

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
COMMON LAW AND EQUITY DIVISION**

2010/CLE/gen/00996

BETWEEN

GLENROY R. BODIE

Plaintiff

AND

MINISTER OF ENVIRONMENT

1st Defendant

AND

ATTORNEY GENERAL

2nd Defendant

AND

FREEPORT CONTAINER PORT

3rd Defendant

Before Hon. Mr. Justice Ian R. Winder

Appearances: Janet Fountain for the Plaintiff

Metta MacMillan-Hughes with Chizelle Cargill for the 3rd
Defendant

Hyacinth Smith for the 1st and 2nd Defendants

JUDGMENT

15 March 2019

WINDER, J

- [1.] This is my brief decision on the 3rd Defendant's application to be removed as a party to this action.
- [2.] The plaintiff was employed as a crane operator at the Freeport Container Port (FCP) and on 29 March 2010 while at work he suffered personal injuries when a tornado hit the FCP.
- [3.] On 20 July 2010 the Plaintiff filed a claim against the first and second defendants. On 28 March 2013 the plaintiff filed a Summons to join the FCP as a defendant to the action.
- [4.] On 28 June 2016, following an appeal, FCP was joined as a party to the action. On 28 August 2017, the Amended Writ of Summons was filed following the grant of leave to amend. FCP was not present for any of these applications.
- [5.] Unusually, on 16 October 2015 the plaintiff commenced a new action 2015/CLE/gen/1649 claiming damages with respect to the same claim for personal injuries. Not surprisingly, that action was ultimately struck out, on the application of FCP, for offending the Limitation Act.
- [6.] On 2 August 2018 FCP applied, by Summons, for an order that it cease to be a party to this action. That Summons is the subject of this application. FCP's application is made pursuant to Order 15 rule 6(2) of the Rules of the Supreme Court on the basis that it was joined after the expiry of the limitation period. Order 15 rules 6(2) provides:

(2) At any stage of the proceedings in any cause or matter the Court may on such terms as it thinks just and either of its own motion or on application —

(a) order any person who has been improperly or unnecessarily made a party of who has for any reason ceased to be a proper or necessary party, to cease to be a party;

(b) order any of the following persons to be added as a party, namely

—

i. any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon; or

ii. any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter,

but no person shall be added as a plaintiff without his consent signified in writing or in such other manner as may be authorised.

[7.]Section 9 of the Limitation Act provides:

9. (1) Subject to subsection (6), this section shall apply to any action for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by any written law or independently of any contract or any such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to the plaintiff or any other person.

(2) Subject to subsection (3), an action to which this section applies shall not be brought after the expiry of three years from —

(a) the date on which the cause of action accrued; or

(b) the date (if later) of the plaintiff's knowledge. (3) If the person injured dies before the expiry of the period prescribed by subsection (2), the period as regards the cause of action surviving for the benefit of the estate of the deceased shall be three years from — (a) the date of death; or (b) the date of the personal representative's knowledge, whichever is the later.

The claim was therefore filed on the last day of the 3-year limitation period.

[8.] FCP says that it should cease to be a party to the action as it was made a party after the statutory period.

[9.] I agree.

[10.] Note 15/6/7 to the 1999 Supreme Court Practice provides that "*Leave to add a defendant will not be granted after the expiry of any limitation period affecting the proposed defendant*". The note relies on the dicta of ***Scrutton LJ in Mabro v Eagle Star and British Dominions Insurance Co. Ltd. [1932] 1 K.B. 485, 487***, which provides:

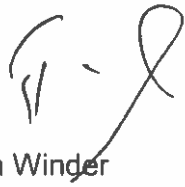
In my experience the Court has always refused to allow a party or a cause of action to be added where, if it were allowed, the defence of the Statute of Limitations would be defeated. The Court has never treated it as just to deprive a defendant of a legal defence. If the facts show either that the particular plaintiff or the new cause of action sought to be added are barred, I am unable to understand how it is possible for the Court to disregard the statute. It has been suggested that we might allow the joinder without prejudice to any defence against the claim, but I cannot see why the parties should be put to the expense of allowing an action to proceed which is barred in law.

[11.] I am satisfied that the amendment to the action against the FCP would be deemed to have been commenced from the date on which the Writ was amended, in which case it was time barred. (See ***Liff v Peasley [1980] 1 All ER 623 and Kettman v Hansel Properties Ltd. [1988] 1 All ER 38***). Therefore, notwithstanding the application was made on the last day of the validity of the limitation period, it was not heard and ordered within the period. The proper course, having regard to the state of the law, was for the plaintiff to have commenced a separate action within the limitation period and thereafter seek to consolidate, rather than applying to join the existing action.

[12.] In the circumstances therefore I will grant the relief sought in the 3rd Defendant's Summons, as its continuing to remain in the action will serve no useful purpose, having regard to Section 9 of the Limitation Act.

[13.] FCP shall have its reasonable costs to be taxed if not agreed.

Dated the 18th day of April 2019

A handwritten signature in black ink, appearing to be 'I. Winder', written in a cursive style.

Ian Winder

Justice