

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2017/CLE/gen/00473

PEDRO KNOWLES

Plaintiff

AND

SYNGAD SERVICES LIMITED

1st Defendant

AND

BAHAMAS OIL REFINING COMPANY LIMITED

2nd Defendant

Before Hon. Mr. Justice Ian R. Winder

Appearances: Gia Moxey-Lockhart for the Plaintiff
 Camille Cleare for the 1st Defendant
 Oscar Johnson Jr. QC with Keith Major Jr. for the 2nd Defendant

22 March 2022

RULING

WINDER, J

This is the application of the Plaintiff (Knowles) for an amendment of the Writ of Summons and for joinder of parties.

[1.] The application was made by Summons dated 14 March 2022 which was settled in the following terms:

LET ALL PARTIES concerned attend before His Lordship the Honourable Mr. Justice Ian Winder, Justice of the Supreme Court situate 3rd Floor Supreme Court Annex 1, Bank Lane, Nassau Bahamas on Tuesday the 22nd day of March, A.D., 2022, at 10:00 o'clock in the fore-noon for the hearing of an application on the part of the Plaintiff for the following Orders that:

1. The Plaintiff be at liberty to Amend the Writ of Summons filed the 10th April, 2017 and the Statement of Claim filed the 12th April, 2018 pursuant to Order 20, Rule 5 of the Rules of the Supreme Court;
2. The Plaintiff be at liberty to add Buckeye Bahamas Hub Limited as a party to the Action, pursuant to Order 15, Rule 6 of the Rules of the Supreme Court; and
3. The Costs of this Application be provided for.

[2.] The Amended Writ of Summons seeks to amend the parties as follows:

COMMONWEALTH OF THE BAHAMAS 2017/CLE/gen/00473
IN THE SUPREME COURT
Common Law and Equity Division
BETWEEN

PEDRO KNOWLES

Plaintiff

AND

SYNGAD SERVICES LIMITED

1st Defendant

AND

BAHAMAS OIL REFINING COMPANY INTERNATIONAL LIMITED

2nd Defendant

AND

BUCKEYE BAHAMAS HUB LIMITED

3rd Defendant

AMENDED WRIT OF SUMMONS

ELIZABETH THE SECOND, by the Grace of God, Queen of the Commonwealth of The Bahamas and of her other realms and territories, Head of the Commonwealth.

TO: Syngad Services Limited AND TO: Bahamas Oil Refining
c/o Registered Office Company International
McDonald & Co. Limited
1 E Settlers Way c/o Registered Office
Freeport, Grand Bahama H & J Corporate
The Bahamas Services Limited
 Ocean Center,
 Montague Foreshore
 East Bay Street
 Nassau, Bahamas

AND TO: Buckeye Bahamas Hub Limited
c/o Registered Office
H & J Corporate Services Limited
Ocean Center, Montague Foreshore
East Bay Street
Nassau, Bahamas

WE COMMAND YOU that within 14 days after service of this Writ on you inclusive of the day of such service, you do cause an appearance to be entered for you in an action at the suit of Pedro Knowles of 115 Wellington Drive, Freeport, Grand Bahama The Bahamas c/o Moxey Law Chambers, Suite 6 Grosvenor Professional Park and Medical Center, Grosvenor Close, Off Shirley Street, Nassau, The Bahamas.

AND TAKE NOTICE that in default of your so doing the Plaintiff may proceed therein, and Judgment may be given in your absence.

WITNESS the Honourable Chief Justice Sir Brian Moree Our Chief Justice of our Commonwealth of The Bahamas the day of in the year of Our Lord.

[3.] The Statement of Claim filed by Knowles provided, in part, as follows:

...

3. The 2nd Defendant is and was at all material times a Company duly incorporated under the laws of and doing business within the Commonwealth of The Bahamas.
4. The Plaintiff was at all material times a mechanical fitter duly employed by the 1st Defendant.
5. On or about the 10th April, 2014 whilst acting in the performance of his duties and functions, the Plaintiff attended the premises of the 2nd Defendant to plug a pipeline in a concrete trench so as to prevent the flow of gasoline, diesel and water. A balloon approximately 3 feet long and 24 inches in diameter was also used during the work. The Plaintiff did this pursuant to an agreement between the 1st Defendant and the 2nd Defendant for the 1st Defendant to conduct this work on the premises of the 2nd Defendant with work materials supplied by the 2nd Defendant.

6. While acting in the performance of his duties and functions, the Plaintiff along with his Supervisor, Lambert Ranger obtained work materials, namely balloons from the storage room of the 2nd Defendant.

[4.] The First Defendant (Syngad) entered an appearance and defended the action in an Amended Defence, which provided:

...

3. The First Defendant denies the allegation in paragraph 5 of the Statement of Claim that the accident happened on or about the 10th April, 2014 and puts the Plaintiff to strict proof thereof. The First Defendant says that the accident happened on Friday, 11th April, 2014, right after lunch.

...

4. The First Defendant otherwise admits paragraph 5 of the Statement of Claim. Further, the First Defendant says it is and was at all material times regularly contracted to perform work for the Second Defendant on its premises and as part of its undertaking as an oil refinery plant. Several of the First Defendant's employees, including Lambert Ranger, are and were primarily stationed at the Second Defendant's plant and integrated into the Second Defendant's operations.

5. The plugging of the western end of the pipeline by the First Defendant at the material time was planned, coordinated and controlled by the Second Defendant with works performed by Sanitation Services Limited removing oil slurry with a guzzler vac truck from the drain at the western end and a third set of contractors performing work at some distance down at the eastern end of the pipeline.

6. The work was carried out pursuant to a "permit to work" system whereby each job was commenced by the First Defendant completing and submitting a Construction Order subject to the laws of New York and jurisdiction of the Courts of New York and issued by the Second Defendant, and preparing a Job Safety Analysis ('JSA') which the Second Defendant reviewed and issued a Work Permit for. An invoice is raised by the First Defendant after the work is completed.

7. The First Defendant admits paragraphs 6 and 7 of the Statement of Claim and states that Mr. Lambert Ranger, the Plaintiff's Supervisor and an employee of the First Defendant, inspected the Second Defendant's equipment and chose the correct size balloon to fit the pipe. Mr. Ranger determined by a visual inspection that there were no signs of fatigue such as stretch marks on the balloon. Mr. Ranger also selected the correct size gauge and fittings to fit the maximum pressure per pound requirement of the balloon, as stated on its attached label. Mr. Ranger assembled the balloon to the couplings, fittings and hose to the compressor and pressure tested all the components for 25-30 minutes in the workshop at the Second Defendant's premises to see if the pressure would drop, which would indicate a leak, it did not. Mr. Ranger also poured a water and soap solution over the components of the assembly to test again for leaks. This test also indicated that there were no leaks. Mr. Howard Williams, a Safety Inspector of the Second Defendant checked and approved the balloon assembly

which was then inserted into the pipe and pressurized by personnel from Sanitation Services Limited by the name of Mr. Forbes, under the direct supervision of Mr. Ranger.

...

(Emphasis Added)

[5.] The Second Defendant (Borco) entered an appearance and defended the action in an Amended Defence, which provided:

...

3. Paragraph 3 of the SOC is admitted.
4. Save that the 2nd Defendant states that on or about 10 April 2014 the Plaintiff was permitted entry to the 2nd Defendant's premises situated at Freeport, Grand Bahamas (sic) ("the Facility") on the basis that he was an employee of the 1st Defendant, the 2nd Defendant can neither admit nor deny Paragraph 4 of the SOC. The Plaintiff is therefore put to strict proof as to his being duly employed by the 1st Defendant as a mechanical fitter, as therein alleged.
5. Save that the 2nd Defendant admits that the 1st Defendant was routinely retained as an independent contractor to provide services at the Facility, the 2nd Defendant can neither make any admission or denials, or properly traverse the allegations set out in respect of Paragraph 5 of the SOC as the same is predicated upon an alleged agreement between the 1st Defendant and the 2nd Defendant, without any, or any relevant particulars as to the nature, date, and/or terms of the alleged agreement having been set out in the SOC. The 2nd Defendant reserves its right to object formally to Paragraph 5 of the SOC until and unless such further and better particulars are provided clarifying whether the alleged agreement was oral or written, the date on which it entered into, the names of the persons who would have executed the same, and/or the terms therein contained. Further, the 2nd Defendant states that the "Permit to Work" issued and the "Job Safety Analysis" prepared with respect to the installation of a sluice gate by the 1st Defendant, did not include nor provide the expectations or guidance related to the safe operations of the installation of the plug installed in the line that feeds MP 3011's sump pit as this did not form part of the work assigned to the 1st Defendant. At any rate, the 2nd Defendant confirms that neither the 1st Defendant nor any of its officers, servants, agents or employees were integrated into the 2nd Defendant's operations, which remained distinct and separate from the 1st Defendant's operations.

[6.] The application was supported by the Affidavit of Lashonda Culmer which provided, in part, as follows:

...

8. By virtue of the Inspection of Documents in paragraph 6 of the Case Management Order filed the 23rd February, 2021, the 1st and 2nd Defendants produced and served, inter alia, the Service/Construction Contract dated the

- 04/04/14; said service occurred on the Plaintiff on the 18th March, 2021 and the 6th May, 2021, respectively. Now produced and shown to me attached hereto and marked "B" is a copy of the said Contract.
9. The 2nd Defendant filed Answers to Interrogatories herein on the 31st August, 2021 in response to our request made by letter dated the 20th July, 2021. Now produced and shown to me attached hereto and marked "C" is a copy of the said Interrogatories herein.
 10. As a result of the documents produced, we conducted several Company searches at the Registrar General's Department, which results determined that:
 - i. The correct name of the 2nd Defendant is BAHAMAS OIL REFINING COMPANY INTERNATIONAL LIMITED (hereinafter called "BORCO").
 - ii. BORCO changed its name to Buckeye Bahamas Hub Limited on the 29th April, 2016;
Now produced and shown to me attached hereto and marked "D" is a copy of the Certificate of Change of Name and Incorporation.
 11. I am advised by Counsel and verily believe same to be true that the 2nd Defendant suffers no prejudice in this application in as much as the Amended Defence and the Interrogatories pleaded and responds to the Plaintiff's allegations as of right. Further, that the 3rd Defendant is a necessary party in determining the dispute effectually and completely.

[7.] The First Defendant supports the application. It accepts that the amendment is necessary to get the proper parties before the Court.

Analysis and Disposition

[8.] Knowles seeks to add Buckeye Bahamas Hub Limited (Buckeye) as a party to the Action. Knowles also seeks to add the word "International" in the name of Borco to make it read as Bahamas Oil Refining Company International Limited. Buckeye and Bahamas Oil Refining Company International Limited however, are the same company. It appears that Bahamas Oil Refining Company International Limited changed its name to Buckeye Bahamas Hub Limited on 29 April 2016. It also appears that notwithstanding Borco appears in the action by Counsel and filed a Defence on 14 May 2018 it was struck off the Register on 3 March 2020.

[9.] Counsel accepts, after prodding by the Court, that the true application is not to join the company twice but simply for the amendment to the action to replace Borco as the 2nd Defendant with Buckeye Bahamas Hub Limited (formally Bahamas Oil Refining Company International Limited).

[10.] Borco opposes the application. It has filed an affidavit in opposition to Knowles' application, which provides, in part as follows:

...

5. Upon a careful review of the Writ exhibited at Tab A of the Culmer Affidavit, it has come to Buckeye's attention that the Plaintiff seeks damages in the instant action arising out of an event which allegedly occurred on or about 11th April 2014.
6. Both Buckeye and I are of the considered view that the Writ contains no reasonable cause of action against either Bahamas Oil Refining Company International Limited or Buckeye, neither of whom are included as Defendants in the action. A review of the Plaintiff's Summons Seeking Amendment and Joinder appears to reveal that the Plaintiff also shares the view of Buckeye as they have drawn the instant application in what appears to be an attempt to correct this. However, it is important to note that such an attempt or approach does not have due or any regard to the fact that the relevant period(s) of limitation, being either three (3) years in relation to a claim for personal injuries or six (6) years in relation to claims arising from tort prescribed under The Limitation Act, Chapter 83 of the Statute Laws of The Bahamas, have both long expired.
7. As a result of the foregoing, Buckeye and I are of the considered view that the instant application has no basis in law; as to invite this Honourable Court to accede to the same would wrongfully deny both Bahamas Oil Refining Company International Limited and Buckeye of the benefits ascribed to them by law, to wit, the relevant provisions of the Limitation Act.
8. I am advised by in-house Counsel for Buckeye, Mr. Patrick Monaghan, and verily believe, that the entity currently named as the Second Defendant (bearing the company number 10788) is a distinct and separate legal entity which has juridical standing separate and apart from Bahamas Oil Refining Company International Limited. I am further advised as aforesaid, and verily believe, that since the institution of this action, the Second Defendant was struck off the Companies Register on or about the 3rd November 2020. There is now produced and shown to me a true and correct copy of an electronic search of the Companies Registry in relation to company number 10788, and which is annexed hereto at Tab 1.
9. The status of the Second Defendant being struck off (although no mention of the same appears in the Culmer Affidavit) is squarely within the knowledge of the Plaintiff. In fact, the Plaintiff first raised this issue in the penultimate appearance of the parties before this Honourable Court on 5th October 2021, when the issue of whether costs should flow arose. The issue was further discussed at the last hearing of the parties before this Honourable Court on 15th December 2021.
10. In consequence of the above, and reviewing the company records, it appears that what is framed by the Plaintiff as an amendment application to include

Bahamas Oil Refining Company International Limited is actually a belated and misconceived joinder application.

11. Bahamas Oil Refining Company International Limited (previously bearing the company number 18440) had its name changed to Buckeye Bahamas Hub Limited on 29th April 2016. There is now produced and shown to me a true and correct copy of the Certificate of Change of Name and Incorporation dated 29th April 2016, which is annexed hereto at Tab 2.
12. As such, and in addition to the reasons stated above, it appears that it is wholly inappropriate for the Plaintiff to now seek to have Bahamas Oil Refining Company International Limited joined as a party to this action, as the aforesaid name change took place an entire year prior to the commencement of this action.
13. Buckeye remains a going concern (sic) in good standing to this date. Buckeye was formerly known as Bahamas Oil Refining Company International Limited, but never as the entity which is now joined as the Second Defendant to the instant action, namely: Bahamas Oil Refining Company Limited. There is now produced and shown to me a true and correct copy of Certificate of Good Standing dated 17th December 2020, which is annexed hereto at Tab 3.

...

[11.] Counsel for Buckeye complains that:

- (1) It will be deprived of a defence under the Limitation Act;
- (2) Borco was struck off the register and it is a separate entity from Buckeye;
- (3) Buckeye's name change took place a complete year prior the commencement of this action.

[12.] **Order 20, Rule 5** of the Rules of the Supreme Court provides:

- (1) Subject to Order 15, rules 6, 7 and 8 and the following provisions of this rule, the Court may at any stage of the proceedings allow the plaintiff to amend his writ, or any party to amend his pleading, on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct.
- (2) Where an application to the Court for leave to make the amendment mentioned in paragraph (3), (4) or (5) is made after any relevant period of limitation current at the date of issue of the writ has expired, the Court may nevertheless grant such leave in the circumstances mentioned in that paragraph if it thinks it just to do so.
- (3) An amendment to correct the name of a party may be allowed under paragraph (2) notwithstanding that it is alleged that the effect of the amendment will be to substitute a new party if the Court is satisfied that the mistake sought to be corrected was a genuine mistake and was not misleading or such as to cause any reasonable doubt as to the identity of the person intending to sue or, as the case may be, intended to be sued.

(4) An amendment to alter the capacity in which a party sues (whether as plaintiff or as defendant by counterclaim) may be allowed under paragraph (2) if the capacity in which, if the amendment is made, the party will sue is one in which at the date of issue of the writ of the making of the counterclaim, as the case may be, he might have sued.

(5) An amendment may be allowed under paragraph (2) notwithstanding that the effect of the amendment will be to add or substitute a new cause of action if the new cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has already been claimed in the action by the party applying for leave to make the amendment.

[13.] An amendment may be made, pursuant to Order 20 rule 5(2) and 5(3) of the Rules of the Supreme Court notwithstanding the period of limitation may have expired, where:

- (a) it was sought to correct the name of a party even if the effect will be to substitute a new party;
- (b) where the mistake sought to be corrected was a genuine mistake and was not misleading or such as to cause any reasonable doubt as to the identity of the person intending to be sued; and.
- (c) the Court thinks it just to do so.

I am satisfied that this is a proper case for an amendment as the misnaming of Borco was a genuine mistake and although Bahamas Oil Refining Company International Ltd. is a different entity there is no doubt as the entity intended to be sued.

[14.] In their Defences, both Borco and Syngad accepted that the accident occurred on property operated by Borco, when Buckeye was in fact in control of the property.

[15.] Answers to Interrogatories, dated 20 July 2021, by Borco, demonstrates the genuineness of the error in naming Borco as the Defendant:

- (1) The interrogatories were sworn by Tom Nash who described himself as follows:-
"TOM NASH Director, Buckeye Bahamas Hub of the Second Defendant"
- (2) The permit to work in respect of which the First Defendant was engaged at the material time authorized the First Defendant to perform maintenance work to the Second Defendant's water collection system; which has no connection or relevance to the operational activities listed in the first interrogatory.
- (3) At the date of the accident, Buckeye Bahamas Hub Limited, formerly Bahamas Oil Refining Company International Limited, was in control of general operations at the Second Defendant's terminal facility. However, at the material time, the maintenance of the water collection system was under the control of the First Defendant.

- (4) Buckeye Partners, L.P. and the Second Defendant are affiliated entities as Buckeye Partners, L.P. is a subsidiary company of the Second Defendant. I make oath and say as follows on behalf of the Second Defendant in answer to the interrogatories pursuant to request for interrogatories dated 20 July 2021:
- (5) Buckeye Partners, L.P., Buckeye Partners, L.P. does not control the operations or perform any daily oversight function at the terminal facility.

[16.] In all the circumstances I find that it is just and proper that the amendment be made to the action to replace Borco as the 2nd Defendant with Buckeye Bahamas Hub Limited (formally Bahamas Oil Refining Company International Limited). Knowles shall make the amendments within 14 days. The Defendant to have 21 days to make any consequential amendments.

[17.] As the amendment is sought by Knowles as a result of his own error, albeit genuine, I make the usual order that costs to be borne by the applicant, Knowles, such costs to be taxed if not agreed.

Dated this 4th day of August AD 2022


Ian R. Winder
Chief Justice