Chambers
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IN THE GRAND COURT OF THE CAYMAN ISLANDS

HOLDEN AT GEORGE TOWN, GRAND CAYMAN

CAUSE NO. 116/94

BETWEEN:	SILAS BODDEN	PLAINTIFF
AND:	WINDJAMMER ENTERPRISES LTD.	1ST DEFENDANT
	TOMMY LYNCH	2ND DEFENDANT

Mr. S. Roy for the plaintiff
Mr. G. Giglioli for the defendants

BEFORE HARRE CJ.

RULING

I am satisfied that the period of limitation applicable to this whole matter is that which arises under S. 13 of the Limitation law 1991 - that is to say 3 years.

A writ and statement of claim were filed on 11th April 1994 well within the limitation period. On 12th August 1994 a summons to strike out the statement of claim was filed on the ground, inter alia, that it disclosed no reasonable cause of action. Clearly it did not. It was a bad pleading effort. The summons was adjourned to a date to be fixed on 22nd August 1994. I am told that this was to enable the plaintiff to amend his pleading.

Now, over a year after that, and after the limitation period has expired, his attorney, having served the requisite notice of intention to proceed, comes for leave to do that. He has not served the second defendant. There would have to be an adjournment for that to be done before I could give leave to amend.

This is a first amendment. It could, I think, have been made without leave. But there is an obvious issue, and I think that the plaintiff was sensible in applying for leave, which can be done at any stage of the proceedings rather than facing an application for disallowance of an amendment made without leave under GCR O, 20 r 4.

So I treat this as an application under O. 20 r 5. Clearly paragraph (5) of that rule reflects Section 41 (5) (a) of the Limitation Law.

S. 39 of that law provides a discretion for the court to exclude the limitation provision of S. 13. But there is no sufficient evidence before me which inclines me towards exercising that, and indeed no evidence at all about many of the circumstances which I am under a duty to take into account in acting under the section. So I am left with the Rules of Court, and in particular Order 20 rule 5 (5). The relevant wording of that paragraph is not identical with the wording of section 41 (5) (a) of the Law, which is this -

> "a new cause of action, if the new cause of action arises out of the same facts or substantially the same facts as are already in issue on any claim previously made in the original action."

It is not open to me to put a wider interpretation on the wording of the rule. It could not have been intended that I should.

There are no facts already in issue because nothing was pleaded in the original statement of claim upon which issue could have been joined. So O. 20 r 5 (5) cannot help the plaintiff.

If the statement of claim had been struck out in August 1994 the plaintiff would have had ample time to file a new action before the expiry of the limitation period. I surmise that he would have had short shrift from the court if he had failed to do so and sought now to invoke S. 39. He was, instead, given time to get his house in order by amending his pleading. That should not put him in a better position.

For these reasons leave to amend the statement of claim is refused. In that circumstance, the failure to serve the second defendant is academic, as there is no possible prejudice to him.

4th September 1995

G.E. Harre

Chief Justice