



[2025] JMSC Civ 112

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. SU2023CV01215

BETWEEN	YNOQUIE WEDDERBURN	CLAIMANT
AND	KERRY ANN LAWRENCE	1ST DEFENDANT
AND	KEMAR JARRETT	2ND DEFENDANT/ ANCILLARY CLAIMANT
AND	TREVOR TAYLOR	1ST ANCILLARY DEFENDANT
AND	PAULA GRIFFITH TAYLOR	2ND ANCILLARY DEFENDANT
AND	NORRIS CASSELLS	3RD ANCILLARY DEFENDANT

IN CHAMBERS

July 23 and September 17, 2025

Ms. Gabrielle McCormack instructed by Messrs Nunes, Scholefield, DeLeon & Co for the 2nd Defendant/Ancillary Claimant

Mr. Andrew A. Dixon instructed by Dixon, Robb-Hilton & Co for the 2nd Ancillary Defendant

Ms. Romae Quarrie, instructed by Jason Jones Legal for the Claimant (appearing but not participating in the hearing of the application)

Civil Practice and Procedure – Ancillary Claims – Claim for Contribution/Indemnity – Time for Bringing Such an Ancillary Claim – Whether the Ancillary Claim is Statute Barred.

Civil Practice and Procedure – Ancillary Claim – Claim Under the Law Reform (Tort-Feasors) Act – Whether the Cause of Action has arisen under the Law Reform (Tort-

Feasors) Act – Whether Ancillary Claim for Indemnity under the Law Reform (Tort-Feasors) Act is Premature.

COR: D. STAPLE J

BACKGROUND

- [1] The Ancillary Claimant is trying to join the Ancillary Defendants to assist in defraying any potential liability that may be found against him in the main claim being brought against him by the Claimant.
- [2] The Claimant sued the 2nd Defendant/Ancillary Claimant to recover Damages for Negligence arising out of a motor vehicle collision that occurred on July 29, 2017. The 2nd Defendant/Ancillary Claimant, having been served, sought to bring an Ancillary Claim against the Ancillary Defendants to get an indemnity against them to avoid any potential liability that may be found against him. The 2nd Defendant/Ancillary Claimant's essential claim is that the entire collision was the fault of the Ancillary Defendants.
- [3] However, the Ancillary Defendants filed a Defence to indicate that the Ancillary Claimant's claim is statute-barred, it having been brought outside of the six (6) year limitation period for filing a claim. To that end, they have also brought the present application to strike out the Ancillary Claim brought against them.
- [4] The question that arises in this application, filed by the 2nd Ancillary Defendant, is whether or not the Ancillary Claim was properly brought.
- [5] The Ancillary Claimant strongly asserts that it was properly brought under the **Law Reform (Tort-Feasors) Act**¹. The 2nd Ancillary Defendant asserted that it was not properly brought under that statute as the cause of action had not arisen to give rise to the claim under that statute, and the time to bring the Ancillary Claim, has

¹ See s. 3(1)(c) of the said Act

passed if they are relying on the conventional method without reliance on the statute.

[6] It is now my task to resolve this question.

WHEN CAN AN ANCILLARY CLAIM BE BROUGHT?

[7] Having read the submissions of both the Applicant and Respondents and done my own research, it is my view that there are two circumstances when an Ancillary Claim for an indemnity can be brought:

- (i) At the same time and in the same claim as the substantive claim; or
- (ii) After a judgment on liability has been obtained by the Claimant against the Defendant/Ancillary Claimant.

[8] In the first scenario, the Defendant, upon being served with the Claim, can bring an ancillary claim against a third party for an indemnity in the same proceedings as the claim. However, this claim must be brought within the same limitation period as the substantive claim².

[9] In the second scenario, a Defendant ***against whom liability has been found and judgment entered*** (emphasis mine), may bring a claim under the Law Reform (Tort-Feasors) Act to get a contribution from a third party. There is no statutory time limit for bringing this claim; however, the ability to bring the claim does not arise until a judgment of liability has been entered against the Defendant³.

² See the decision of the Court of Appeal in *Medical and Immunodiagnostic Laboratory Limited v Dorrett O'Meally Johnson* [2010] JMCA Civ 42.

³ See the decision of Sykes J (as he then was) in *Mervis Taylor v Owen Lowe et al* (Supreme Court of Jamaica, Sykes J, May 9, 2006 at paragraph 21 in particular. This case was approved by Bertram-Linton J in the later case of *Minott v Nevins et al* [2015] JMCA Civ 225 at para 11.

ARGUMENTS AND ANALYSIS

- [10] The position of the Applicant is that the Ancillary Claimant, having brought the Ancillary claim in the current proceedings, is barred by statute from bringing the claim because the cause of action has expired. They relied on *Medical and Immunodiagnosics Laboratory* for their position.
- [11] The Respondents have argued that the claim is not statute barred by virtue of the fact that claims for indemnity or contribution do not arise until the judgment has been entered against the Defendant/Ancillary Claimant in the main claim. They relied on the decision in *Mervis Taylor*.
- [12] The Ancillary Claim in this matter was not filed until April 10, 2025. On the face of it, this would be well outside the limitation period for actions in tort, which is six years from the date the tort was committed.
- [13] Therefore, the Ancillary Claim would, prima facie, be statute barred based on the ruling in *Immunodiagnosics Laboratory*. The Ancillary Defendant relied on the case of *Keo Thompson v Valbert Johnson et al⁴* and the decision of Rattray J. In that case, Rattray J found that if the Ancillary Claimant wished to bring his ancillary claim in the substantive claim (i.e. in the same suit with the same suit number), then he would have to bring the Ancillary Claim within the same time period for bringing the substantive claim – six (6) years.
- [14] I am in agreement with this position, and I find that the Ancillary Claim is statute barred.
- [15] The Ancillary Claimant's argument cannot stand as the cause of action under the **Law Reform (Tort-Feasors) Act** has not yet arisen. This is because s. 3(1)(c) requires that there be a judgment entered against the Defendant as a precondition

⁴ [2019] JMSC Civ 58

to him being able to launch his claim for contribution. The key cause of action under the statute is the fact of entry of judgment on liability against the Ancillary Claimant. This was the holding in *Mervis Taylor, Minott v Nevins et al* and it was also a finding made by Rattray J in the *Keo Thompson* decision⁵.

[16] In this case, no judgment has been entered against the Ancillary Claimant in the substantive claim. As such, he would not yet have cause to bring his claim under the statute. The Ancillary Claim really should be struck out pursuant to rule 26.3(1)(c).

CONCLUSION

[17] The Ancillary Claim, having been brought in the same claim as the substantive claim, but outside of the six (6) year limitation period, is statute barred and is therefore liable to be struck out.

[18] The Ancillary Claimant's argument in reliance on s. 3(1)(c) of the Law Reform (Tort-Feasors) Act must also fail because the cause of action has not yet arisen, as no judgment has been entered against the 2nd Defendant/Ancillary Claimant in the substantive claim. Accordingly, the claim would fall to be struck out as disclosing no reasonable ground for being brought.

⁵ Id at paragraph 14

DISPOSITION

1. The Application to strike out the Ancillary Claim is granted.
2. Costs to the Ancillary Defendants to be taxed if not agreed.
3. Ancillary Defendant's Attorneys-at-Law are to prepare, file, and serve this Order on or before the 1st October 2025 by 4:00 pm.

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Dale Staple
Puisne Judge