[2020] JMSC Civ 147

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2016 HCV 03095

BETWEEN	**TAMARA MYRIE-JONES**	**CLAIMANT**
AND	**NUTTALL MEMORIAL HOSPITAL TRUST LIMITED**	**1ST DEFENDANT**
	DR. BARBARA NOEL	**2ND DEFENDANT**

IN CHAMBERS

Nigel Jones and Olesya Y. Ammar instructed by Nigel Jones and Company for the Claimant

Ms. P. Roberts-Brown and Jonathan Neita instructed by Crafton Miller and Company for the 1st Defendant

John Graham and Peta-Gay Manderson instructed by John Graham and Company for the 2nd Defendant/Applicant

Heard: June 2, 2020 and June 19, 2020

Application to strike out – limitations of actions – relevant date from which cause of action accrues – actions on the case - amendment of claim – addition of a party to claim – challenge to the court's jurisdiction.

T. HUTCHINSON, J

INTRODUCTION

[1] The 2nd Defendant, Dr. Barbara Noel, disputes the court's jurisdiction pursuant to Rule 9.6 of the Civil Procedure Rules and seeks the following: -

(1) A declaration that the claim the subject matter of these proceedings became statute barred no later than 2011.

(2) A declaration that the 2nd Defendant was added as a party to the suit after the end of any relevant limitation period.

(3) A declaration that it was not permissible to add the 2nd Defendant as a party to the suit in the manner in which she was added by the Claimant.

(4) A declaration that the amendment to the Particulars of Claim were made after the end of any relevant limitation period.

(5) An order that the amendments to the Claim Form and Particulars of Claim by the addition of the 2nd Defendant be struck out.

(6) An Order that the claim against the 2nd Defendant be struck out as an abuse of the process of the court.

(7) Costs

(8) Such further or other relief as this Honourable Court deems just.

BACKGROUND

[2] On the 23rd of February 2005, the Claimant, Mrs Myrie-Jones, had a caesarean section at the Nuttall Memorial Hospital, the first defendant. This procedure was conducted by the 2nd Defendant during which she was assisted by nurses employed to the 1st defendant. In 2008, the Claimant had a second operation surgery to remove her left ovary and fallopian tube. This surgery was also performed by the 2nd Defendant at the same hospital.

[3] In 2014, the Claimant began to experience microscopic haematuria (blood in the urine) and lower urinary tract symptoms among other issues. She was examined by Dr William Aiken, a Consultant Urologist who provided a medical report. In this report he noted that the Claimant had a suture (foreign body) on the right bladder wall

with a calculus on its end which required surgical removal and this was done on the 8th of July 2015. He proferred the opinion that the suture was left in the Claimant's body during the caesarean section which was performed in 2005.

[4] On the 21st day of July 2016, the Claimant filed suit against the 1st Defendant for negligence. On the 21st May 2018, an Amended Claim Form and Amended Particulars of Claim were filed in which the 2nd Defendant was added as a Defendant. The Claim against the 2nd Defendant is for negligence arising out of the procedure performed by her on the 23rd of February 2005, during which the Claimant alleges the suture was left inside her.

[5] On the 23rd of April 2019 the 2nd Defendant filed an Acknowledgment of Service and on the 14th of May 2019 she filed her Notice of Application for Court Orders seeking the declarations and orders referred to above. On the 2nd of June 2020, the day of this hearing, the Claimant discontinued the action against the 1st Defendant.

ISSUES

[6] The legal issues to be resolved by this Court are as follows:

(i) Whether the 2nd Defendant can bring a Notice of Application to strike out the claim in circumstances where she has not filed a Defence.

(ii) Whether the limitation period accrues from the date of the surgical procedure, 23rd of February, 2005, or when the microscopic haematuria and lower urinary tract symptoms were observed in 2014;

(iii) Whether the Claimant had properly added the 2nd Defendant to the claim;

(iv) Whether the claim should be struck out pursuant to Rule 26.3 of the Civil Procedure Rules.

ANALYSIS

Whether the 2nd Defendant can bring a notice of application to strike out the claim in circumstances where she has not filed a defence

[7] The 2nd Defendant seeks to persuade the Court that it should not exercise its jurisdiction to allow the claim to proceed on the basis that it is statute barred. In this regard, she has relied on the provisions of Rule 9.6 of the Civil Procedure Codes which states as follows;

> *(1) A defendant who-*
>
> *(a) disputes the court's jurisdiction to try the claim; or*
>
> *(b) argues that the court should not exercise its jurisdiction,*
>
> *may apply to the court for a declaration to that effect.*
>
> *(2) A defendant who wishes to make an application under paragraph*
>
> *(1) must first file an acknowledgment of service.*
>
> *(3) An application under this rule must be made within the period for*
>
> *filing a defence.*
>
> *(Rule 10.3 sets out the period for filing a defence.)*
>
> *(4) An application under this rule must be supported by evidence on*
>
> *affidavit.*
>
> *(5) A defendant who -*
>
> *(a) files an acknowledgment of service; and*
>
> *(b) does not make an application under this rule within the*
>
> *period for filing a defence, is treated as having accepted*
>
> *that the court has jurisdiction to try the claim.*

(6) Any order under this rule may also -

(a) strike out the particulars of claim;

(b) set aside service of the claim form;

(c) discharge any order made before the claim was

commenced or the claim form served; and

(d) stay the proceedings.

(7) Where on application under this rule the court does not make a

declaration, it -

(a) must make an order as to the period for filing a defence;

and

(b) may -

(i) treat the hearing of the application as a case

management conference; or

(ii) fix a date for a case management conference.

Part 26 sets out powers which the court may exercise on a case management

conference.)

(8) Where a defendant makes an application under this rule, the period

for filing a defence is extended until the time specified by the

court under paragraph (7)(a) and such period may be extended

only by an order of the court.

(emphasis supplied)

[8] The Notice of Application and Affidavit in support which were filed on the 14th of May 2020 set out the grounds on which the Court is being asked to exercise its powers.

[9] In respect of this application, it was submitted by Mr Jones on behalf of the Claimant that Rule 9.6(1) provides for two distinct situations under which the

Court's jurisdiction can be challenged. He acknowledged that the challenge raised in the instant matter is not whether the Court is the right forum to hear the matter but that the Court should use its discretion and refuse to embark on a hearing on the basis that the claim is statute barred. In respect of this position Counsel argued that case law such as ***Vanetta Neil v Janice Halstead [2019] JMSC CIV 68*** and ***Toussant Tucker v Inez Bouges [2013] JMSC Civ 90*** make it clear that where issues of limitation are raised on the face of a matter, it is for the Defendant to plead the breach by filing a defence in order to bring this issue to the forefront of the Court's mind.

[10] Mr Jones also submitted that until the defence is specially pleaded by the Defendant, the Court will not block a Claimant from seeking compensation and the 2nd Defendant must file a Defence under the Limitations of Actions Act before seeking to strike out the claim on the ground that it is frivolous, vexatious and an abuse of the process of the Court.

[11] Counsel also contended that in the absence of a filed defence an allegation concerning the expiration of a limitation period, without more, is not a ground upon which the Court's jurisdiction can properly be challenged and the 2nd Defendant should not have submitted the Notice of Application but should have filed a Defence.

ANALYSIS

[12] In considering this issue the decision of **Ronex Properties Ltd v John Laing Construction [1983] Q.B. 398** was carefully reviewed. In that matter, the Court was faced with an application to strike out a claim where the limitation period had run and no defence had been filed. Useful guidance was provided in the dicta of Donaldson LJ at page 405 of the judgment where he stated;

> *Where it is thought to be clear that there is a defence under the Limitation Acts, the defendant can either plead that defence and seek the trial of a preliminary issue or, in a very clear case, he can seek to strike out the claim upon the ground that it is frivolous, vexatious and an abuse of the process*

> *of the court and support his application with evidence. But in no circumstances can he seek to strike out on the ground that no cause of action is disclosed. (emphasis supplied)*

[13] While it is not in dispute that the 2nd Defendant has not filed a defence to the claim in compliance with Part 10 of the CPR, a review of the documents provided reveals that she has however complied with the requirements set out by the Court in **Ronex Properties Ltd** as well as Rule 9.6(2), (3) and (4) of the CPR.

[14] The contents of the Notice of Application and more importantly the Affidavit in Support though not sworn to by the Defendant herself comply with the requirements of Part 30 of the Rules and provides the Court and the Claimant with some of the information that would ordinarily have been included in her defence.

[15] At paragraph 3 of the affidavit it is stated that 'Dr. Noel denies liability for the procedure', and paragraph 7 outlines that "any claim in respect of that surgical procedure would be statute barred when the "amendment" was made on the 21st of May, 2018".

[16] These assertions provide the basis on which the 2nd Defendant has asked that the matter be struck out as frivolous, vexatious and an abuse of process. Accordingly, I am unable to agree with the submission made on behalf of the Claimant that the 2nd Defendant cannot be heard on this point in the absence of a defence.

Whether the limitation period accrued from the date of the surgical procedure, 23rd of February, 2005, or when microscopic haematuria and lower urinary tract symptoms were observed in 2014;

[17] In light of my finding that the 2nd Defendant could properly bring the action to have the matter struck out, a determination must now be made whether the cause of action was filed within the relevant limitation period. Section 3 of the Limitations of Actions Act provides that:

> *"All actions of trespass quare clausum fregit, all actions of trespass, detinue, action sur trover, and replevin for taking away of goods and cattle, all actions of account and upon the case (other than such accounts as*

> *concern the trade of merchandise between merchant and merchant, their factors or servants), all actions of debt grounded upon any lending or contract without specialty, all actions of debt of arrearages of rent, and all actions of assault, menace, battery, wounding, and imprisonment, or any of them, which shall be sued or brought at any time,… shall be commenced and sued within the time and "limitation hereafter expressed, and not after, that is to say,-- The actions upon the case (other than for slander), and the said actions for account, and the said actions for trespass, debt, detinue, and replevin for goods or cattle, and the said action of trespass quare clausum fregit, within… six years next after the cause of such actions or suit, and not after…"*

[18] It is not in dispute that Section 46 of the Limitations of Actions Act of Jamaica acknowledged the application of the UK Statute 21 James 1, Cap 16 which imposes a limitation period of 6 years for actions on the case within this jurisdiction. It is also not in dispute that the term 'actions on the case' has been accepted by the Courts, to include our local Courts, as a reference to actions brought for the tort of negligence.

[19] In support of the contention that the matter should be struck out as being time barred, the Applicant has referred to and relied on the decisions of ***Cartledge (Widow and Administratrix of the Estate of Fred Hector Cartledge (deceased) etal v E.Jopling & Sons Ltd [1963] 1 All ER 341 a***s well as the local Court of Appeal decision ***Lance Melbourne v Christina Wan (1985) 22 JLR 131***.

[20] It was submitted by Mr Graham that the facts in the **Cartledge** case are not dissimilar to the situation which exist in the current matter. In that decision, the plaintiff worked in the defendant's factory. A breach on the part of the defendant company resulted in the plaintiff contracting pneumoconiosis but he was not aware that he had the disease. The action in respect of this injury was brought by his estate in 1956. The court held that on the true construction of the Limitation Act time did not run from the date when the plaintiff knew or ought to have known that he was suffering from pneumoconiosis but from the date when the cause of action accrued which it found was prior to 1950.

[21] Counsel submitted that the ruling of the Courts made it clear that the cause of action had accrued at the time at which the wrong had been done. The end result

of this he argued was that in the ***Cartledge*** decision the matter was ruled to be statute barred in spite of the fact that the Claimant would not have been aware of the harm/damage done to his health. Mr Graham submitted that this approach was also followed in ***Lawrence v Wan,*** where the Court found that the time had already run against the bringing of the action and he argued that the same conclusion should be arrived at in the instant matter.

[22] He directed the Court's attention to the dicta of Rowe JA at page 135 where he stated:

> *"The Jamaican courts have over the years treated actions for negligence as actions upon the case to which the six year period of limitation applied. Martins Tours Ltd. v Sentra Gilmore [1969] 11 JLR… As the law now stands there is for Jamaica a rigid rule that actions for negligence must be brought within a period of six years from the time the cause of action arose and any failure so to do will render the action statute barred."*

[23] He submitted that even if the court were to accept, at this stage, that the Claimant only became aware that something was wrong "in and around 2014", that does not mean that the cause of action did not accrue from the 23rd of February, 2005 as at any time after the 23rd February, 2005, the Claimant could have filed a claim alleging negligence and asserting that she has suffered "damage" even though she exhibited no 'symptoms'.

[24] On the other hand, Counsel for the Claimant has urged the Court to allow the matter to proceed as the Claimant was properly within the limitation period. In respect of this position the Claimant made reference to a number of decisions both local as well as from the Irish Courts.

[25] Mr Jones argued that on an application of the principles in ***Donoghue v Stevenson [1932] A.C. 562*** there was a duty of care owed by the 2nd Defendant to the Claimant as her attending physician, there was a breach of that duty of care when the suture was left in the region of the Claimant's bladder and the Claimant suffered damage as a result of this breach when she began to experience pain, discomfort and spotting in her urine. He asked the Court to find that the damage

could only be said to have occurred when there was the physical manifestation of this and he has commended to the Court the position that since the Claimant would not have been in a position to prove damage before it occurred, it is the pain, discomfort and spotting which should commence the running of time and not when the surgery was performed and the suture left behind.

[26] In his submissions, Counsel made reference to the Irish Supreme Court and Court of Appeal decisions of ***Anna Hegarty v Francil O'Loughran*** **and** ***Gerald Edwards*** **[1990] 1 IR 148** and ***Brandley etal v Deane T/A Hubert Deane and Associates etal IECA*** **54** respectively. In respect of the former decision, it was noted that the relevant legislation and provision being considered by that Court was S11 (2)(b) of the Statute of Limitations 1957, which provides that an action in tort for damages for personal injury shall be brought within three years from the date of the accrual of the cause of action. There is no like provision within this jurisdiction. The dicta of Finlay CJ was nonetheless commended to the Court as being useful where it was stated as follows;

> *A tort is not completed until such time as damage has been caused by a wrong, a wrong which does not cause damage not being actionable in the context with which we are dealing. It must necessarily follow that a cause of action in tort has not accrued until at least such time as the two necessary component parts of the tort have occurred, namely, the wrong and the damage. The time of the act, neglect or default complained of cannot therefore be equated with the date on which the cause of action accrued.'*

[27] In the **Anna Hergarty** decision, the plaintiff underwent surgery to her nose which was performed by the first defendant in 1973. Because this surgery was unsuccessful, in 1974 the second defendant performed a remedial operation which subsequently began to deteriorate by 1976. Proceedings were instituted against both defendants in 1982 claiming damages. The defendants denied negligence and further pleaded that the claim was statute barred. The Court dismissed the plaintiff's appeal and held that the cause of action accrued at the time when

provable personal injury capable of attracting compensation occurred and this would have been 1974 in respect of the first defendant and 1976 in respect of the second, as such the action by the Claimant was out of time.

[28] Mr. Jones noted that the reasoning of the lower Court was expressly approved by the Court of Appeal in ***Brandley etal v Deane etal*** where the Learned President stated at paragraph 15;

> *'it is clear that negligence by itself without the accompaniment of damage or loss is not actionable. The Plaintiffs did not suffer damage at the time when the defective foundations were installed. When the defective foundation was installed the only complaint the plaintiffs could have had was that the foundation was defective. They had not suffered any damage at that point – there was merely a defective foundation – but that is not damage of a kind that is actionable in tort*

[29] Counsel argued that while the wrongful act was done on either the 23rd of February, 2005 when the caesarean section was performed or 2008 when the Claimant had a left oophorectomy to remove an ovarian abscess, the medical evidence presented reveals that the Claimant first presented with the injuries complained in or around 2014. He observed that the report dated 18th of November, 2015 from the Consultant Urologist, Dr. William Aiken disclosed a connection between the injuries and the surgery performed in 2005.

[30] Mr Jones contended that applying the reasoning of the Courts in ***Hegarty*** and ***Deane***, the time would properly accrue from 2014 and not 2005 as the 2nd Defendant insisted.

[31] Counsel made reference to the decision of **Medical & Immunodiagnostic Laboratory Ltd v Dorett O'Meally Johnson *[2010] JMCA Civ 42*** in which Harrison JA stated at paragraph 4 and 5 as follows:

> *"Now, the law makes it abundantly clear that an action shall not be commenced after the expiration of six years from the date on which the cause of action accrued see the Limitations of Actions Act. A 'cause of action' has been defined as "every act which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court": **Read v Brown** **[1888] 22 QBD**"*

[32] He also urged the Court to carefully consider the words of the Learned Judge at paragraph 8 of the judgment where he stated;

> *"in the tort of negligence the cause of action arises when the damage is suffered and not when the act or omission complain of occurs."*

[33] Mr Jones submitted that the reasoning of the Irish Courts in the ***Hegarty*** and ***Deane*** cases is to the same effect as the principles outlined by Harrison JA in the ***Medical and Immunodiagostic*** case and he asked the Court to accept that this is the legal position within this jurisdiction and not that which is reflected in the UK decision of ***Cartledge.***

ANALYSIS

[34] In considering the competing positions which have been advanced by Counsel for the respective Parties, the legal principles extrapolated in the Court of Appeal decision of ***Sherrie Grant v Charles McLaughlin etal*** **[2019] JMCA Civ 4** proved extremely beneficial. In that decision Brooks JA, having conducted a review of case law involving claims to which the limitations of actions defence was raised stated as follows;

> *[58] The relevant principles concerning the commencement time for limitation purposes were conveniently set out in* ***Medical and Immunodiagnostic Laboratory Limited v Dorett O'Meally Johnson*** **[2010] JMCA Civ 42***. K Harrison JA made the following points in paragraphs [5] through [8]:*
>
> *a. the general rule in contract is that the cause of action accrues when the breach occurs and not when the damage is suffered;*
>
> *b. where the contract is for the sale of goods the buyer's right of action for breach of an implied or expressed warranty relating to goods accrues when the goods are delivered and not when the defect is discovered or damage ensues;*

> *c. the general rule in tort is that the cause of action arises when the damage is suffered and not when the act or omission complained of occurs (emphasis suppled)*

[35] It is my considered view that by emphasising that the cause of action would have accrued from the time at which the damage was done and not when the wrongful act occurred, the Court affirmed a departure from the approach which had been taken in the ***Cartledge*** decision. The legal position outlined by the respective Judges of Appeal in both the ***Sherrie Grant*** and ***Medical Immunodiagnostic*** cases, to my mind, appear to more in line with the principle stated in the Irish decisions which is that the tort of negligence was not complete until damage had been caused by the Defendant's wrongful act.

[36] In light of this conclusion, I am unable to agree with the submissions of the Applicant that the action should be struck out on the grounds that it was brought outside the period of limitation.

Whether the Claimant can properly add the 2nd Defendant to the claim

[37] It was the submission of Mr Graham on behalf of the 2nd Defendant that the amendment by the Claimant to add her to the claim was improper as the limitation period had passed and any such application had to be done pursuant to Rue 19.4 or 20.6 of the CPR.

[38] In support of the contention that the amendment was not properly made the 2nd Defendant relied on the case **Cyrus Reid v JP Tropical Foods Limited [2018] JMSC Civ 32** where it was emphasised by the learned judge that an amendment to a Party's statement of case after the expiration of the relevant limitation period can only be made with the Court's permission. In that situation the application to amend after the limitation period in order to correctly identify the Defendant was denied.

[39] On the other hand, Mr Jones submitted that the 2nd Defendant had properly been added to the claim in accordance with Rule 19.2 and 20.1 as no case management conference had been held for this matter and the limitation period had not yet run.

[40] In respect of this submission, Counsel referred to the case of **Index Communication Network Limited v Capital Solutions Limited et al [2012] KMSC Civ. No. 50** and argued that the case confirms that where there is no issue regarding the limitation period, a party has the right to amend the statement of case without the court's leave before the Case Management Conference.

ANALYSIS

[41] In respect of these submissions the relevant rules for consideration are Rules 20.1, 19.4 and 20.6. Rule 20.1(a) provides that:

> *20.1— A party may amend a statement of case at any time before the case management conference without the court's permission unless the amendment is one to which either –*
>
> *(a) rule 19.4 (special provisions about changing parties after the end of a relevant limitation period);*

[42] Rule 19.4 as mentioned at section 20.1(a) provides that:

> *19.4 (1) This rule applies to a change of parties after the end of a relevant limitation period.*
>
> *(2) The court may add or substitute a party only if –*
>
> *(a) the relevant limitation period was current when the proceedings were started; and*
>
> *(b) the addition or substitution is necessary.*
>
> *(3) The addition or substitution of a party is necessary only if the court is satisfied that –*
>
> *(a) the new party is to be substituted for a party who was named in the claim form in mistake for the new party;*
>
> *(b) the interest or liability of the former party has passed to the new party; or*

> *(c) the claim cannot properly be carried on by or against an existing party unless the new party is added or substituted as claimant or defendant.*

[43] Rule 20.6 of the CPR states that:

> *20.6 (1) This rule applies to an amendment in a statement of case after the end of a relevant limitation period.*
>
> *(2) The court may allow an amendment to correct a mistake as to the (18/9/2006) 109 Amendments to Statements of Case name of a party but only where the mistake was –*
>
> *(a) genuine; and*
>
> *(b) not one which would in all the circumstances cause reasonable doubt as to the identity of the party in question*

[44] At paragraph 41 of her judgment in the ***Index*** case, Mangatal J stated:

> *It is conceded that this application for an amendment is being made before the Case Management Conference. However, I entirely agree with Counsel for the Defendants, that Rule 20.1 of the CPR does not provide an unlimited licence to amend a pleading at will. I accept that what the Rule actually allows for is a single amendment to be made without leave prior to the case management conference. In my view Rule 20.3 supports such an interpretation also, in so far as it permits only one without permission consequential amendment in response to an amended particulars of claim or an amended defence.*

[45] Both Rule 20.1 and 20.3 provide to a party the right to amend "without the permission of the Court". In the ***Index*** case, Mangatal J explained that prior to the Case Management Conference, only one amendment can be made without the permission of the Court as allowing multiple amendments without the permission of the court would be a recipe for prolixity and harassment of the opposing party. She also stated:

> *I am of the view that any other interpretation would not be in keeping with the overriding objectives of dealing with cases justly. It would be preposterous, and lead to great absurdity, if parties could simply effect amendments after amendment at will prior to the case management conference…This plainly cannot be a just and reasonable interpretation of the Rules. No judge-driven case management system aimed at achieving justice, and fairness to all, alongside greater efficiency in the administration*

> *of justice and fairness to all, alongside greater efficiency in the administration of justice, could in my opinion permit such a practice.*

[46] While the **Index** case settles the point that an amendment can be made without the Court's permission, Rule 20.1 provides an exception which requires the party to seek permission from the court if it is after the limitation period. In this particular case, the 2nd Defendant asserts that the Claimant does not qualify to make amendments without permission of the Court as the cause of action of negligence should have been brought within six (6) years

[47] The Court having concluded that the action was filed well within the limitation period the amendment to add her as a Defendant in her own right/capacity would also have been within the time allowed in the Act and this submission is also without merit.

Whether the claim should be struck out pursuant to Rule 26.3 of the Civil Procedure Rules

[48] The Civil Procedure Rules gives the Court power to strike out a claim. In relation to this instant case, the Applicant placed emphasis and reliance on the provisions of Rule 26.3(1)(a):

> *26.3 (1) In addition to any other powers under these Rules, the court may strike out a statement of case or part of a statement of case if it appears to the court –*
>
> *(a) that there has been a failure to comply with a rule or practice direction or with an order or direction given by the court in the proceedings.*

[49] In the decision of ***Johnson v Gore Wood*** **[2001] 1 All ER 481**., Bingham and Millett LJ opined that the court must hesitate, think deeply and carefully before turning away a litigant who has not had his claim heard on the merits. Decided cases on the point have made it clear that striking out a claim is a draconian rule which ought to be the last resort and should only be so ordered in the clearest of cases as the consequence is that a party who has had his claim struck out is barred

from proceeding when there may be some cause of action that is worth being ventilated by the court.

[50] In light of the finding that the Claim and Amendment were filed within time the 2nd Defendant has no proper basis on which the Court could properly be prevailed upon to exercise this discretion. As such, this application is also denied.

CONCLUSION

[51] The Civil Procedure Rules provide that a party may amend their Statement of Case without permission before the Case Management Conference provided this amendment is made within the limitation period. This was the approach which was taken by the Claimant at the time that the 2nd Defendant was added to the claim as the limitation period had not yet run. In these circumstances, I am unable to agree with the submissions of the 2nd Defendant that the matter should not proceed pursuant to Rule 9.6 or be struck out as an abuse of process. Accordingly, the orders sought by the 2nd Defendant in her notice of application for Court orders are refused.

ORDERS

1. The 2nd Defendant's application for Court Orders are refused.

2. The 2nd Defendant is to file her defence within 21 days of this order.

3. The cost of this application is awarded to the Claimant to be taxed if not agreed.

4. The 2nd Defendant is granted leave to appeal.

5. The Claimant's Attorney is to prepare, file and serve order herein.