[2021] JMSC Civ 197

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2010 HCV 01616

BETWEEN	**GRACE WILLIAMS**	**CLAIMANT**
AND	**CEBERT REID**	**DEFENDANT**

CONSOLIDATED WITH: 2010 HCV 01617

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

BETWEEN	**LURLINE BROWN-GOODEN**	**CLAIMANT**
AND	**CEBERT REID**	**DEFENDANT**

CONSOLIDATED WITH: 2010 HCV 01618

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

BETWEEN	**TAMZIE MARTIN**	**CLAIMANT**
AND	**CEBERT REID**	**DEFENDANT**

CONSOLIDATED WITH: 2010 HCV 01618

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

BETWEEN	**TAMZIE MARTIN**	**CLAIMANT**
AND	**CEBERT REID**	**DEFENDANT**

CONSOLIDATED BETWEEN

	SELMETA COLE	**CLAIMANT**
AND	**CEBERT REID**	**DEFENDANT**
BETWEEN	**CEBERT REID**	**ANCILLARY CLAIMANT**
AND	**LURLINE BROWN-GOODEN**	**1ST ANCILLARY DEFENDANT**
AND	**ALVIN MARTIN**	**2ND ANCILLARY DEFENDANT**

IN CHAMBERS

Mr. Raymond Samuels instructed by Samuels Samuels for the Claimants and Ancillary Claimants.

Mr. Oshane Vaccianna instructed by Burton - Campbell and Associates for the Defendant.

Civil Procedure – Application to strike out ancillary claim and ancillary particulars of claim for improper procedure – Whether nullity or procedural error- issue estoppel - application to strike out amended defence after the limitation period – Civil Procedure Rules Parts 18, 20 and 29.

Heard: September 23rd 2021 and December 20, 2021

H. CARNEGIE, MASTER (AG)

INTRODUCTION

[1] This is an Oral Judgment reduced to writing.

[2] is a consolidated claim of claim numbers 2010 HCV 01616, 2010 HCV 01617, and 2010 HCV 01618. The claimants Grace Williams, Lurline Brown Gooden and Tamzie Martin, were all passengers in the vehicle registered 0898BT and

claim against the defendant Cebert Reid, the registered owner of motor vehicle registered 7511DW.

[3] The claimants' claim is to recover damages for personal injuries and for consequential loss and damages occasioned by a motor vehicle accident which occurred on March 31st 2004, between the claimants and the defendant.

[4] An application was filed by the claimants' attorney on September 23, 2021, for court orders to strike out the ancillary claim and amended defence filed by the defendant. This application arose out of the defendant, filing an ancillary claim against Lurline Brown-Gooden the 1st ancillary defendant and the 2nd ancillary defendant Alvin Martin; and for the filing of an amended defence which names another party (who is not a party to the proceedings) as the driver of motor vehicle registered 7511DW, when the collision occurred.

[5] The proposed ancillary claimant, claims against the 1st proposed ancillary defendant Mrs. Lurline Brown Gooden and the 2nd proposed ancillary defendant Alvin Martin for indemnity and/or contribution for damages he may be found liable to pay the claimant as a result of the claim filed March 30th 2010. The 2nd ancillary defendant was at all material times the servant or and/or agent and or authorised driver of the proposed 1st ancillary defendant.

[6] Submissions were made in respect of the application on whether ancillary claim and ancillary particulars of claim should be permitted to stand or be struck out: due to failure to follow the procedure under Civil Procedure Rule 18.5, as the proposed ancillary claimants did not receive the permission of the court; the ancillary claim filed October 29th 2010, was undated and filed four days after the filing of the defence; the defendant failed to serve with the ancillary claim form and ancillary particulars of claim, the form for defending the claim and form for acknowledging service; the ancillary defendants were not served with the ancillary claim and ancillary particulars of claim, in particular the 2nd ancillary defendant who was not a party to the main claim.

[7] The defence filed October 25th 2010, stated that the accident was caused by Alvin Martin the driver of the motor vehicle 0898BT. The ground provided for the application for striking out the amended defence filed September 10th 2013, was that the amended defence brought forth a new claim, by naming Junior Broderick otherwise called "Beany" who was driving at the material time.

Claimants' Submission in respect of the Filing of Ancillary Claim and Ancillary Particulars of Claim and Amended Defence

[8] Claimant/applicants' attorney submitted that the ancillary claim should be struck out for the following reasons:

1. The ancillary claim was filed after the defence was filed.
2. In respect of the service of the ancillary claim and the particulars of claim, the defendant failed to serve the accompanying documents for defending the claim and acknowledgement of service in accordance with Civil Procedure Rule 18.6(1) and (2).
3. The ancillary claim and ancillary particulars of claim served are not in cohesion with the affidavit of service.
4. The ancillary claim and particulars of claim filed October 2010, were undated.
5. The defendant failed to serve every statement of case that was served in the main claim on the ancillary defendants, more specifically the defendant failed to serve every statement of case on the second ancillary defendant who was not a party to the proceedings.

[9] In respect of the amended defence Mr. Samuels' submitted the amended defence ought to be struck out because:

1. there is no application before the Court in respect of the amended defence which was filed three years after the defence was filed.

2. The defence purportedly puts blame on the proposed ancillary defendant Mr. Alvin Martin raises the issue of agency, which is a significantly new claim which the claimant cannot meet to bring Junior Broderick into the claimants' hearing.

3. The information in the amended defence would have already been in the possession of the defendants who had all knowledge and details in relation to the defence and chose not to provide this information from the beginning.

4. The amended defence submitted some five years after is prejudicial to the claimant and not in keeping with the overriding objective in dealing with cases justly.

5. The amended defence ought to be struck out as it is bringing forth a new claim in circumstances where the limitation period has expired and would therefore cause an injustice.

[10] Alternatively, Mr. Samuels submits, if the defence is allowed to stand, then the claimants should be allowed to join the new person which the defendant now seeks to place before the court.

Defendant's Response

[11] In response to application to strike out the ancillary claim, Mr. Vaccianna submitted that he cannot agree with Mr. Samuels' submission that the ancillary claim should be struck out, because Mrs. Lurline Brown-Gooden is among one of the claimants in the matter. Mr. Vaccianna further submitted that Part 5 of the Civil Procedure Rules 2002, is complied with and do not agree with the submission that the proposed ancillary defendants were not properly served. Mr. Vaccianna further asserted, that the proposed ancillary claim is essential to or has a real connection between the main claim and arose out of the same accident.

[12] Mr. Vaccianna response in respect of the amended defence is that the defendant has a duty to set out all material information on which he intends to rely, and that the amended defence provides therefore further information in relation to the defendant's defence. Such information Mr. Vaccianna submits is necessary in the circumstances to be ventilated with the only difference being more information.

[13] Mr. Vaccianna further submitted that the basic principle of law is "who alleges must prove" and it is not for an attorney to investigate and bring the claim to the attention of the parties responsible for the accident. The claimant had a duty, Mr. Vaccianna stated, to bring all parties before the Court.

ANALYSIS

[14] Is the ancillary claim form properly before the court? The governing rule is Civil Procedure Rule 18. 5 which states:

> (1) A defendant must seek the court's permission to make an ancillary claim if–
>
> (i) In the case of a counterclaim it is not filed with the defence; or
>
> (ii) in any other case, the ancillary claim form is not filed before or at the same time as the defence is filed.
>
> (2) Where either –
>
> (a) rule 18.3; or
>
> (b) paragraph (1),
>
> does not apply, an ancillary claim may be made only if the court gives permission.
>
> (3) An application for permission under paragraph (2) may be made without notice unless the court directs otherwise.

(4) The applicant must attach to the application a draft of the proposed ancillary claim form and ancillary particulars of claim.

[15] The fact that the ancillary claim form was not filed with the defence, means the permission of the court is required. The ancillary claim was not filed with the defence, but was filed four days later. Compliance with rule 18.5 (1) and (2) would have been achieved, if the permission of the court was first obtained, prior to serving the ancillary claim form and ancillary particulars of claim. Consequently, the procedures adopted by the Defendant/Proposed Ancillary Claimant in effecting service of the application on the proposed ancillary defendant suggests, that the proper procedure was not followed, and therefore that ancillary claim form and particulars of claim are not properly before the court. Mr. Samuels is correct on this point.

[16] However, I do not agree with Mr. Samuel's submission in regards to the service of the ancillary claim and ancillary particular of claim for several reasons. The file reflects that service of the ancillary claim form in respect of both proposed ancillary defendants were effected on November 19th 2013, evidenced by the filing of an acknowledgement of service. There are two acknowledgement of service on record and would therefore contradict assertion by the claimants' attorney without more. The file also reflects affidavit of service, the date on which the proposed ancillary defendants were served.

[17] Mr. Samuels asserted that service was not effected on the parties to the proceedings. However, I do not accept the position of Mr. Samuels on this point. The relevant rule is Civil Procedure Rule 18.12. Rule 18.12 does not apply in respect of Mrs. Lurline Brown Gooden as she is a party to the main proceedings, and that rule does not require a party in the main proceedings to be served with the claim form and particulars of claim along with the ancillary claim form and ancillary particulars of claim. Mr. Alvin Martin is not a party to the main proceedings, and service of the main claim would be required to be effected on him. Service on Mr. Alvin Martin is inadequate for the purposes

of Civil Procedure Rules 18.12, however, as the claim form and particulars of claim were not served on him. Rule 18.12 states:

> **Procedural Steps on service of ancillary claim form on person who is not a party**
>
> 18.12 An ancillary claimant who serves an ancillary claim form on a person who is not already a party must also serve a copy of –
>
> (a) every statement of case which has already been served in the proceedings; and
>
> (b) such other documents as the court may direct.

[18] Rule 18.6 applies in circumstances were the court's permission is required and which also requires that every claimant is served. The circumstances surrounding the filing of the application by the claimants suggest that the court's permission is not required nor the service of every person in the main proceedings.

[19] The question arises therefore whether the court can seek to make things right in respect of inadequate service on Mr. Alvin Martin. Blackstone's Civil Practice 2012 p. 699:

> *main concept in the overriding objective in the CPR 1.1, is that the primary concern of the court is doing justice. Shutting a litigant out through a technical breach of the rules will not often be consistent with this, because the civil courts are established primarily for deciding cases on their merit not in rejecting them through procedural default.*

[20] In the first instance decision of **Nanco v. Lugg and B&J Equipment Rental Limited** 2012 JMSC Civil 81, an application was filed to set aside an interlocutory judgment in default of defence entered. MacDonald-Bishop J in her delivery at paragraph 31 stated:

> *It should be noted within the context, however, that rule 26.9 applies where the consequence of the failure to comply with, inter alia a rule has not been specified. Rule 29 (2) then provides, among other things, that failure to comply with a rule does not invalidate any step in the proceedings, unless the court so orders. It means that effect on the proceedings on the claimant's failure to comply with 18.6 (1) does not, without more, invalidate the proceedings. Whether it should do so is ultimately a question for the court, to determine the circumstances of the case.*

[21] In determining whether a step should be determined to be invalid is ultimately a question for the courts to determine in all the circumstances **Nanco Supra**: at paragraph 31. **Nanco supra** at paragraph 45:

> *What I have observed from the available case law is that even in circumstances where such core documents (as important as they are) might not have been served, those are the claim form and the particulars of claim. Those documents would be the ones that would inform the defendant of the case it had to answer. What I have observed from the case law is that even in circumstances where such core documents (as important as they are) might not be served, a defendant can still waive the irregularity of non-service by appearance and/or participation in the proceedings. It follows then there can be a waiver of the non-service on the defendants of less critical documents albeit that they are important.*

[22] CPR 26.9 (3) in this context allows for the court to correct errors of procedure and put things right. Failure to comply with rule 18.5(2) therefore does not invalidate a step in the proceedings.

[23] The case law therefore suggests that if the relevant accompanying documents form for defending the claim and acknowledgment of service were not served with the ancillary claim and ancillary particulars of claim, that such is an irregularity which can be corrected.

[24] Having determined that the steps taken in filing of the ancillary claim are not invalid unless so determined, it is left to be considered what context must the

court consider giving effect to furthering the overriding objective. How, should such judicial discretion should be exercised? **Nanco** supra at paragraph 34, McDonald-Bishop J stated that it is incumbent on her to pay regards to the specific facts at bar before determining the effect the breach would have on the proceedings.

[25] Civil Procedure Rule 18.9 is therefore relevant in this context and it states:

> Matters relevant to the question whether an ancillary claim should be dealt with separately from the main claim
>
> 18.9 (1) This rule applies when the Court is considering whether to –
>
> (a) permit an ancillary claim to be made;
>
> (b) dismiss an ancillary claim to be made;
>
> (c) require the ancillary claim to be dealt with separately from the claim.
>
> (2) The Court must have regard to all the circumstances of the case including –
>
> (a) the connection between the ancillary claim and the claim;
>
> (b) whether the ancillary claimant is seeking substantially the same remedy which some other party is claiming from the ancillary claimant;
>
> (c) whether the facts in the ancillary claim are substantially the same, or closely connected with, the facts in the claim; and
>
> (d) whether the ancillary claimant wants the court to decide any question connected with the subject matter of the proceedings –

(i) not only between the existing parties but also between existing parties and the proposed ancillary claim defendant; or

(ii) to which the proposed ancillary defendant is already a party but also in some further capacity.

[26] Though not central point in his submissions, Mr. Vaccianna maintained that it is necessary for the ancillary claim to stand to prevent the defendant facing issue estoppel.

[27] An entitlement to indemnity arise by contract, under statute or by virtue of the relationship between the parties (see Blackstone's Civil Practice supra at p. 447). Also a right to contribution can arise between tort feasors, under the Law Reform Tort-Feasors Act section 3 which provides:

3(1) Where damage is suffered by any person as a result of a tort (whether or not such tort is a crime) –

(a) Judgment recovered against any tort feasor liable in respect of such damage shall not be bar to an action against any other person who would, if sued have been liable as a joint tort feasor in respect of the same damage.

(b) If more than one action is brought in respect of such damage by or on behalf of the person by whom it was suffered or for the benefit of the estate, or of the wife, husband parent or child of such person, against tort-feasors liable in respect of the damage (whether as joint torr-feasors or otherwise) the sums recoverable under the judgment given in those actions other than that in which judgment is first given, the plaintiff shall not be entitled to

costs unless the court is of the opinion that there was reasonable ground for bringing the action.

(c) any tort feasor liable in respect of such damages may recover contribution from any other tort feasor who is or would if sued have been liable in respect of the same damage, (whether as a joint tort feasor or otherwise). So however that no person shall be entitled to recover contribution under this section from any person entitled to be indemnified by him in respect of the liability in respect of which contribution is sought.

The relevant paragraphs are (a) and (c) which combined operate to allow the defendant/proposed ancillary claimant to initiate proceedings after the outcome of the main claim.

[28] In respect of *res judicata* in particular issue estoppel Blackstone's Civil Practice supra at p. 69:

> *…issue estoppel is based on the same public policy. The doctrine of issue estoppel is that if, after judgment is delivered in civil proceedings, two of the parties in those proceedings, or their successors in title, are parties to further civil proceedings; then one of those parties cannot repeat as against the other in the second proceedings an assertion which was found to be incorrect by the court in the first proceedings Mills v. Cooper [1967] 2 QB 459 per Diplock LJ at pp. 468-9).*

[29] The authorities relied on by Mr. Vaccianna supports the case law in an application of rule 18.9 and cited in the context of the possibility and effect of issue estoppel. However, issue estoppel is not the sole determining factor in respect of the issue at bar, save and except its application is for completeness in exercising judicial discretion under Rules 18.9. I do agree that the

possibility exists that issue estoppel may arise given the facts are closely connected and substantially same and arising from the same incident.

[30] Blackstone's Civil Practice supra at p. 447 provides:

> *permission of the court is required to bring an additional claim where a defendant wishes to counterclaim against a claimant after having already filed his defence; where a defendant wishes to counterclaim against a person other than the claimant; where a defendant wishes to make a claim for contribution or indemnity against a co-defendant, but does not file the notice of claim with his defence; where a defendant wishes to make claim (whether for a contribution or indemnity or otherwise) against a person who is not a co-defendant and where the claim is not a counterclaim and where such claim is not issued before or at the same time as he files his defence.*

[31] It is not my task to determine whether the defendant/proposed ancillary claimant will be able to receive an indemnity or contribution against the proposed ancillary defendants, but as far back as the decision in **Barclays Bank Ltd v Tom** [1923] 1 KB 221**,** it has been part of the consideration of the court that the future conduct of the case should be considered. Therefore, having determined that a procedural error can be made right, it is left to be determined the parameters of judicial discretion. Scrutton LJ in **Barclays Bank** supra at p 224 suggested taking a wide approach to safeguard against differing results and to ensure that the defendant is bound by the decision between the claimant and the defendant: A Practical Approach to Civil Procedure Fifth Edition p 187. Seventy years later such principles in **Barclays Bank** supra were captured in The Civil Procedure Rules 2002.

[32] In the case of **Dorett O'Meally Johnson v Medical Immunidiognostic Laboratory** 2006 HCV03983, Master George (Ag) as she then was, applied rule 18.9, in exercising her discretion as to whether to allow ancillary claim.

The facts surrounding that decision involved damages for personal injuries received from sitting in the waiting area for the defendant's medical facilities. Having regard to the requirements for Rule 18.9 as laid out and applied in Master George (Ag) as she then was in her judgment **Dorett O'Meally Johnson** supra p 12:

> *There are questions and issues to be tried that are related to the original subject that should be determined not only between the plaintiff and defendant, but also between the defendant and the proposed ancillary defendant.*

[33] Blackstone's Civil Practice, supra pp. 453-454 which provides:

> *If the court conducts separate proceedings, the court hearing the second action is not bound by the decision in the first action; where proceedings are not conducted separately is to ensure that the question between the defendant is decided as soon as possible after the decision between the claimant and the defendant; conducting proceedings together save the expense of two trials; a party commencing separate proceedings unnecessarily where claim could have been used may be penalised in costs.*

[34] Whether it is contribution that is being sought or indemnity by virtue of Mr. Alvin Martin's and Mrs. Lurline Gooden Brown's role in the claim, in furthering the overriding objective under Civil Procedure Rule 1.1, suggests that ancillary claim be tried as the circumstances are closely connected and would safeguard against differing results, to ensure that the defendant is bound by the decision between the claimants and the defendant.

[35] I would agree with the submission by Mr. Samuels are not properly before the court. However, I do not agree with Mr. Samuel's submissions that the ancillary claim form should be struck out for lack of proper procedure.

[36] I do not agree with Mr. Vaccianna that reserving the claim form is an option that should be considered by the court. Re-serving the ancillary claim form would have the effect of serving an ancillary claim form that is dead, as the validity of the ancillary claim form would have expired six months after being filed. Adopting the route of re-serving would run counter to the rule CPR 8.14(1). A claim form that is dead for all intents and purposes cannot be resurrected.

[37] I do agree with the submissions on behalf of the defendant, that having regard to the circumstances and the future conduct of the trial the requirements of rule 18.9 would have been met.

AMENDED DEFENCE

[38] The limitation period was not raised by Mr. Samuels in respect of the ancillary claim filed. However, it was raised in respect of the amended defence. The main cause of action was grounded in March 31st 2004, the date of incident, and by virtue of settled law the statute of limitation would have ran March 31st 2010 (**Sherrie Grant v McLaughlin and Smith** [2019] JMCA Civ 4 paragraph 30).

[39] Furthering the overriding objective means exercising judicial discretion in determining whether in accordance with the Civil Procedure Rules the amended defence filed is permitted to stand.

[40] The Civil Procedure Rule allows for an amended the defence under rule 19.4 or 20.6. Neither rule is applicable to this case, as there is no application before the court for adding a party or making a correction respectively.

[41] However, Civil Procedure Rule 20.4 provides that an application to amend a defence may be made at the Case Management Conference. The rule states:

Amendments to statements of case with permission

20.4 (1) An application for permission to amend a statement of case may be made at the case management conference.

(2) Statement of case may only be amended after case management conference with permission of the court.

(3) Where the court gives permission to amend a statement of case it may give directions to –

(a) amendments to any other statement of case;

and

(b) the service of any amended statement of case.

[42] The rule suggests that for a statement of case to be amended an application should be made for same to be heard at the Case Management Conference. No such application was made prior to filing the amended defence. However, this does not prevent the court making a determination given the current applications before the court.

[43] The defendant/proposed ancillary claimant has sought to amend his defence, to include information in respect of an individual he asserts is the person responsible for the accident. The question before the court therefore is whether the amended defence as filed should be permitted to stand. This requires a determination as to effect of the amended defence filed, which turns on whether the amended defence is one that has the effect of introducing an entirely new claim.

[44] The amended defence was filed some three years after the filing of the defence. This amended defence named a different party from that first mentioned in the defence first filed as responsible for the accident. Though Mr. Vaccianna may be correct in relying on the decisions of Moo Young and Anor v Chong and Ors (200) 59 and Sandals Resorts International Limited v

Neville Daley & Company Limited [2016] JMCA Civ 35 (in paragraph 20 of his submissions) that:

1. amendments may be made late at any stage of the proceedings for the purpose of bringing forward and determining the real questions and issues in controversy between the parties; and

2. that the court will view the exercise of this discretionary power quite liberally, as long as it will not do any injustice to the opponent of the part seeking the amendment, and particularly, if the opponent may be adequately compensated by costs consequent on such amendment,

3. An amendment to a statement of case is usually granted if –

   (a) It is necessary to decide the real issues in controversy, however late;

   (b) It will not create any prejudice to the other party and in not preventing “a new case” to the other party;

   (c) It is fair in all the circumstances of the case.

4. However late may be the application for amendment, it should be allowed in the circumstances osutlined in 3(a)-(c) above, if it will not injure or prejudice the other party.

5. In cases where the issues, which are the subject of the proposed amendment are not new or would have to be the subject of the litigation in any event, the amendment would not necessarily result in a new cause of action.

[45] However, such consideration by the court needs to go a step further than the submissions by Mr. Vaccianna.

[46] This is allegation of fact regarding who is responsible would not be within the realm of contemplation by the claimant, who if armed with such knowledge would have brought that person before the court. Indeed, the case of **Turner v Ford Motor Co. Ltd** [1965] 1 WLR 948, CA which followed **Weaitt v Jayanbee Joinery Ltd** [1963] 1 QB 239 CA, provides an amendment to the defence would be allowed where the amended defence asserted facts within the knowledge of the claimant (see A Practical Approach to Civil Procedure Fifth Edition p. 156).

[47] The amended defence includes the name of a different party from that first mentioned as the culpable person has the effect of introducing a new person, raising the issue as to identity of the driver and transferring liability to a person who is not a party to the proceedings and whom can no longer be sued by the claimant, because the statute of limitation has expired.

[48] To identify "Beany" as the person who was driving would be to introduce a new claim which is going a step further than clarifying the claim. The claimant would be taken by surprise if the claimant is now faced with a pleading and allegation that the person who the claimant asserted as culpable is not.

[49] To name "Beany" as culpable for the tort three years after filing of the claim would place the claimant in a position in which the claimant cannot sue the named person in the amended defence, as the appropriate period pursuant to the statute of limitation has expired. Blackstone's Civil Practice supra at p 475:

> *A defendant will not be given permission to amend where the effect of the proposed amendment is to transfer responsibility for the claim on to a non-party who cannot be sued by the claimant as a result of the expiry of the relevant limitation period.*

[50] Simmons J as she then was in **Wright, Nyron and Collins et al** 2010 HCV 03150 on an application to amend, applied the principle of the determining the difference between amendment to clarify issues and one seeking to introduce an entirely new claim. The determination before Simmons J as she then was,

was whether the test of permitting a defendant to amend their defence in the decision **Gladstone Allen v. David Allen** [2014] JMSC Civ. 220, has been made out. In making such a determination the following are factors are to be considered which are not exhaustive:

1) whether the amendment would be prejudicial to the other side;
2) whether there would be injustice caused to the other side;
3) whether the other side would be taken by surprise; and
4) how great a change is made in the issues proposed?

[51] These circumstances would bring not only an element of surprise but a great change in the issues proposed, and further would leave the claimant without any means of bringing suit against the named person in the amended defence, as liability would be transferred to another person. In such circumstances this could also be seen as causing some prejudice to the claimant.

[52] I therefore do not find agree with Mr. Vaccianna's submission that the amended defence is to provide further information without more.

[53] Mr. Samuels submitted that if the defence is permitted to stand that the claimants be allowed to add the person named as culpable. I do not agree with this submission in the context of the claimant objecting to the amended defence because the statute of limitation has expired. Permitting the joining of the person named as culpable would be going against settled law in respect of statute limitation being six years for negligence (see Rattrary J, **Vaneta Neil v Janice Halstead** 2019 JMSC Civ. 68 paragraph 32).

[54] Based on the analysis above, I make the following Orders -

1. The service of the ancillary claim and ancillary particulars of claim against the proposed ancillary defendant are permitted to stand;

2. The ancillary claim and particulars of claim served on the proposed ancillary defendant are permitted to stand;
3. The claim form and particulars of claim is treated as if served with ancillary claim and ancillary particulars of claim in respect of Mrs. Lurline Gooden Brown;
4. Permission is granted to serve claim form and particulars of claim on the defendant/ancillary claimant Mr. Alvin Martin.
5. The amended defence filed is struck out
6. Leave to appeal is granted to the defendant/applicant
7. Case Management Conference is adjourned to January 13th 2022 at 2 pm for 1 hour.
8. Costs to be costs in the claim
9. Claimant/Applicants attorney to prepare, file and serve formal orders herein.

……..
H. Carnegie (Ag)
Master in Chambers