouse LJ said inter alia:
 - “...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.”
- (ii) 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. See **Savings and Investment Bank Ltd v Finckin** [2001] EWCA Civ 1639, *The Times*, 15 November 2001.
- (iii) 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.
- (iv) ...

[12] As I noted in **Liz Zhou & anor v Yvonne Spencer** [2022] JMSC Civ, these principles have been consistently applied by our Court of Appeal in cases such **Attorney General v Vassell** [2015] JMCA Civ 47; **Annissia Marshall v NERHA & Attorney General**; and **Sandals Resort International v Neville L Daley Ltd & ors** [2016] JMCA Civ 35.

[13] It follows from the above that in considering whether to grant the amendment to include the cause of action of negligence after the expiry of the limitation period, the particulars of claim originally filed would have to contain facts upon which a cause of action could be mounted. In **Medical and Immunodiagnostic Laboratory Limited v Johnson**, Phillips JA at paragraph [53] of her judgment referred to with approval the words of the learned authors of Bullen & Leake & Jacob’s *Precedents of Pleadings* 15 edn Vol 1 that “the statements of case must state the facts, which, if correct, give rise to a valid legal claim or defence. If it does not do so, it is liable to be struck out”. Of course, the failure to state the cause of action being relied on is not fatal; what is necessary is that the facts giving rise to that cause of action have been pleaded (see paragraph 53 of the

judgment of Phillips JA in **Medical and Immunodiagnostic Laboratory Limited v Johnson**). So not only is the claimant required to set out a brief statement of “**all the facts** on which the claimant relies” in accordance with rule 8.9(1)(c) of the CPR, but those facts must also give rise to a cause of action. If these conditions are satisfied, the court can then consider whether the facts already pleaded in the claim give rise to the cause of action which is being sought to be added to the claim.

[14] In the instant case, as can be seen from the particulars of claim set out at paragraph 1 of this judgment, contrary to what Mr Clarke has submitted, there are no facts pleaded on which any cause of action may be mounted. All that was pleaded with reference to the incident giving rise to the claim was that there was a motor vehicle accident involving the two motor vehicles and that the driver of the defendant’s vehicle died as a result of the accident. There is certainly nothing stated in these facts which demonstrate what actions of the defendant’s driver the claimant is claiming were negligent or gave rise to a cause of action. It seems that this may have been what prompted the defendant to file the application for summary judgment or to strike out the claim.

[15] The claimant has argued that the pleadings which are now sought to be included by way of the amendment would not take the defendant by surprise as they were included in the witness statement of the claimant’s witness, Owen Johnson. Regardless of whether this is so, the authorities are clear that although extensive pleadings are not necessary, pleadings are still required to mark out the parameters of the case. In **Rasheed Wilks v Donovan Williams** [2022] JMCA Civ 15, our Court of Appeal had to consider this issue of whether the witness statement having contained a particular aspect of the defence as to agency which was not contained in the defence, the defendant could be allowed to rely on that evidence. In coming to the determination that this was impermissible without an amendment, Edwards JA (with whom the other members of the court agreed) at paragraph 36 of her judgment referred to the decision of the Privy Council in **McPhilemy v Times Newspaper Ltd and ors** [1999] 3 AER 775 that a detailed witness statement could not be used as a substitute for a short statement of all the facts relied on by the claimant.

- [16] Edwards JA in **Wilks v Williams** also considered the Privy Council's decision in **Charmaine Bernard (Legal Representative of the Estate of Reagan Nicky Bernard) v Ramesh Seebalack** [2010] UKPC 15 in which the claimant had failed to give any details of the damages she was claiming. A witness statement was however, filed including receipts showing funeral expenses and wages, although there was no pleading in the claim form or statement of case concerning those items. The claimant later made an application to amend the statement of case to include particulars of special damages. The Privy Council found that short statement of the heads of loss should have been included. In the instant case, the claimant failed to include any particulars of special damages claimed as it seems to me that the mere listing of documents in what may be regarded as a purported notice of intention to rely on hearsay documents cannot be substituted for pleadings items of special damages. The Supreme Court is after all a court of pleadings. The claimant's failure to include specifics of special damages claimed offends the well-established rule that special damages should be specifically pleaded. Authorities such as **Judith Godmar v Ciboney Group Limited** SCCA No 144/2001 (delivered 3 July 2003) are clear that an amendment to special damages may be allowed after the expiration of the relevant limitation period, where specifics of special damages were already pleaded and the special damages which are sought to be added are additional details of what has already been pleaded. However, this would clearly not apply in the circumstances of the instant case, where special damages were not even pleaded.
- [17] It follows from the foregoing that to allow the claimant the amendment sought after the limitation period would amount to allowing the claimant to add a new cause of action and to include special damages in circumstances where no facts giving rise to a cause of action or special damages were previously pleaded. The law, whether by way of statute or common law, does not permit this.
- [18] Mr Clarke argued that the application was made very late in the day after prolonged participation in the litigation process. I agree with Ms Russell that the fact that the defendant has participated in the litigation process does not mean that the defendant consented. Likewise, the defendant's compliance

with the case management orders (as it was obliged to do) also could not mean that the defendant is estopped from objecting to the amendments. As was stated by Edwards JA in **Wilks v Williams**, “there is no burden on a claimant to alert a defendant to do what he is required to do to advance his case”. This would apply equally to the defendant.

[19] It therefore seems to me that the circumstances of this case do not allow for the amendments sought to be made, regardless of any possible prejudice to the claimant. The court must consider the position of both parties and it seems to me that quite apart from whether the defendant would be required to expend resources on investigating the additional facts and items of expenditure which would be included if the amendment were granted, it is undeniable that to allow the amendment would deprive the defendant of a limitation defence in that it would amount to allowing the claimant to advance his case in negligence for the first time after the expiry of the limitation period.

[20] The amendments that are being sought are not permissible in the circumstances of this case where the claimant is seeking to plead facts giving rise to negligence and to include special damages arising from that cause of action after the expiry of the limitation period.

[21] Having determined that the application to amend cannot be granted, I will proceed to consider the defendant’s application for summary judgment.

THE SUMMARY JUDGMENT/STRIKING OUT APPLICATION

On behalf of the defendant

[22] In written submissions, reference was made to rule 15.2 of the CPR which empowers the court to give summary judgment on the claim or a particular issue if it considers that the “claimant” has no real prospect of succeeding on the claim or the issue and on rule 15.6(1) which stipulates that on hearing an application for summary judgment, the court may “strike out or dismiss the claim in whole or in part”. Reliance was also placed on **Swain v Hillman** [2001] 1 All ER 91 for the “foundational guidance on how summary judgment applications ought to be approached” in that the court must determine whether

the claimant has a real as opposed to fanciful prospect of success. It was further submitted that the claimant must show that he has more than an arguable case for it to be considered "real".

- [23] Ms Cherie Russell submitted orally that the claimant had failed to particularise negligence or to provide the court with a factual background as to how the accident occurred. There was no factual background to support the cause of action of negligence. Similarly, there is a claim for loss of earnings as a result of the accident; however, there were no particulars of loss. This, Ms Russell argued, did not put the court in a position to ascertain the basis of his claim for negligence. It was also submitted that the witness statement which was filed on behalf of the defendant succinctly set out the details of the accident but that it should be disregarded because it was filed after the application for summary judgment was filed, highlighting the flaws in the pleadings and that it would be unjust to allow the claimant to benefit from the subsequent attempt to remedy the flaw and also that it was filed outside of the deadline for doing so and that no application for relief from sanctions had been filed. It was also submitted that the facts in the witness statement cannot be used to substitute for the "lack thereof in the claim form and particulars of claim".
- [24] With respect to striking out the claim, in written submissions, reference was made to rule 26.3(a) & (c) of the CPR empowering the court to strike out for failure to comply with a rule and where the statement of case disclosed no reasonable grounds for bringing or defending the claim respectively. Reference was also made to rule 8.9(1) and 8.9A of the CPR which requires that the claimant include in the claim form or particulars of claim a statement of all the facts on which the claimant intends to rely and that the claimant may not rely on any allegation or factual argument which is not set out in the particulars of claim, but which could have been set out there, unless the court gives permission, respectively.
- [25] It was submitted by Ms Cherie Russell that the claimant in failing to include in the pleadings any facts to alert the defendant of how the defendant's agent acted negligently and in failing to provide any particulars special damages had not adhered to rule 8.1 of the CPR. Reliance was placed on **Anthony Tharpe**

et al v Alexis Robinson et al [2022] JMSC Civ 66 at paragraphs 65-67, **McPhilemy v Times Newspaper** [1999] 3 All ER 775 and **Alcoa Minerals of Jamaica Incorporated v Marjorie Yvonne Patterson (court appointed personal representative of the claimant the late Orinthia Hanson, deceased)** [2019] JMCA Civ 49 and **Grace Kennedy Remittance Services Ltd v Paymaster (Jamaica) Ltd and Paul Lowe** SCCA No 5/2009 (delivered 2 July 2009) to underscore the importance of pleadings in relation to special damages.

For the claimant

[26] Relying on the learned author, Stuart Sime, in his text *A Practical Approach to Civil Procedure* 7th edn, it was argued in written submissions that it is trite that summary judgment is not usually granted in negligence claims because the facts are always in dispute and may well turn on the credibility of the parties. The sole factual assertion on which the application was grounded is that the claimant had failed to set out his case against the defendant in the particulars of claim. It was submitted before this court by Mr Clayton that the claim was properly grounded in negligence and that the specific amount being claimed for damage to the motor truck forms part of his claim. Mr Clayton argued orally that the defendant did not meet the threshold for summary judgment because there are substantial and relevant facts that are undisputed and the claimant therefore has a more than arguable case that should go to trial. He relied on **Allan Lyle v Vernon Lyle** 2005 HCV 02246 (delivered 10 May 2005).

[27] The claimant relied on **Dotting v Clifford & the Spanish Town Funeral Home Ltd** Claim No 2006 HCV 0338 (delivered 19 March 2007) and **Peerless Limited v Gambling Regulatory Authority** [2015] UKPC 29 to support the submission that the traditional approach to striking out is that it is appropriate only in plain and obvious cases and so it should be exercised with considerable caution. It was also submitted on behalf of the claimant that an application to strike out a statement of case should be brought by way of a notice of application for court orders and where certain facts need to be proved, should be supported by evidence on affidavit. The defendant, it was argued, had not

put forward any evidence before the court to support its defence to this claim on the merits.

- [28] In oral submissions, Mr Clayton submitted that on the face of the documents, namely the claim form, particulars of claim and defence, there is an issue to be litigated. He pointed out that the limitation period had already passed and that in light of the issue to be litigated, striking out would be very prejudicial.

DISCUSSION AND ANALYSIS

- [29] The provisions of the CPR, governing the grant of summary judgment are not in doubt. So, by virtue of rule 15.2 of the CPR, in order to obtain summary judgment the applicant must show that the other party does not have a real prospect of successfully defending the claim. There is a plethora of authorities on the principles applicable. I will set out below the ones that are of most relevance to my consideration of this application. These are:

- (i) The case must be more than just arguable; however, it does not require a party to convince the court that his case must succeed (**International Finance Corporation v Ute Africa SPRL** [2001] EWHC 508).
- (ii) The burden of proof is on the applicant to prove that the other party's case has no real prospect of success (**Island Car Rentals v Lindo** 2015 JMCA App 2;).
- (iii) Where the applicant establishes a prima facie case against the respondent, there is an evidential burden on the respondent to show a case answering that which has been advanced by the applicant. A respondent who shows a prima facie case in answer should ordinarily be allowed to take the matter to trial (Blackstone's Civil Commentary 2015, para 34.11).
- (iv) The court will be guided by the pleadings as well as the evidence filed in support of the application (**Sagicor Bank v Taylor Wright** [2018] UKPC 12).
- (v) The court must exercise caution in granting summary judgment in certain cases, particularly where there are conflicts of facts on relevant

issues which have to be resolved before a judgment can be given and which may be influenced by the outcome at trial (**Bolton Pharmaceutical Co 100 Ltd v Doncaster** [2006] EWCA Civ 1661). However, in an appropriate case, despite the conflict in evidence, a court may investigate each and every alleged pleaded cause of action to assess if there is any real prospect in bringing the claim **Delroy Howell v Royal Bank of Canada & Ors; Ocean Chimo Ltd v Royal Bank of Canada & Ors** [2021] JMCA Civ 19.

- (v) Summary judgment is not usually granted in negligence cases (Commonwealth Caribbean Civil Procedure 2nd edn; **Island Car Rentals Ltd v Lindo**).

[30] I expressed the view in **Demetrius Seixas v Tricia Maddix Blair** [2022] JMCA Civ 103 that the general rule in relation to summary judgment not being granted in negligence must admit of some exceptions. It seems to me that the central consideration is not so much the type of matter that is the subject of the application but more so the substance of the case before the court and whether the case that is the subject of the application reveals a more than arguable case.

[31] In the instant case, the burden of proving that the claimant does not have a real prospect of success is on the defendant. It is true that the defendant did not rely on any facts in its affidavit in support of the application. However, given my observations at paragraph [14] of this judgment that there are no facts pleaded in the particulars of claim on which any cause of action can be mounted, it seems to me that this is a case where it is plain on the pleadings that there is no cause of action, which leads to the ineluctable conclusion that the claimant does not have a real prospect of success in his claim for negligence. There are no disputes of fact as revealed by the particulars of claim. Further, even though, there appears to be evidence that could be adduced at trial that may affect the outcome of the evidence, the difficulty that the claimant would face is that it is unlikely that he will be allowed to rely on this evidence because any pleadings giving the details of the accident would fall outside the pleaded case.

[32] For the very same reason stated in paragraph [31] above, the application to strike out the claim must also be successful. **Sebol Ltd v Selective Homes & Properties Ltd and ors** SCCA No 115/2007 (delivered 12 December 2008) demonstrates that on an application to strike out a statement of case under rule 26.1(3)(c) as disclosing no reasonable grounds for bringing the claim, the court should examine the pleadings to determine whether the pleadings give rise to a cause of action against the other party. The pleadings having been bereft of any pleaded case giving rise to a cause of action, I am of the view that no conclusion can be reached other than that there are no reasonable grounds for bringing the claim.

[33] So even if the court were to take the view that the defendant could not succeed in its summary judgment application because no evidence was adduced in support to show that the claim has no real prospect of success, the defendant would be entitled to have the claim against it struck out as disclosing no reasonable grounds for bringing the claim.

[34] It is true that the defects in the claimant's statement of case could have been addressed by way of the amendments sought; however, as I observed earlier in this judgment, there is no law, whether statutory or otherwise, empowering me to extend the time for the bringing or establishing of a claim against the defendant after the limitation period has passed. Therefore, I make the following orders:

1. The application to amend particulars of claim is dismissed.
2. Summary judgment is entered on the claim in favour of the defendant.
3. The claim is dismissed as disclosing no reasonable grounds for bringing the claim.
4. Costs of the applications to the defendant to be taxed if not agreed.
5. Leave to appeal is refused.