[2023] JMSC Civ 229

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
CIVIL DIVISION
CLAIM NO. 2018HCV01726

BETWEEN	**TAJHIEVE WEST**	**CLAIMANT**
AND	**BAYVIEW ECHO RESORT & SPA**	**1ST DEFENDANT**
AND	**SEVENTH DAY ADVENTIST CHURCHES OF THE W.I. UNION CONFERENCE**	**2ND DEFENDANT**
AND	**PORTLAND PRIMARY & HIGH SCHOOL**	**3rd DEFENDANT**

Mr Raymond Samuels instructed by Samuels Samuels for the claimant

Mr Lorenzo Eccleston instructed by Temple Law for the 1st defendant

Heard: September 26, 2023, October 23, 2023, and December 1, 2023

Application to strike out statement of case - application under CPR 19.4 and CPR 20. 6 - whether claim against defendant without legal personality can be amended under CPR 19.4 to substitute a legal entity - whether correction to name of defendant can be made under CPR 20.6

CORAM: JARRETT, J.

Introduction

[1] The question I must decide is whether it is permissible for the claimant, Tajhieve West, to apply under CPR 19.4 to substitute Island Coach Limited and/or Island Eco Resort and Spa Limited t/a Bayview Echo Resort and Spa, for the 1st defendant who has been sued but does not have the capacity to be sued; or whether he can proceed under CPR 20.6 to correct the 1st defendant's name. I will outline the background facts, review

the law, and demonstrate why I have found that the claimant's application under CPR 20.6 is meritorious and ought to be granted.

Factual background

[2] On June 29, 2015, the claimant who was then a student at the Portland Primary and High School, in the parish of Portland, ("the 3rd defendant"), fell and allegedly suffered injuries while on the pool deck at premises in Anchovy, known as Bayview Echo Resort and Spa, in the same parish ("the 1st defendant"). At the time of the incident, the claimant was a member of the graduating class of the 3rd defendant and was on the premises of the 1st defendant for purposes of the graduation festivities. Arising from the fall, on May 2, 2018, the claimant filed the instant claim by his then next friend and mother Sarina Berry claiming damages for negligence. In a defence filed on October 3, 2018, the 1st defendant admitted that it operates an entity in the hospitality industry, in Anchovy, Portland, but averred that Island Coach Limited, trades as Bayview Resort and Spa. On April 19, 2023, it filed a Notice of Application to strike out the claim against it on the basis that it is not a legal entity and therefore it is incapable of being sued. Following on that application, the claimant in his own right, after filing a notice of the cessation of the appointment of his next friend, filed an application on July17, 2023 to amend his statement of case to substitute Island Coach Limited and/or Island Eco Resort and Spa Limited t/a Bayview Echo Resort and Spa for the 1st defendant, under the provisions of CPR 19.4 and CPR 20.6. Both applications are before me for determination.

[3] I first heard submissions on September 26, 2023, in respect only of the 1st defendant's application. This was because the claimant's application though filed, had not been given a hearing date and therefore had not been served. When I enquired of the claimant's counsel Mr Raymond Samuels, what he wished me to do in those circumstances, he indicated that I should proceed with the 1st defendant's application. After hearing submissions on the 1st defendant's application however, Mr Samuels had a change of heart and asked that I allow him the opportunity to serve the claimant's

application and hear that application before ruling on the 1st defendant's application. With the parties' agreement, I adjourned the 1st defendant's application part heard and ordered that the claimant serve his application, that that application be heard on October 23, 2023, and that counsel for the 1st defendant be permitted to make further submissions both in relation to the 1st defendant's application as well as in response to the claimant's application on October 23, 2023. In the end, I treated both applications as being heard together.

The 1st defendant's case

[4] The 1st defendant's application is simply that it is not a legal entity, it cannot be sued and therefore the claim against it is a nullity. Because the claim is a nullity, there can be no substitution of another defendant in its place. It therefore asks that the claim against it be struck out on the basis that it is an abuse of the process of the court and that the claimant has no reasonable grounds to bring it. It also asks in the alternative that it be removed as a party to the claim, or that summary judgment be entered in its favour on the basis that there is no reasonable prospect of success against it since it is not a legal entity and cannot sue or be sued.

[5] The affidavit in support of the application is that of Gordon Townsend. He says that he is the Managing Director of Island Eco Resort and Spa formerly known as Island Coach Limited. He is also the operator of Bayview Eco Resort and Spa, and his address is in care of Bayview Eco Resort and Spa. According to him, the 1st defendant has no legal personality, "the legal personality resides with Island Eco Resort and Spa Limited, formerly Island Coach Limited" and therefore the claimant has sued the wrong person. He says further that since the filing of the 1st defendant's defence five years ago, the limitation period has expired and his attorney -at -law has advised him that there cannot be a substitution of a party after the expiration of the limitation period where the original pleadings are a nullity.

[6] Counsel for the claimant Mr Lorenzo Eccleston argued that while CPR 20.1, 19.4 and 20.6 allow amendments to a statement of case or to add or substitute a party with or

without the court's permission at the end of a limitation period, such an amendment will not be permitted where to do so would deprive a litigant of the right to raise a limitation defence. For this proposition he cited the decision in **Gregory Grizzle v RUI Jamaicotel Limited and another [2020] JMSC Civ 105.** He argued further that in this case, the claim was brought against the 1st defendant who is not a legal person and who, therefore, cannot sue or be sued. The claim is therefore a nullity, and as such, no amendment can be made to substitute another party especially since the limitation period has expired. To allow the claimant's application would deprive the legal entity, Island Eco Resort and Spa Limited, of the limitation defence. The claimant was aware from 2018 when the 1st defendant's defence was filed, that he was suing the wrong person, yet nothing was done until now. There was no genuine mistake in this case. It is a case of mistaken identity and not as to name. It is not a mere misnomer.

[7] Heavy reliance was placed by counsel on the decision of Sykes J, as he then was, in **Caribbean Development Consultants v Lloyd Gibson, Suit No. CL 323 of 1996, unreported Supreme Court decision delivered on May 25, 2004,** in support of the argument that as the claim against the 1st defendant is a nullity, there can be no amendment to substitute another party. The decision in **International Bulk Shipping and Services Limited v Minerals and Metals Trading Corp of India [1996] 1 ALL ER 1017**, which was relied on by Sykes J in **Caribbean Development Consultants v Lloyd Gibson** (supra), was also prayed in aid**.**

[8] Several authorities were cited for the submission that as the 1st defendant has no legal status, the claim against it is a nullity. Among them**, Wilfred Emmanuel Forbes and another v Miller's Liquor Store (DIST) Limited [2012] JMCA App 13; Lazard Brothers and Company v Midland Bank Limited [1933]AC 289** and **The Junior Doctors Association and another v The Attorney General Motion No 21/200 Suit E127/2000, unreported court of appeal decision delivered on July 12, 2000.** Counsel asked me not to rely on the decision of Batts J in **Caribbean Pirates Theme Park Limited v Irish Rover Limited [2015] JMSC Civ 158**, in which the learned judge refused to strike out the claimant's statement of case on the basis that it was not a legal entity. In that

decision Batts J declined to follow the earlier decision of Sykes J in **Caribbean Development Consultants v Lloyd Gibson** (supra)**.** In the case before the court, argued Mr Eccleston, the only appropriate remedy is to strike out the claim.

The claimant's case

[9] The claimant's application is under both CPR 19.4 and 20.6. The affidavit in support of the application is that of his counsel, Mr Raymond Samuels and it was filed on July 17, 2023. Mr Samuels says that the claim was made against the defendants with the information the claimant's next friend had at the time. He says that it has been brought to the attention of the claimant that the correct name of the 1st defendant is Island Coach Limited and/or Island Eco Resort and Spa Limited t/a Bayview Echo Resort & Spa. He says it is necessary to add and or substitute Island Coach Limited and/or Island Eco Resort and Spa Limited t/a Bayview Echo Resort and Spa, so that the court can resolve all the matters in dispute in these proceedings. Counsel says that the 1st defendant and the party to be substituted are one and the same. To date, the 1st defendant has participated in these proceedings including filing a full defence and attending mediation. Using the name of the 1st defendant was a mistake, and the claimant would be severely prejudiced if his application is not granted.

[10] In his submissions, Mr Samuels argued that it is clear from the pleadings that there was a genuine mistake as to name and not identity. The defence shows that the 1st defendant knows about the matter and gave a comprehensive defence. It therefore cannot now say that there would be prejudice, because if the claimant's application is granted nothing will really change. The documentation sent to the 3rd defendant in relation to the graduation festivities referred to the name of the 1st defendant. The identity of the person to be sued is known. The matter went to mediation and case management conference and the 1st defendant participated fully. This is a case of misnaming as the wrong name was utilised, and not a case of a change of party. There is no doubt about who the claimant wanted to sue. The defence has already dealt fully with the defendant's case, and so there would be no prejudice as, save for compliance with the case management conference orders, nothing more needs to be done.

[11] Like Mr Eccleston before him, Mr Samuels cited numerous authorities to support his arguments. **National Recovery Ltd v The Attorney-General [2020] JMSC Civ 125**, was relied on for the argument that a court will permit an amendment to a statement of case where : a) it is necessary to decide the real issues in dispute b) when it will not create any prejudice, c) it is fair in all the circumstances and; d) it is a proper exercise of the judge's discretion. On the application of CPR 20.6, he cited the decisions in **Gregson v Channel Four Television Corporation [2002] EWCA Civ 214; Elita Flickenger v David Preble and Xtabi Resort Limited, unreported Supreme Court decision Suit No CL 1997/F-013, delivered January 31, 2005;** and **Grace Turner v University of Technology [2014] JMCA Civ 24.** It was argued that in **Caribbean Pirates Theme Park Ltd v Irish Rover Ltd [2015] JMSC 158,** Batts J, in refusing to strike out the claimant's statement of case on the basis that it did not have legal personality, relied on the overriding objective of the CPR. Counsel urged me to follow that decision and to grant the claimant's application. In concluding, it was submitted that on the facts of the case at Bar, there is no abuse of process, the case against the 1st defendant ought not to be struck out, and summary judgment is not appropriate as the claimant has a good prospect of succeeding on the claim.

Analysis and discussion

[12] Given the importance of CPR 19.3 and CPR 20.6 to the determination of the applications before me, it is appropriate to set them out in full: -

> "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 started; and
>
> (b) the addition or substitution is necessary.
>
> (3) The addition or substitution of a party is necessary only of the court is satisfied that-

(a) the new party is to be substituted for a party which 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."

"20.6 (1) This rule applies to an amendment in a statement of case after the end of the limitation period.

(2) The court may allow an amendment to correct a mistake as to the 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".

[13] There is a clear distinction between applications under CPR 19.4 and those under CPR 20.6. Recently in **Sherrod Hemans v Tyshawn Omar Walters and Anthony Morrison [2022] JMSC Civ 159,** I had this to say about the distinction :-

"[18] The distinction between CPR 19.4 and CPR 20.6 was discussed and analysed by Sykes J in **Elita Flickinger (Widow of the deceased Robert Flickinger) v David Preble (t/a Xtabi Resort Club & Cottages) and Xtabi Resort Club** (**Unreported), Supreme Court, Jamaica, Suit No CL F 013/1997, judgment delivered 31 January 2005**. After an examination of several English authorities, which applied both the CPR 19.5 (UK), its predecessor Order 20 rule 5(3) and CPR 17.4(3) (UK), the latter rule being similar to our CPR 20.6, Sykes J held that our CPR 19.4 deals with mistakes involving 'misidentification' while CPR 20.6 deals with cases of mistakes

concerning ‘misnaming’. Adopting the dictum of Donaldson L.J. in **Evans Limited v Charrington and Co. Limited [1983] 1QB810**, Sykes J said that determining whether a case is one of misidentification or misnaming, depends on the intentions of the person making the mistake. He said that discerning the intention, may involve examining the statement of case.

[19] Determining whether any given case is one of misidentification or misnaming is however not always an easy task. The difficulty was discussed by Lloyd LJ in **Sardinia Sulcis v Al Tawwab [1991] 1 Lloyds L.R.201,** which is one of the decisions referred to by Sykes J in **Elita Flickinger (Widow of the deceased Robert Flickinger) v David Preble (t/a Xtabi Resort Club & Cottages) and Xtabi Resort Club** (**Unreported), Supreme Court, Jamaica.** At page 207 of the judgment **Lloyd** L.J said this: -

> ‘In one sense a plaintiff always intends to sue the person who is liable for the wrong which he has suffered. But the test cannot be as wide as that. Otherwise, there could never be any doubt as to the person intended to be sued and leave to amend would always be given. So, there must be some narrower test. In **Mitchell v Harris Engineering** the identity of the person intended to be sued was the plaintiff’s employers. In **Evans v Charrington**, it was the current landlord. In **Thistle Hotels v McAlpine** the identity of the person intending to sue was the proprietor of the hotel. In **Joanna Borchard**, it was the cargo-owner or consignee. In all these cases it was possible to identify the intended plaintiff or intended defendant by reference to a description which was more or less specific to the particular case. Thus, if in the case of an intended defendant, the plaintiff gets the right

> description but the wrong name, there is unlikely to be any doubt as to the identity of the person intended to be sued. But if he gets the wrong description, it will be otherwise. The point can be illustrated by the facts of **Rodriquez v R.J Parker.** In that case the identity of the intended defendant was the driver of a particular car. It was held that there was a mistake as to name. But if the plaintiffs had sued the driver of a different car, there would be a mistake as to identity. He would have got the wrong description.'"

[14] The evidence in support of the claimant's application as well as the particulars of claim demonstrate that the claimant intended to sue the operator of the facility in the hospitality industry located in Anchovy in the parish of Portland, where he and his graduating class visited on June 29, 2015, as part of their graduation class celebrations. This is clear from paragraphs 2, 7 and 9 of the Particulars of Claim in which the following is pleaded:

> "(2). The 1st Defendant at all material times operated as an entity in the Hospitality Industry and specifically operated a facility which includes a swimming pool and Restaurant for the accommodation of the general public. At all material times the 1st Defendant had its place of business at Anchovy in the parish of Portland and its address at Anchovy Port Antonio Post Office in the parish of Portland".
>
> (7). On the 29th of June 2015 the infant claimant was a member of a group of graduates from the [Portland Preparatory and High School]. The Defendant (sic) agreed with the mother and next friend of the Claimant Sarnia Berry to fete the said graduates including the Claimant for the graduation exercise to take place on that date at the 1st defendant's said facility.

(9). That on the said date the 29th June 2015 the said group of graduates about fifteen (15) in number aged 11-12 years escorted by and under the supervision of two senior teaches chosen and selected by the 3rd Defendant arrived at the premises known as "Clear Spring" as aforesaid and were welcomed by a servant and /or agent of the 1st Defendant. The 3rd Defendant paid the required fee to the 1st Defendant to have the benefit of the swimming pool in particular and the environs thereof. The said servant or agent of the 1st Defendant first conducted the graduates to a room where she enjoined them to the facilities of the said room which was to be the "Change Room". The said servant or agent of the First Defendant then escorted the said graduation group to the swimming pool and invited them to use the said "swimming pool to their unmeasured pleasure". No pool security or pool attendant was provided by the 1st Defendant".

[15] The 1st defendant in response to the above averments, pleaded the following in paragraphs 2, 6 and 7, of its defence: -

"2. "Save and except that Island Coach Limited, a registered company, trades as Bayview Resort and Spa (sic), paragraph 2 of the Particulars of Claim is admitted".

6. As it relates to the averments at paragraphs 7 and 8 of the particulars of claim, the 1st Defendant neither admits nor denies same and the Claimant is put to strict proof. The 1st Defendant will say further that on or about June 26, 2015 the 3rd Defendant, though its servants and /or agents and /or employees, entered into an oral agreement with the 1st Defendant whereby the 1st Defendant agreed to host twelve (12) graduating students and two (2) teachers of the 3rd Defendant relative to a graduation dinner scheduled

for June 29, 2015 and to commence at approximately 2pm. This agreement was subsequently reduced into writing.

7. In relation to paragraph 9 of the Particulars of Claim, the 1st Defendant neither admits nor denies same and the Claimant is put to strict proof. The 1st Defendant will say further that on the morning of June 29, 2015, the 3rd Defendant through its agent and /or servants and/or employees orally varied the terms of the original agreement by requesting, for the first time, access to the 1st Defendant's swimming pool. Additionally, the 1st Defendant (sic) informed the 1st Defendant that the party in attendance now includes fifteen (15) graduating students, two (2) members of staff of the 3rd Defendant and two (2) adults/parents . . ."

[16] According to the evidence, the name that was used in the statement of case was that of the 1st defendant, as that was the name available to the claimant's next friend at the time the claim was filed. As is plain from the evidence of Mr. Gordon Townsend filed in support of the 1st defendant's application, the legal personality of the operator of the facility in question, is not Bayview Echo Resort and Spa, but Island Eco Resort and Spa Limited (formerly Island Coach Limited). It therefore seems to me, that this is not a case of misidentification but is one of misnaming. It follows then, that the applicable rule is CPR 20.6 and not 19.4.

[17] As previously stated, Mr Eccleston invites me to rely on the decision of Sykes J in **Caribbean Development Consultants v Lloyd Gibson** (supra), and to find that the claim against the 1st defendant is a nullity and consequently, there can be no amendment to substitute another party. In that case, Sykes J said in relation to CPR 19.4 and 20.6 that both deal with two separate and distinct situations but they assume that the person being sued or suing, has the legal capacity to be a proper party to court proceedings. The learned judge then went on to consider the cases of **International Bulk Shipping and Services Ltd v Minerals and Metals Trading Corp of India** (supra) and **The Sardina**

Sulsis (supra) and said that he preferred the judgment of Evans LJ in the former, over that of the court of appeal in the latter, because in his view, there is nothing in the rules to suggest that any court can breathe life into a nullity. Sykes J's ultimate conclusion was that there cannot be a substitution of parties under CPR 19.4 after the expiration of the limitation period where the original proceeding is a nullity. His lordship's decision was therefore plainly based on CPR 19.4.

[18] Evans LJ in **International Bulk Shipping and Services Ltd v Minerals and Metals Trading Corp of India** (supra), in referring to the now repealed Rules of the Supreme Court (RSC) Order 15 r 6 (UK) , which dealt with the addition or substitution of a party after the limitation period and which was in similar language to our CPR 19.4; said that the rule clearly contemplates that there is an existing action in which the addition or substitution of a party may be made, and if there is no existing action, then it follows that the rule cannot apply. However, the learned judge held a different view in relation to applications under RSC Order 20 r 5 (UK), which though not identical to our CPR 20.6 is similar to it. This is what he said at page 1025 b-d:

> **"**If the need for the application arises because, mistakenly, the wrong person was named, then the court has power to correct the mistake under Ord 20.r.5 which is the separate application made here. **When that is the appropriate order to make then the fact that the action may be a nullity is not relevant and the fact that the limitation period has expired does not prevent the order being made.** [Emphasis added]

He then went on to consider the authorities relied on by the trial judge including **The Sardinia Sulcis** (supra), and said at page 1026 paragraphs c-d :

> "These authorities have established that a distinction must be made, in accordance with the wording of the rule, between 'the identity of the person intending to sue' and the name of that party. A mistake as to the latter can be corrected, but as to the former not. In **The Sardinia Sulcis and Al Tawwab [1991] 1 Lloyd's Rep 201 at 207,** Lloyd LJ with whom Stocker LJ

(at 209) expressly agreed , suggested that the test is 'can the intending plaintiff or defendant be identified by reference to a description which is specific to the particular case - e.g. landlord, employer, owner or shipowners? If the answer is Yes, then an amendment can be allowed even where the correction involves substituting a different name altogether, and the name of a separate legal entity even though this may be equivalent to substituting a new party".

[19] Batts J in **Caribbean Pirates Theme Park Ltd v Irish Rover Ltd** (supra)**,** preferred the decision in **The Sardinia Sulcis** (supra)**,** and Sykes J in **Caribbean Development Consultants v Lloyd Gibson** (supra), preferred the judgment of Evans LJ in **International Bulk Shipping and Services Ltd v Minerals and Metals Trading Corp of India (supra).** I am however of the view that the judgment of Evans LJ in **International Bulk Shipping and Services Ltd v Minerals and Metals Trading Corp of India** (supra) and that of the majority of the court in **The Sardinia Sulcis** (supra) are not at variance with each other on the question of the interpretation and application of then RSC Order 20 r 5 (UK). The interpretation that was accepted was that the rule applies to a case of misnaming which can be corrected, with the question in each case being whether the intended claimant or defendant can be identified by reference to a description specific to that case. This is the very same test Sykes J applied in respect to our CPR 20.6 in **Elita Flickinger (Widow of the deceased Robert Flickinger) v David Preble (t/a Xtabi Resort Club & Cottages) and Xtabi Resort Club** (supra). In **Caribbean Development Consultants v Lloyd Gibson** (supra), as I have observed above, his decision was plainly in respect of CPR 19.4

[20] On an application under CPR 20.6, therefore, one looks to the intention of the person making the mistake. The pleadings and the evidence in this case clearly show that the intention of the claimant was to sue the operator of the facility in the hospitality industry, located in Anchovy, Portland, where his graduating class had graduation festivities on June 29, 2015. In his affidavit in support of the 1st defendant's application, Mr Gordon Townsend, the Managing Director of Island Eco Resort and Spa, formerly known as Island Coach Limited, says that the 1st defendant has no legal personality. He

says that the legal personality 'resides' with Island Eco Resort and Spa Limited. It seems to me therefore, that since the legal personality for the operator of the facility which the claimant intended to sue, dwells in Island Eco Resort and Spa Limited, it is a reasonable inference to make that the latter would certainly have been aware of the claimant's claim, as well as of the prior arrangements the 1st defendant made with the 3rd defendant for the claimant's graduating class visit on June 29, 2015. The 1st defendant, Bayview Echo Resort and Spa filed a full defence to the claim denying liability, and in it, refers to the contractual arrangements it made with the 3rd defendant. I cannot see how correcting the name of the 1st defendant to that of the legal entity that trades and operates in its name, will cause any prejudice to that legal entity, even though the limitation period has expired.

[21] I find that the mistake in naming the 1st defendant as the party to be sued was a genuine one. I accept the evidence of Mr Samuels, that the name of 1st defendant was the information the claimant's next friend had at the time. This is undoubtedly a case where the right person was wrongly named. Based on the observations made, I find that the mistake was not one which would, in all the circumstances cause reasonable doubt as to the identity of the party in question intended to be sued. I adopt the dictum of Evans LJ, in **International Bulk Shipping and Services Ltd v Minerals and Metals Trading Corp of India** (supra) and find that in this case, the fact that the action against the 1st defendant may be a nullity is not relevant and the fact that the limitation period has expired does not prevent the order being made under CPR 20.6.

[22] Even though the claimant did not act timeously in making his application after being served with the defence, the correction of the name of the 1st defendant will involve changing it to that of the entity, which, as I have endeavoured to show, would have been aware of the claim and the circumstances which led to it. This is quite a different factual situation from that in **Sherrod Hemans v Tyshawn Omar Walters and Anthony Morrison** (supra), in which I said obiter, that had the application been under CPR 20.6 I would not have granted it because the claimant was dilatory in making his application and to change the name of the 2nd defendant in that case would likely lead to substituting a different person as defendant, who may have had no prior knowledge of the claim.

[23] The decision of the court of appeal in **Grace Turner v The University of Technology [2014] JMCA Civ 24,** is helpful. In that case, an application by the claimant to amend its name was refused by a Master on the basis that the limitation period had not expired. The claimant then amended its claim to correct its name from The University of Technology to The University of Technology Jamaica. The trial judge's refusal of the defendant's application to strike out the amended claim as an abuse of process was appealed by the defendant. In dismissing the appeal, Harris JA writing for the court, found that in fact the limitation period had expired before the amendment. In considering the provisions of CPR 20.6, the learned judge said at paragraph 25 that:-

> "In keeping with the prescriptions of this rule, it must be shown that a bona fide error had been made in the name of the party and the mistake which is sought to be corrected was not misleading or such as to create reasonable doubt as to the identity of the party. In deciding on an amendment where a party has been wrongly named authoritative guidance from **Sardina Sulcis v Al Tawwab [1991] 1 Lloyds Rep 201,** enunciates the test to be whether the intending plaintiff or defendant can be identified by reference to a description which is specific to the particular case. If the answer is yes, then the amendment can be allowed. . ."

[24] **Wilfred Emmanuel Forbes and another v Miller's Liquor Store (DIST) Limited** and **The Junior Doctors Association and another v The Attorney General Motion No 21/200 Suit E127/2000, unreported court of appeal decision delivered on July 12, 2000,** relied on by Mr Eccleston are unhelpful. In neither case was the court appeal considering an application of CPR 20.6. In Wilfred **Emmanuel Forbes and another v Miller's Liquor Store (DIST) Limited** (supra)**,** one of the respondents raised a preliminary point that the appeal was a nullity because the named 1st appellant had died before the appeal was filed. The court found that the appeal filed on behalf of the deceased appellant was indeed a nullity. Brooks JA (as he then was) , in writing for the

court referred to the dictum of Evans LJ in **International Bulk Shipping and Services Ltd v Minerals and Metals Trading Corp of India** (supra) , where the learned judge had said that a claim commenced against a non-existent person is a nullity. There was however no issue in **Wilfred Emmanuel Forbes and another v Miller's Liquor Store (DIST) Limited** (supra), concerning the application or interpretation of CPR 20.6. Likewise, in **The Junior Doctors Association and another v The Attorney General Motion,** no question arose pertaining to CPR 20.6. In that case the court of appeal found that an exparte injunction could not have been brought against the appellant who was not a legal entity capable of suing and being sued.

[25] On the facts of the case at Bar, I have no hesitation in correcting the name of the 1st defendant to that of the legal entity who trades in its name. There is no question in my mind that it is fair and just on the facts of this case and in keeping with the overriding objective of the CPR to grant the claimant's application under the provisions of CPR 20.6 In the result, the 1st defendant's application is refused.

Conclusion

[26] In the result, I make the following orders:

a) The claimant's application under CPR 20.6 to correct the name of the 1st defendant to Island Eco Resort and Spa Limited t/a Bayview Echo Resort and Spa is granted**.**

b) The 1st defendant's application to strike out the claim and for summary judgment is refused.

c) Costs are costs in the claim.

d) An extension of time is granted to all the parties to comply with the Case Management Conference Orders.

e) Leave to appeal is granted to the 1st defendant.

f) The Pre Trial-Review is adjourned to June 19, 2024, at 10 am for 1 hour.

A Jarrett
Puisne Judge