IN THE SUPREME COURT
TURKS AND CAICOS ISLANDS

CL 57/18

Between

EVANGELISTA MESA

PLAINTIFF/CLAIMANT

And

LEONTE MARTINEZ VEGA

STANLEY HAROLD WILLIAMS

DEFENDANTS

CL25/20

LEONTE MARTINEZ VEGA

PLAINTIFF/CLAIMANT

And

STANLEY HAROLD WILLIAMS

(DBA LLT VIP TRANSPORT)

DEFENDANT

Joinder-Disjoinder-Consolidation-Deconsolidation-Variation of order

Cases

Pfizer Corp v Intercontinental Pharmaceuticals Ltd [1963]

Payne v British Time Recorder Co Ltd & Curtis Ltd ([1921] 2 KB at p 16)

Healey v. A. Waddington & Sons (a firm), and National Coal Board [1954] 1 WLR 688

Ellis v Kerr [1910] 1 Ch. 529 at 537"

Mullins v. Hownell. [1879 m. 27.] (1879) 11 Ch.d. 763

Lewis and Another v Daily Telegraph Ltd and Another (No 2) [1964] 1 All ER 705

Prestney v Colchester Corpn ((1883) 24 Ch D

Ainsworth v. Wilding. [1890 a. 1085.] [1896] 1 Ch. 673

JUDGMENT

Before: Registrar Narendra J Lalbeharry

Appearances: Ms. Chloe McMillan for the Plaintiff in CL57/18
Ms. Murray Snider for the 1st Defendant CL 57/18
Clayton Greene for the 2nd Defendant and Defendant in both CL 57/18 and CL 25/20
Hon. Alvin Garland for the Plaintiff in CL 25/20

Hearing Date: Tuesday 12th March 2024

Venue: Parties appeared virtually

Delivered: Monday 25th March 2024

Background

1. On the 4th of March 2017 a road traffic accident occurred resulting in two (2) civil actions being filed in the Supreme Court. The Writ and Statement of Claim in CL 57/18 was filed on 31st May 2018 by Evangelista Mesa as plaintiff naming Leonte Martinez Vega and Heritage Insurance Company (Caribbean) Ltd as defendants. An amended Writ and Statement of Claim was filed on 1st July 2019 substituting Heritage Insurance to the 2nd Defendant Stanley Harold Williams.

2. On the 5th of February 2020 the 1st Defendant in CL 57/18 Leonte Martinez Vega by Writ and Statement of Claim brought proceedings against the Defendant Stanley Harold Williams (the 2nd Defendant in CL 57/18) under action number CL 25/20 claiming personal injuries and damages. On the 13th of March 2020 the Defendant in CL 25/20 Stanley Harold Williams filed a Defence and Counterclaim.

3. In an uncontested application and by agreement of the parties in CL 57/18 and 25/20 the court on 23rd June 2021 ordered that the matters "*be heard at the same time*" because the same question of law or fact arises in both actions.

4. On the 21st of June 2022 the Plaintiff in CL 57/18 filed a summons to strike out the 2nd Defendants Defence in CL 57/18 for non-compliance with an Order dated 16th March 2022. Hylton J after hearing the application to strike out, struck out the 2nd Defendant's Defence and judgment on liability was entered against the 2nd Defendant in CL 57/18 with damages to be assessed. On the 17th of October 2022 the 2nd Defendant filed an application to set aside the default judgment which was granted by Gruchot J. on the 24th of January 2023.

5. On the 16th of March 2022 Simons J. issued directions in CL 57/18 and at paragraph 6 of said Order, ordered that *"the trial in this matter be heard at the same time"* as Action 25/20 pursuant to Order 4 Rule 9 (1) (a) of the Rules. The trial bundle in 57/18 was filed on the 31st of May 2022.

6. CL 57/18 is now ready for trial, CL 25/20 is not. On perusal of the case file in CL 25/20 no summons for directions was filed in the matter and therefore no directions were given.

The Application

7. Before this Court is the application of the Plaintiff in CL 57/18 for separate trials pursuant to Order 15 Rule 5 of the Civil Rules of the Supreme Court of the Turks and Caicos Islands supported by an affidavit of the Plaintiff.

8. The Plaintiff states in evidence that on the 16th day of March Learned Justice Simons KC at paragraph 6 of his Order directed that *"the trial of this action is to be heard at the same time as Action CL 25/20 pursuant to Order 4 Rule 9(1) (1) of the Rules*". The Plaintiff continued, that several attempts were made through various correspondence to contact the Plaintiff's Attorney in CL 25/20 in order to have him file a Summons for Directions so that his action could also proceed at the same pace as 57/18, to no avail.

9. The Plaintiff states that for this reason she is seeking that the Court severs and disjoin Action 57/18 and Action 25/20 given the significant delay on the part of the Plaintiff and Defendant in complying with directions in CL 25/20.

10. In response Counsel for the 1st Defendant in CL 57/28 Leonte Martinez Vega submitted that the Plaintiff's application may not be correct as the matters were not joined, but ordered to be heard together and therefore the order of the court should be varied.

11. The issues which arise for determination are accordingly: 1) Whether these matters were consolidated? 2)Can these matters be disjoined and 3) Can the order directing that both matters be heard at the same time be varied?

Whether these matters where consolidated?

12. Civil Rules 2000 Order 4 Rule 9 provides that where it appears to the Court:
    a. That some common question of law or fact arises in both or all of them or
    b. That the rights to relief claimed therein are in respect of or arise out of the same transaction or series of transactions, or
    c. That for some other reason it is desirable to make an Order under this paragraph

the court may order those causes or matters to be consolidated on such terms as it thinks just or may order them to be tried at the same time or one immediately after another or may order any of them to be stayed until after the determination of any other of them. **[Emphasis Mine]**

13. In my view on a literal interpretation of Order 4 Rule 9 a differentiation clearly exists between *"consolidation"* and *"trying both matters at the same time".* The terms *"consolidation"* and *"tried at the same time"* have different meanings. Further, the disjunctive *"or"* is used in Order 4 Rule 9. In *Pfizer Corp v Intercontinental Pharmaceuticals Ltd [1963]* Lloyd-Jacob J. highlighted the breath of the court's powers under RSC Ord.4 rule 9. He indicated that the powers of the court under this rule can be exercised as ordering separate trials, confining the action to some causes of action, ordering the plaintiff or plaintiffs to elect which cause of action shall proceed, preventing a defendant from being embarrassed or the court can under O. 4 r. 9 order two or more actions to be consolidated or tried at the same time or one immediately after another.

14. *"Consolidation"* seeks to physically bring the matters together as one, with one set of pleadings and usually one set of Attorneys. Whereas "*tried at the same time"* means that the matters will be heard together with the Judge hearing the matter, having control over how the matters progresses at trial. Usually such matters all have separate pleadings and attorneys.

15. The main purpose of consolidation is to save costs and time and would not usually be ordered unless there is *"some common question of law or fact bearing sufficient importance to render it desirable that the whole matter should be disposed of at the same time*". In *Payne v British Time Recorder Co Ltd & Curtis Ltd* ([1921] 2 KB at p 16). Scrutton LJ said:

> *"where there are common questions of law or fact involved in different causes of actions you should include all parties in one action, subject to the discretion of the court, if such inclusion is embarrassing, to strike out one or more of the parties. It is impossible to lay down any rule as to how the discretion of the court ought to be exercised. Broadly speaking, where claims by or against different parties involve or may involve a common question of law or fact, bearing sufficient importance in*

proportion to the rest of the action to render it desirable that the whole of the matters should be disposed of at the same time, the court will allow the joinder of plaintiffs or defendants, subject to its discretion as to how the action should be tried."

16. In *Healey v. A. Waddington & Sons (a firm), and National Coal Board [1954] 1 WLR 688* it was stated that the effect of an order for consolidation of actions, is that all actions would be tried as one action, with one set of pleadings and particulars, one setting down for trial and one solicitor in charge.

17. The Plaintiff relies on Order 15 Rule 5 in support of the application, however this is flawed. Ord. 15 operates in circumstances to join parties to causes of action. In joining causes of action, a Plaintiff may join in one action, several causes of action against the same defendant. In the present case this did not occur, instead separate actions were brought by two different Plaintiffs against the same Defendant.

Can these matters be disjoined?

18. In the present case, both actions result from a single accident. The Plaintiff in CL 57/18 Evangelista Mesa was a passenger in the vehicle driven by the 1st Defendant Leonte Martinez Vega when it got into accident with the 2nd Defendant's vehicle driven by Stanley Harold Williams. She therefore sued both drivers. The Plaintiff in CL 25/20 Leonte Martinez Vega being the driver of the car in which Evangelista Mesa was a passenger, sued Stanley Harold Williams. Mr. Vega is therefore, one of the defendants in CL 57/18 and is also the Plaintiff in CL 25/20. The White Book Note 15/1/13 states that *"the same person cannot be both a Plaintiff and defendant in the same action see Ellis v Kerr [1910] 1 Ch. 529 at 537"*. Therefore, in the present case there could not have been a joinder of both actions.

19. Applications pursuant to O.15 r.5 apply in circumstances to exercise supervisory control over the joinder of causes of action and to disjoin or order separate trials in cases where the joinder would embarrass or delay the trial or is otherwise inconvenient. An application under this rule is only made to disjoin or order separate trials which were previously joined.

20. I am fortified in my view that there was no joinder or consolidation by the terms of the order of Simon J. In the present case both matters were ordered to *"be heard at the same time".* In my view, the current actions were not joined or consolidated and therefore cannot be disjoined, separated or deconsolidated.

Can the order directing that both matters be heard at the same time be varied?

21. In view of my finding that these matters were not consolidated and that the application pursuant to Order 15 is improper I do not need to address the issue of deconsolidation pursuant to Order 15 or otherwise. However, I consider what the Plaintiff is seeking is a variation of Simon J's order that the matters be *"heard at the same time",* and will address whether this is possible.

22. The order of Simons J was an interlocutory order. In *Mullins v. Hownell. [1879 m. 27.] (1879) 11 Ch.d. 763* Jessel M.R stated *"The Court has jurisdiction to discharge an order made on an interlocutory application by consent when it is proved to have been made under a mistake".* There is no consent and no evidence that Simon J's order was made by mistake.

23. Further there has been no appeal from the order of Simons J. In *Lewis and Another v Daily Telegraph Ltd and Another (No 2) [1964] 1 All ER 705* F. In September, 1963, an order was made for consolidation of the two consolidated actions into one. On appeal by Mr. Lewis, sought deconsolidation so that he and the plaintiff company should cease to be co-plaintiffs. master Jacob rejected Mr. Lewis's application for deconsolidation. Mr. Lewis appealed to the judge in chambers against the master's refusal, Roskill J. dismissed the appeals, Mr. Lewis then appealed to the Court of Appeal.

24. Pearson LJ referred to the decision of Roskill J that there is an inherent power in the court to vary any order of an interlocutory nature. Reference was made to the Annual Practice, 1964 which states in the notes to RSC, Ord 20, r 11 ***"Interlocutory orders stand in the same position as final orders, and cannot be altered save by means of an appeal … save in certain cases expressly provided for … But it appears that although the substance of the order cannot be changed, the method of giving effect to it may be." [Emphasis Mine]***

25. Reference was made to *Prestney v Colchester Corpn ((1883) 24 Ch D* at p 384 This was a case in which an order had been made for production of documents for inspection in the office of solicitors in London. It afterwards appeared more convenient and preferable that the production of the documents should be made in Colchester, and an order to that effect was made, varying the previous order. Cotton LJ, said ((1883),):

> *"Now I think that probably the order was wrong in form.* ***There was no power in him to hear by way of appeal an order which had been made by his predecessor, nor even by himself, after the lapse of time which had occurred****; and the proper form of order, I think, would have been this, that notwithstanding the directions contained in the previous order the defendant should produce the documents which by that order they were directed to produce in London at Colchester at the place named. The order being in that form I have no doubt that Pearson, J (as he then was), had full jurisdiction and power to make such an order because the former order did not decide anything as of right between the parties, but merely directed how the documents which are mentioned in the affidavit should be produced; …" [Emphasis Mine]*

26. Pearson LJ in applying this principle to Mr. Lewis stated:

> ***I would say that the consolidation orders properly made in May, 1959, cannot now be appealed from, and cannot be set aside or cancelled. They are, however, orders having a continuing operation, being worked out or working themselves out as the action proceeds, and if some new situation has arisen in which convenience or justice requires some modification or adaptation of the original order to fit the new situation, the appropriate powers conferred by the Rules of the Supreme Court can be used for that purpose****.*
> ***[Emphasis Mine]***

27. He continued by reference to Order 15 r 5 and 18 and Ord 4 r 10 and stated ***"that any order that might be convenient and desirable could be made in this case. It may be misleading to call any such order a "deconsolidation order", because I do not think that there would be really deconsolidation. However, I must use the phrase in the present case, as the application was in terms for a "deconsolidation order" [Emphasis Mine]***

28. He went on further to consider the issue of having a consolidated action with separate representation. The Lord Justice stated that in cases involving a jury trial it would be extremely inconvenient and awkward to have separate representation in such a matter, though it is not impossible for such situations to exist. The appeals were dismissed and the consolidation remained.

29. What can be seen from *Lewis,* though in that case the application failed, the Court has the power "*if some new situation has arisen in which convenience or justice requires some modification or adaptation of the original order to fit the new situation, the appropriate powers conferred by the Rules of the Supreme Court can be used for that purpose*". However, I do believe that such modification or adaptation can only be done in line with the decision in *Prestney* and qualification in *Lewis* supra i.e any modification or variation can only be made to the manner in which the order is to take effect not the actual order. Therefore, in the current case any variation as to separating the trials conflicts and seeks to change the substance of the Order of Simons J.

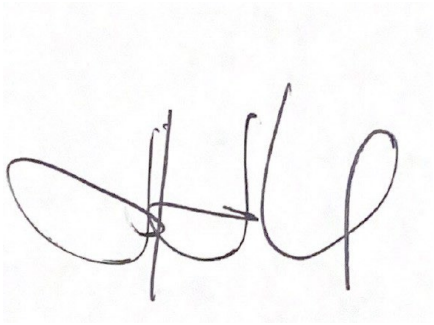
30. In *Ainsworth v. Wilding. [1890 a. 1085.] [1896] 1 Ch. 673* Romer J. in a Motion to discharge a judgment given at trial stated The Court has no jurisdiction, after the judgment at the trial has been passed and entered, to rehear the case. That is clear. Formerly the Court of Chancery had power to rehear cases which had been tried before it even after the decree had been entered; but that is not so since thhe Judicature Acts. So far as I am aware, the only cases in which the Court can interfere after the passing and entering of the judgment are these: (1.) Where there has been an accidental slip in the judgment as drawn up - in which case the Court has power to rectify it under Order XXVIII., r. 11; (2.) when the Court itself finds that the judgment as drawn up does not correctly state what the Court actually decided and intended"

31. In all these circumstances, the Plaintiff's application is improper. The proper application should have been an application for further directions, supported by evidence as to how the order of Simons J should be modified or varied in view of the alleged conduct of the Plaintiff's Attorney in CL 25/20 while still giving effect to the original Order.

Disposition

32. The application filed by the Plaintiff is dismissed. However pursuant to the powers of the inherent jurisdiction of the Supreme Court, a directions hearing will be listed in CL 25/20 to determine the readiness of the parties and make the necessary orders for progression of the matter.

33. Although the Plaintiff's application was unsuccessful, I believe it was necessary in the circumstances to highlight the readiness of the parties in CL57/18 and the conduct of the Plaintiff's Attorney in CL 25/20. No affidavit was filed by any of the parties in response. Mr. Snider for the 1st Defendant in CL 57/18 made brief oral submissions. Mr. Greene made no submissions at all and Attorney for the Plaintiff Mr. Garland did not appear for this hearing. In the circumstances I order costs to be cost in the cause.



Narendra Lalbeharry

Registrar

Supreme Court Turks and Caicos Islands