COMMONWEALTH OF THE BAHAMAS **2022**
IN THE SUPREME COURT **CLE/GEN/00522**
Common Law and Equity Division

IN THE MATTER of the Industrial Relations Act (the Act)

AND

IN THE MATTER of the Collective Bargaining Agreement between The Government of The Commonwealth of the Bahamas and The Bahamas Union of teachers for the period July 1st A.D. 2013 to June 30th A.D. 2018 ***(the Collective Bargaining Agreement)***

BETWEEN:

THE BAHAMAS UNION OF TEACHERS
(By Vernincha Simmons and Vernon Rogers in their capacities as Trustees)
Claimant

V.

THE ATTORNEY GENERAL OF
THE COMMONWEALTH OF THE BAHAMAS
Defendant

THE BAHAMAS EDUCATORS COUNSELLORS AND ALLIED WORKERS UNION
Applicant

Before: The Hon. Madam Justice Carla D. Card-Stubbs

Appearances: Kahlil Parker KC with Roberta Quant and Lesley Brown for the Claimant
Antoine Thompson for the Defendant
Obie Ferguson KC with Keod Smith and Sidney Campbell for the Applicant

Hearing Date: Joinder Application - April 20, 2023

Civil - Trade Union – Procedure – Joinder of parties – Trade union seeking to join action as Second Defendant – Preliminary Section 1, Rule 2(1)(b) Supreme Court Civil

Procedure Rules, 2022, (CPR 2022) - *Order 15 Rules of the Supreme Court (R.S.C. 1978, as amended) – Applicant claiming to have vested interest in the matter*

INTRODUCTION AND BACKGROUND

1. This ruling concerns a procedural application for joinder. On April 28, 2023, this Court delivered a decision acceding to the Application for joinder, with reasons to follow. Leave was given to the Applicant to join the proceedings as Second Defendant. The following sets out the decision as well as the reasons for the decision.

2. The application filed March 13, 2023 by the Bahamas Educators Counselors and Allied Workers Union ("BECAWU"), the Applicant, is pursuant to Order 15 Rule 4 of the Rules of the Supreme Court (R.S.C.). This Court notes that while the application was filed subsequent to the coming into force of the Supreme Court Civil Procedure Rules, 2022, (CPR 2022), a date for hearing/trial had already been set. The CPR 2022, Preliminary Section 1, Rule 2, provides in part as follows

> 2. Application of Rules.
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> (1) Subject to paragraph (4), these Rules shall —
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> (a) apply to all civil proceedings commenced in the Court on or after the date of commencement of these Rules;
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> (b) not apply to civil proceedings commenced in the Court prior to the date of commencement of these Rules except where —
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> (i) a trial date has not been fixed for those proceedings; or
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> (ii) a trial date has been fixed for those proceedings and that trial date has been adjourned.

3. On January 18, 2023, a trial date was fixed for the proceedings. Therefore, pursuant to the CPR 2022, Preliminary Section 1, Rule 2(1)(b), the relevant rules for consideration of the application in those circumstances are those contained in Order 15 R.S.C. as set out below.

4. It is useful at the outset to give the background of the substantive dispute so that the application for joinder may be put in context.

5. The substantive action concerns a dispute between a local trade union, The Bahamas Union of Teachers ("BUT"), the Claimant (previously styled as "Plaintiff") and The Ministry of Education, Technical and Vocational Training ("MOE") as represented by The Attorney General of The Commonwealth of The Bahamas (AG), the Defendant.

6. The Claimant contends that the Defendant, in breach of its contractual and statutory obligations, unlawfully ceased payment of dues and Agency Shop Fees to the Claimant. The Claimant founds its claim on a Collective Bargaining Agreement as well as s. 47 of the Industrial Relations Act.

7. By Originating Summons filed 6 April 2022 the Claimant seeks relief, including certain Declarations against the Defendant, namely

> **(1)** A Declaration pursuant to and in accordance with section 47 of the Act and Articles 9.1 and 9.2 of the collective Bargaining Agreement *inter alia,* that the Defendant remains obligated to deduct and pay in full to the Plaintiff the dues and Agency Shop fees due and payable from the salaries of all the Defendant's employees in the Plaintiff's Bargaining Unit.
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> **(2)** An Order that the Defendant do account for and pay to the Plaintiff's the total amount of dues and Agency Shop fees due with respect to its employees in the Plaintiff's Bargaining Unit, which funds have been unlawfully withheld by the Defendant from April 2021 to the date hereof and continuing.
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> **(3)** A Declaration that the Defendant is not entitled to cease payment to the Plaintiff of the full amount of the said dues and Agency Shop Fees other than by strict compliance with the provisions of section 47 of the Act, which requires *inter alia* a proper application and representational court by secret ballot of the Plaintiff's Bargaining Unit with respect thereto.
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> **(4)** A Declaration that 47A of the Industrial Relations Act, as amended by section 9 of the Industrial Relations (Amendment) Act 2017, does not repeal, replace, or otherwise derogate from the statutory and contractual rights and entitlements of the Plaintiff, or the statutory and contractual duties of the Defendant, pursuant to and in accordance with the collective Bargaining Agreement and Section 47 of the Act.
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> **(5)** An Order that the Defendant rescind all directives issued by the Ministry of Education, Technical and Vocational Training, the department of Education or the Director of Education to cease payment to the Plaintiff of the full amount of the dues and Agency Shop fees payable with respect to the Defendant's employees in the Plaintiff's Bargaining Unit and that the Defendant shall resume such payments to the Plaintiff in full forthwith."

The Declarations sought reveal the true nature of these proceedings and the issues involved.

8. The Originating Summons is supported by the Affidavit of Belinda Wilson, also filed on April 6, 2022, which sets out the Claimant's case.

9. The Defendant entered an appearance on May 11, 2022. By Affidavit of Lorraine Ambrister filed June 24, 2022, the Defendant responded to the Claimant's allegations. The Defendant denied that the cessation was unlawful or unreasonable and denied any statutory or contractual breach. In short, the Defendant alleges that they received instructions via letters from their employees to join a new union and to have their dues paid to that union. That union was BECAWU, the Applicant. That Union is said to have been registered and certified by the Director of Labour.

10. Both the Claimant and the Defendant are agreed that by email dated and sent 2nd day of December 2021, the Defendant informed the Claimant that they were acting in accordance with the instructions of their (MOE) employees.

11. There is no dispute as to the cessation of the payments or as to how it came about. There seems to be no dispute that the payments were subsequently rerouted to the Applicant. The Claimant's case is that such action breached the Defendant's obligations to it, which obligations are said to arise under the Collective Bargaining Agreement as well as under statute, viz, s. 47 of the Industrial Relations Act.

Date Set For Trial

12. On January 18, 2023, this Court gave Case Management Directions in preparation for the hearing of the substantive application. Hearing of the Originating Summons was set for a period of 2 days from May 8, 2023 to May 9, 2023. The Claimant and Defendant proceeded to comply with the several directions of the court. A pre-trial review was set for April 28, 2023. It was generally accepted that if the application for Joinder was successful, the hearing would necessarily have to be adjourned and new directions given on, as it were, the eve of the hearing date.

Joinder Application

13. On March 13, 2023 BECAWU filed a Summons for leave to join the proceedings "as the Second Respondent [sic] pursuant to the inherent jurisdiction of the Court on the basis that it has sufficient interest in the matter". By that Summons it also seeks costs. The application was later stated to be an application for leave to be joined as a "Second Defendant" pursuant to Order 15 Rule 4, R.S.C. In the hearing of the application, no appeal was made to the inherent jurisdiction of the Court. The application was opposed by the Claimant, the BUT. The Defendant, AG, made no independent argument and adopted the submissions of the Applicant, BECAWU.

Summary of The Case of The Applicant

14. The Applicant's Summons was supported by the Affidavit of Sandra Major filed March 13, 2023, a supplemental affidavit of Sandra Major filed March 17, 2023 and an Affidavit of Keysha Laroda filed March 30, 2023. Both the BUT and the BECAWU represent members employed by the MOE. The Applicant represents teachers, guidance counsellors and teacher's aides from Grand Bahama, Bimini and the Cays.

15. The Affidavit of Sandra Major, President of BECAWU, seeks to establish the registration of the BECAWU and its recognition as the Bargaining agent for teachers, guidance counsellors and teacher's aides employed by the MOE. The BECAWU is said to have 557 members in good standing. It purports to show that the Claimant, the BUT, did not have the representational status to be recognized by the Defendant and that there is no Industrial Agreement between the Claimant and the Defendant. The affidavit exhibits, inter alia, its own Registration Certificate and Determination Certificate. The supplemental affidavit of Sandra Major purports to exhibit its registered Industrial Agreement with the Government of the Commonwealth of The Bahamas. It relies on that as the source of its authority to collect the disputed payments.

16. Keysha Laroda swears in her affidavit that she is one of the Trustees of BECAWU. The substance of that affidavit is contained in 2 of its 4 paragraphs and echoes the averments in the Affidavits of Sandra Major. It serves to give her observation that the Claimant had not produced a Registration Certificate or a Determination Certificate (paragraph 2) nor a Registered Industrial Agreement (paragraph 3). Those paragraphs, together with the allegation in the Applicant's other Affidavits, undergird the Applicant's main objection i.e. that BUT has no standing to bring these present proceedings.

17. The Applicant claims to have a vested interest in this matter because of the relief sought via the declarations "which would have a devastating effect on BECAWU if allowed to go on unchallenged." The Applicant makes the argument that the Claimant is not a Registered Union and is unlawful. Counsel for the Applicant in his submissions to the court, described his main point of contention as "a jurisdictional point".

18. Counsel for the Applicant submits that the Claimant is not a Registered Trade Union pursuant to Section 12 of the Act and as such "all relief sought is invalid".

The Applicant points to the fact that the Affidavit of Belinda Wilson filed 5 April 2022 failed to exhibit a Certificate of Registration by the Registrar of Trade Unions.

Summary of The Case of The Claimant

19. The Claimant opposed the application on several grounds. The Claimant asserts that it makes no claims against BECAWU, the Applicant and that the Applicant cannot "assist the Court in solving the issues raised as between the parties in this matter and is therefore not a reasonable or necessary party". The Claimant submits that adding BECAWU as a party would unnecessarily increase the time and expenses necessary to resolve the dispute between the Claimant and the Defendant and that it would not be in keeping with the Overriding Objectives. The Claimant relies on the CPR 2022 for its submissions. For the reason stated above, I find that the applicable procedural rule is Order 15, r.4. However, where the interpretation of Order 15 is compatible with the CPR 2022, I will so indicate. Therefore, those cases which considered the construction of CPR rules, as submitted by the Claimant, will be viewed in that light. Those cases, while highly persuasive, will not be authoritative in this instance.

20. The Claimant submits that the Applicant is "a stranger to the Claimant's claim herein as against the Defendant, and to the relationship between the Claimant and Defendant". In arguing against the inclusion of the Applicant as a desirable or necessary party, the Claimant argues that "the Court would be fully able to resolve the issues raised herein without the addition of the BECAWU as a party".

ISSUE

21. Whether in accordance with Order 15, r.4, R.S.C., the BECAWU ought to be added as a party to the proceedings.

LAW

22. The Court derives its jurisdiction to add, substitute or remove a party to the proceedings pursuant to Order 15 Rule 4, R.S.C.

23. Order 15, r.4 provides:

    4. (1) Subject to rule 5(1), two or more persons may be joined together in one action as plaintiffs or as defendants with the leave of the Court or where —

1. (a) if separate actions were brought by or against each of them, as the case may be, some common question of law or fact would arise in all the actions; and
2. (b) all rights to relief claimed in the action (whether they are joint, several or alternative) are in respect of or arise out of the same transaction or series of transactions.

(2) Where the plaintiff in any action claims any relief to which any other person is entitled jointly with him, all persons so entitled must, subject to the provisions of any Act and unless the Court gives leave to the contrary, be parties to the action and any of them who does not consent to being joined as a plaintiff must, subject to any order made by the Court on an application for leave under this paragraph, be made a defendant. This paragraph shall not apply to a probate action.

(3) Where relief is claimed in an action against a defendant who is jointly liable with some other person and also severally liable, that other person need not be made a defendant to the action; but where persons are jointly, but not severally, liable under a contract and relief is claimed against some but not all of those persons in an action in respect of that contract, the Court may, on the application of any defendant to the action, by order stay proceedings in the action until the other persons so liable are added as defendants.

24. Order 15 r.4(1) is subject to Order 15 r. 5(1). Order 15 r. 5(1) provides:

5. (1) If claims in respect of two or more causes of action are included by a plaintiff in the same action or by a defendant in a counterclaim, or if two or more plaintiffs or defendants are parties to the same action, and it appears to the Court that the joinder of causes of action or of parties, as the case may be, may embarrass or delay the trial or is otherwise inconvenient, the Court may order separate trials or make such other order as may be expedient.

25. By the terms of Order 15, r.4, it is clear that

1. Unless a person satisfies r. 4(1)(a) and (b), a person must seek the leave of the court to be added as a party.

2. Where a person satisfies both r. 4(1)(a) and (b), no leave is necessary.

3. In either case, joinder is in the court's discretion. A court may order separate trials or otherwise make an expedient order if the joinder would embarrass or delay the trial or if it is otherwise inconvenient (r.5(1)).

26. Order 15 is silent on the factors that a court may consider *on an application* to add new parties into the proceedings. However, it does provide guidelines for the court

in the exercise of its discretion, and so, if it appears to the Court that the joinder of parties, or causes of action, as the case may be, may embarrass or delay the trial or is otherwise inconvenient, the Court may order separate trials or make such other order as may be expedient. It is to be noted that the language of Order 15 rr. 4 and 5 do not require the Court to act in a particular way. A court may grant leave for joinder, or may order separate trials or may make some other expedient order. The rule on joinder confers a wide discretion on the court, which discretion is to be exercised judicially. The rule is to have a liberal construction.

27. For the reasons already stated above, this Court is of the opinion that at this stage of the proceedings, the RSC applies. However, given the Claimant's submissions on the CPR 2022, the Court will consider those submissions to the extent that they are compatible with the prevailing law in the RSC. For this purpose only, I set out the relevant CPR 2022 rule.

28. As an observation, the CPR 2022 is similarly silent on the factors that a court may consider *on an application* to add new parties into the proceedings. Under those rules, the Court derives its jurisdiction to add, substitute or remove a party to the proceedings pursuant to Part 19 of the CPR 2022, as amended. A court may do so either on application by a party or on application by a person who wishes to become a party or without an application. The factors to be considered where there is *no application* appear in Rule 19.2(4).

29. Rule 19.2 (4) CPR 2022, as amended, provides:

> (4) The Court may add a new party to proceedings without an application, if —
> (a) it is desirable to add the new party so that the Court can resolve all the matters in dispute in the proceedings; or
> (b) there is an issue involving the new party which is connected to the matters in dispute in the proceedings and it is desirable to add the new party so that the Court can resolve that issue.

30. Those factors may well be relevant to any exercise of the court's discretion where there is an application. However, it appears that a court is not confined those considerations where an application is made (i.e. where leave is needed), provided that the court bears in mind the overriding object of Part 1.

31. For completeness, Part I of the CPR 2022 provides in part -

> 1.1 The Overriding Objective
> (1) The overriding objective of these Rules is to enable the Court to deal with cases justly and at proportionate cost.

(2) Dealing justly with a case includes, so far as is practicable:

(a) ensuring that the parties are on an equal footing;

(b) saving expense;

(c) dealing with the case in ways which are proportionate to —

(i) the amount of money involved;

(ii) the importance of the case;

(iii) the complexity of the issues; and

(iv) the financial position of each party;

(d) ensuring that it is dealt with expeditiously and fairly;

(e) allotting to it an appropriate share of the Court's resources, while taking into account the need to allot resources to other cases; and

(f) enforcing compliance with rules, practice directions and orders.

32. There appears to be a wide discretion given to the Court on an application for joinder under the CPR 2022 but it goes without saying that that that discretion must be exercised judicially. General Guidelines for the Court's exercise of discretion under the new rules are expressed in the overriding objectives of the CPR provided for in Part I of the Rules.

33. Again, as stated above, the correct rule for the present application appears in Order 15. The Court has a wide discretion to allow an application for joinder of a party. The Applicant submits that it has a vested interest. The Claimant submits that the Applicant is not a necessary or reasonable party. In exercising its discretion, the Court can take into account whether the Applicant has a legitimate interest in the resolution of the dispute before the Court such that it ought to be joined as a party. In other words, does the Applicant have a substantial interest, or a vested interest, in the outcome of the dispute? A Court can consider whether the determination of the issues before it can be achieved without the interested party being before the Court. A Court may also consider whether the Applicant's interest may adequately be represented by an existing party to the litigation. A Court may take into account whether the Applicant's absence could result in a multiplicity of actions. In other words, is the Applicant is a necessary or reasonable party?

LEGAL DISCUSSION AND ANALYSIS

Applicant's submissions

34. The Applicant submits that it has a vested interest and ought to be joined as a party pursuant to Order 15, r. 4 because the Claimant in its Originating Summons seeks various Declarations "which would have a devasting effect on BECAWU if allowed to go on unchallenged." It argues that "the named Plaintiff herein is not a Registered Union pursuant to Section 12 of the Industrial Relations Act 19711 ("IRA-1971") and as such, all relief sought is invalid and cannot be pursued via these proceedings, or at all." Its other arguments are advanced to buttress this point i.e. the absence of certain documents and non-compliance with procedure that would cause the disentitlement of the Claimant to the relief sought in the action.

35. The Applicant relies on Section 6 of the IRA-1971 at Part II in advancing the proposition that an unregistered union is unlawful.

36. Section 6 of the IRA-1971 at Part II provides:

> "It shall not be lawful for any trade union to commence, or for any person to take part in, any activities of any trade union if such union is not a union registered under this Act, and every person who takes part in any activities of such a union shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding fifty dollars: and every officer and every member of the executive committee or other governing body of a union which commences any activities as a union without being registered under this Act, shall also be guilty of an offence and liable on summary conviction, to a fine not exceeding fifty dollars, and to a further fine of ten dollars for every day during which he remains a member of the committee or other governing body of such union after such conviction until such union either is dissolved or is registered under this Act."

37. The Applicant also relies on Sections 50 and 51 of the IRA-1971 to demonstrate the implications of absence of a Registered Industrial Agreement. Sections 50 and 51 of the IRA-1971 provide:

> "50. An industrial agreement under section 46 shall have effect only if it is registered by the Tribunal in accordance with section 49.
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> 51. (1) Every industrial agreement so registered shall during its continuance be binding on
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> (a) the bargaining agent and every employee in the bargaining unit for which the bargaining agent has been recognized;

(b) the employer who has entered into the industrial agreement;
(c) any person succeeding (whether by virtue of a sale or other disposition or by operation of law) to the ownership or control of the business for the purposes of which the employees in the bargaining unit."

38. Counsel for the Applicant cited the case of *CMK Holdings Limited v The Minister of Labor and Bahamas Hotel Catering & Allied Workers Union* SCCivapp & CAIS No. 302 of 2013 as "the authority for the proposition that in the absence of a certificate of registration, any purported union, as is the BUT in this case, is deemed not to be in existence as a legal entity that is capable of acting as a trade union registered under the provisions of the IRA-1971". He also relied on *Bahamas Hotel Catering & Allied Workers Union v Cable Beach Resort Limited and Anor* No. 2015/SCCivApp/174 for the proposition that there is no legally binding industrial agreement between the parties where it had expired or was otherwise not registered.

39. The Applicant urges the Court to grant leave for it to be joined as the Second Defendant in these proceedings "to argue and provide evidence to show, inter alia, that the Plaintiff ought not be allowed to carry on with these proceedings as it is, inter alia, prohibited by law."

40. This is a useful juncture to note that, at this stage, the Court is concerned with whether to exercise a discretion to add the Applicant as a party. The cases and legislation advanced by the Applicant do not assist the Court in determining how that discretion ought to be exercised. However, the Court accepts that the cases are proffered in furtherance of the Applicant's claim that they have a "vested interest" in the outcome and that the Claimant's action is likely to be defeated if the Applicant is given an opportunity to intervene.

The Claimant's submissions

41. The Claimant submits that the Applicant is not a necessary or reasonable party and ought not to be allowed to join the proceedings. It relies on the CPR 2022, as amended, which, for reasons stated, I find are the inapplicable rules at this juncture. This Court is not bound by the considerations set out in those rules. However, to the extent that the cases relied are consistent with practice under Order 15 and can provide some assistance in how the Court should exercise its discretion in this matter, the Court will review same.

42. The Claimant argues that it is the Defendant alone who is answerable to the Claimant on its claims made, and for the relief sought. It submits that if the joinder were to be allowed, it would constitute a distraction from the matters in issue. "The BECAWU makes the false and self-serving contention that the Claimant has no Collective Bargaining Agreement with the Defendant, and further suggests that the Claimant has no standing to bring the present action. These assertions are baseless and demonstrate that far from seeking to participate substantially in this action, the BECAWU is intent on driving the Claimant from the judgement seat and/ or delaying timely conclusion of this matter." The Claimant also submitted that the Applicant could appear as *amicus curiae* but ought not to be added as a party.

43. In answer to the Applicant's cases on the status of the Claimant, the Claimant submitted the case of *Dave Beckford et al v. Registrar of Trade Unions et al*, Appeal No. 273 of 2014 to the Court, Applicant and Defendant post-hearing. The Claimant sought to highlight paragraph 26 of the Court of Appeal's Judgment in that case. The case concerns the validation of unions. Similar to the cases that this one purports to answer, it does not address how the Court's discretion ought to be exercised on the application before it. However, it may be that such cases demonstrate that there is a live issue between the parties that could possibly affect the outcome of the substantive matter. This Court will not, on this application, determine issues of status of either trade union.

44. Concerning the exercise of the Court's discretion on an application for joinder, the Claimant relied on the cases of *High Commissioner for Pakistan in the United Kingdom v National Westminster Bank plc* [2015]EWHC 55 (Ch) and *Malavi v Hibbert and Others* [2020] EWHC 121 to demonstrate how a Court is to apply the overriding objective under the CPR. Those cases do not bind this Court. However, I do find the tenet advanced in *Malavi v Hibbert and Others* principally sound. In that case, the Court refused to join an applicant as party to a claim where it "would not be in accordance with the overriding objective because it would only increase costs and delay without assisting in the resolution of the issues". Delay and costs are considerations that a court would take into account under Order 15 as to whether the joinder should be allowed or refused because it would delay the trial or "is otherwise inconvenient". The two cases are otherwise unhelpful in this exercise.

45. The Claimant also cited the case *of XYZ v. Various (Including Transform Medical Group (CS) Ltd) and Spire Healthcare Limited* [2014] EWHC 4056 (QB) which is case concerning the interpretation of The English CPR, Rule 19.2(2) which

Counsel submits reflects Rule 19.2(4) of the SCCPR, (Amendment) 2023. Counsel for the Claimant submits that the case is authority for the proposition that mere connection to a matter will not automatically afford a gateway for the Court to add a party to proceedings. I can find no fault in this and this would appear to be part of a consideration to be undertaken in a judicial exercise of discretion under Order 15. That case concerned a group litigation where the Defendants were sued for damages stemming from the supply of defective implants used in breast implant surgery. In that case, one of the Defendants sought to join Amlin Insurance (UK) Ltd and to bring against it a claim for a declaration. Thirlwall J DBE reviewed The English CPR, Rule 19.2(2) and dismissed the application because he found that the issue to be joined was not connected to the matters in dispute in the proceedings as mandated by the rule. He found at para. 27 that "However attractively packaged this application maybe it is an attempt by Travelers/Transform to establish in advance the depths of another insurer's pockets."

46. I find that *XYZ v. Various (Including Transform Medical Group (CS) Ltd) and Spire Healthcare Limited* does not advance the case of the Claimant much to the extent that it relies on the English CPR and the interpretation of the test in r.19(2). However, in that case, Thirlwall J DBE cited *Chubb v Davies* [2005] Lloyds Rep IR 1 where Langley J held that joinder did not require the existence of an extant cause of action. Thirlwall J DBE cited *Chubb v Davies* where Langley J considered that the question for the court in that case was whether the proposed new party should be permitted to respond to the claim. The proposed new party did not have an existing cause of action against either party. Langley J found that the new party should be permitted to respond, "in common justice". I will return to *Chubb v Davies* shortly.

47. The Claimant argues that "BECAWU cannot provide the Court with greater assistance more than the current parties have, the BECAWU has also requested to be joined at an advanced stage when a trial in the matter has already been set and parties have prepared themselves for the same….it would add undue costs to these proceedings, and inevitably delay the completion and adjudication of this matter were the Court to allow the addition of the BECAWU." It is also the Claimant's submission that the Applicant appears to be merely "repeating evidence and/or arguments already before this Court, which evidence and/or arguments ought properly to be led and/or advanced by the Defendant." I find that these concerns are addressed by the decision in *Chubb v Davies*.

48. In *Chubb v Davies*, (relying on the case as reported at *Chubb Insurance Company of Europe SA v Davies* [2004] All ER (D) 149 (Sep)) the applicants (the Black parties) had succeeded in an earlier suit against the Defendant (Mr. Davies). Subsequent to that suit, the Claimant Insurers (Chubb) brought the instant action for a declaration that it was not liable under its policy with the Defendant to indemnify the Defendant in respect of the applicants' judgment received in the earlier suit. The applicants sought permission to be joined as defendants in order to contest the claimant's right to the declaration sought. This was at the stage where an application for summary judgment had been made. Langley J allowed the joinder, finding it appropriate for the applicants to be joined to the proceedings. He accepted the proposition that the Applicants would have no better answer than the Defendant to the Claimant's cause. However, in reviewing the CPR 19.2(2) and comparing it with the previous Order 15 (similar to the language of Order 15 of the RSC Bahamas), Langley J found as follows:

> 19. The rule does not require "the new party" to have a cause of action. The wording is, if anything, more general than RSC Order 15 rule 6. I am sure it should be interpreted more generously if the overriding objective requires it. The real target of Chubb's present claim is the Black parties. *Chubb seeks prospective relief in the form of a declaration. Yet Chubb seeks to prevent the Black parties from intervening on the ground that they only have a prospective cause of action. In common justice the Black parties should, in my judgment, be permitted to advance such case as they can that the insurance should respond to their claim against Mr Davies.* [emphasis mine]

Application of Principles

49. I find the case of *Chubb v Davies* instructive and highly persuasive. The Claimant's case is framed as one against the MOE. The essence of the Claimant's assertion is that the obligation owed by the Defendant to the Claimant is severable from any owed to the Applicant. While this may be so, and this court makes no pronouncement on that at this time, the question then arises as to the source of the Defendant's obligation. The Defendant has answered the Claimant by relying on their instructions to pay the Applicant. The Applicant argues, by response to the Claimant's action, that it is properly entitled to the payments and that the Defendant can have no obligation to the Claimant, given the status of the Claimant. What also cannot be escaped on these facts is that the dispute is over the entitlement to deductions from employee salaries. There can be only one set of deductions ultimately. If the Claimant were to succeed in its claim, the Defendant would have to act in such a way as to alter the status quo and therefore, would

have to alter their relationship with the Applicant. If the BUT were successful, the Applicant would be disentitled to the payments which it now receives. The Claimant may argue that the Applicant is not the target of the action but it cannot deny that the Applicant will be affected by the outcome of this action – whatever that outcome is. I adopt and adapt the reasoning of Langley, J in *Chubb v Davies*. In this case, the Claimant seeks prospective relief in the form of a declaration. Yet the Claimant seeks to prevent the Applicant from intervening on the ground that it has no cause of action with the Applicant. Presumably, if the Claimant were to succeed, then the Applicant could sue the Defendant on what it says the obligations owed by the Defendant to it are. In common justice the Applicant should, in my judgment, be permitted to advance such case as they can that the Defendant should resist the case of the Claimant.

50. The Claimant's position is that this is a dispute based on a contract between them and the Defendant and a dispute based on a breach of statutory obligation between them and the Defendant. However, when one examines the relief sought, the Claimant also seeks a Declarations which involve the construction of statutory provisions in relation to a trade union, in particular Declarations 3 and 4. Those as set out in the Originating Summons are:

> (3) A Declaration that the Defendant is not entitled to cease payment to the Plaintiff of the full amount of the said dues and Agency Shop Fees other than by strict compliance with the provisions of section 47 of the Act, which requires inter alia a proper application and representational court by secret ballot of the Plaintiff's Bargaining Unit with respect thereto.
>
> (4) A Declaration that 47A of the Industrial Relations Act, as amended by section 9 of the Industrial Relations (Amendment) Act 2017, does not repeal, replace, or otherwise derogate from the statutory and contractual rights and entitlements of the Plaintiff, or the statutory and contractual duties of the Defendant, pursuant to and in accordance with the collective Bargaining Agreement and Section 47 of the Act.

51. Such Declarations invite pronouncements on the interpretation and effect of the statutory provisions. Either declaration would cover the construction of any relationship between the Defendant and any Trade Union said to be entitled to the sums in dispute. The Applicant is such a Trade Union. It is clear that such a Declaration could immediately affect the relationship between the Defendant and the Applicant. Practically, it would impinge on the entitlement of the Applicant to

the disputed sums i.e. sums deducted from the remuneration of employees of the Defendant. The Defendant has prayed in an aid, as a Defence, its obligation to honor the instructions of the employees. Those instructions, the Defendant intends to show, were to pay the Applicant. Any declaration as to an obligation and where this obligation lies and how it is to be treated will have implications and impact for parties other than the Claimant and the Defendant. A treatment of this issue affects the payor and the payee. At this point, the Applicant has been the payee of the disputed sums. The Claimant's action is asking for relief that would serve to disrupt the status quo.

52. At first blush, it is an attractive submission that the Applicant who seeks to attack the entitlement of the Claimant on what it calls "a jurisdictional point", should be assigned to do so in the role of *amicus curiae* if any allowance for participation in the trial is to be made. On deeper analysis, it is clear to me that the Applicant is concerned in the outcome of the action. The ambit and existence of what it claims as its legal entitlement is at stake. In my judgment, in this case, the Applicant is entitled to have an opportunity to be heard. It would not serve the interest of justice or judicial efficiency if the Applicant were to be relegated to the sidelines and risk having the Claimant getting the Declarations sought without its input when those Declarations could be inimical to its legal interest. The Applicant has shown that, on the eve of the hearing, there are matters not pleaded which matters ought to be before the Court if those matters could affect whether the Claimant is entitled to the Declarations sought. It is proper that a person ought not to be allowed to join an action where it would serve to obfuscate the issues or merely increase costs. I note that a Court had wide case management powers under Order 31A, and now under Parts 25, 26 and 27, CPR 2022 to ensure that the issues between parties are clearly defined and that costs-saving measures are undertaken. A Court should carefully consider the purported interest of an Applicant who desires to join an action. In this instant case, what this Court has before it is a request from an entity that claims a right to the sums in dispute. It asks for an opportunity to be heard and to have that right considered where the making of the declarations sought can affect the enjoyment of that right. This is not a potential right. It is a right that the Applicant currently enjoys.

53. The Claimant submits that the Applicant could easily instruct the Defendant and, that way, costs would be minimized. There is force in that argument but I find that it is not the appropriate analysis in this case. While I agree that it appears to be the Applicant's concern that certain matters might not be before the Court and while I agree that those matters could have been properly put by the Defendant,

the fact is that on the eve of the hearing of this matter, there are issues raised by the Applicant that are said to be matters that would debar the Claimant from relief. Those matters have not been put before this Court. I am of the view that a Court, in granting declarations, ought to consider all those matters relevant to the determination of the issues that would need to be treated in order for the Court to pronounce on the relief sought. The Court has to determine whether the Claimant is entitled to the relief sought. I find it a relevant and related issue in this matter as to whether the Claimant is in fact a proper person who may be awarded the relief sought. That issue was never raised by the named Defendant.

CONCLUSIONS AND DECISION

54. The Claimant submits that it is not asking for relief as against the Applicant and that it is not enough that the Applicant wants a specific result. The Applicant submits that it has a vested interest and that it has a right to advocate against the case of the Claimant. In this regard, I agree with submission of the Applicant. Viewed at its essence, the Claimant seeks a redirection of payments being made to the Applicant. The Applicant would be directly and immediately affected by any Declaration made in the Claimant's favour. It is my view that it would be unjust if the Applicant were not allowed to advocate for their own cause. On the other hand, if a Declaration is made in favour of the Claimant, the Applicant would be immediately bound by same concerning what it says its rights and obligations are. It is my finding that these are the types of facts that support a case for joinder. I find that it is a reasonable and desirable course to add the Applicant as a party.

55. This is not an action where the Applicant would be found liable to the Claimant and this is because the action has not been so structured. However, this is an action seeking certain declarations that could potentially deny the Applicant of its entitlement to the disputed sums. I find that the Applicant has a vested interest.

56. I hold that this situation is more appropriately addressed by having the Applicant joined as a party than by merely being facilitated as *amicus curiae*.

57. I am satisfied that the rule of joinder is not to be narrowly construed. The jurisdiction to allow the joinder of causes of actions and of parties serves to meet the interest of justice in supervising the resolution of disputes. If several filed disputes may better be resolved together, a joinder of actions is envisaged. One of the purposes of joinder of parties, is to ensure that there is not a multiplicity of actions. If there are persons with legitimate claims and a substantial interest in the outcome of the litigation, they ought not to be ignored when they present

themselves to the Court. The test at this stage is not whether their claim (or defence) will be upheld. It is sufficient, as in this case, if the resolution of the dispute will impact some legal entitlement that they espouse. Taking a practical approach, it makes sense for them to be brought into the dispute so that they are heard, and, as importantly, it makes sense so that they are immediately bound by the outcome of the dispute. This may mean too that they could be specifically subject to any relief obtained by the Claimant as well as they may be the specific beneficiaries of any restraint imposed upon the Claimant. These results will forestall the launching of further actions to cover the same or similar grounds or questions. I find in this case, while the Claimant's action is framed as a dispute between it and the named Defendant, that it is, in essence, an action calling for relief that touches and concerns the entitlement of others. One such other is the Applicant. The Defendant has named the Applicant in its response to the Claim. It is a matter of justice that the Applicant, having a substantial stake in the outcome and being concerned in the dispute, appear before the Court.

58. The question arises whether "Defendant" is the correct capacity for the Applicant. A finding for the Claimant would be a finding against the Applicant. It is clear that the interest of the Claimant and Applicant are adverse and therefore the Applicant would be properly described as an additional defendant. *Chubb v Davies*, supra, is good authority for that approach. Therefore, the Applicant will be joined as the Second Defendant. Of course, having entered the fray, the Applicant puts itself at risk for paying costs of the action in the event that the Claimant is successful - because the Claimant must now contend against an additional Defendant.

59. This Court recognizes that this decision will delay the hearing of the substantive matter. The Claimant, if it is to succeed in its claim, would have been deprived of payments dating back to April 2021. However, I find that the balance of justice favours allowing the joinder of the Applicant as a party so that all issues can be litigated.

60. For the reasons given above, it is my view that it is better in the process of judicial efficiency that a proceeding includes relevant interests where there is a common concern, rather than risk parties appearing in different courts concerning that common concern and with the risk of conflicting results. Further, it is my opinion that there is no undue prejudice to the Claimant by the delayed trial in this matter. The relief sought are damages and Declarations which are still attainable if the Claimant is eventually successful in its claim. The delayed payment of sums can be compensated by way of damages and/or interest.

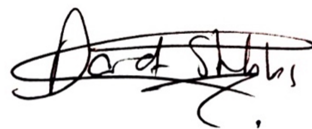
COSTS

61. The Applicant has been successful in its Application and has asked for its costs. I find that an award of costs in its favour is inappropriate in this circumstance. The Applicant necessarily had to seek leave to be joined as a party in this matter. The Claimant, especially on the eve of the hearing/trial of this matter, is entitled to oppose the application. The Court was aided by the submissions of the Claimant. In the circumstances, each party will bear its own costs.

ORDER

62. The order and directions of this Court are as follows.
    1. Leave is given to the Applicant to be joined as Second Defendant to this action.
    2. Each party will bear its own costs.
    3. The trial date is vacated and the trial is adjourned.
    4. Further case management, and directions in this action will be given on the first day previously set aside for trial i.e. May 8, 2023 at 10:00am.
    5. For avoidance of doubt, given the adjournment of this hearing, this action is now governed by The Supreme Court, Civil Procedure Rules 2022, as amended.

Dated this 4th day of May, 2023



Carla D. Card-Stubbs, J