

1994 8.

IN CHAMBERS

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN
CAUSE NO. C 116 OF 1994

BETWEEN:
AND:

SILAS BODDEN
WINDJAMMER ENTERPRISES
AND TOMMY LYNCH

PLAINTIFF
DEFENDANT

For the plaintiff: Mr. Steven Roy
For the defendant: Mr. George Giglioli

CHIEF JUSTICE'S NOTES

MR. ROY:

I ask for leave to appeal against your order.

Chief Justice gave written ruling.

I would hope to present an argument based on the fact that Statement of Claim before it was amended did on face of it disclose the nature of the dispute and although it was not in proper terms was clear that the plaintiff suffered an accident at work he was claiming damages from them.

Halsbury "The function of pleadings".

And see Order 20 Note at 020 r 1.

Note to 020 r 5/8/6

Tildesly v. Harper

Would argue that these principles it is possible to allow the amendment.

020 r 5. Notes.

Having regard to these principles and bearing in mind there is right to amend once without leave anyway will argue appeal.

MR. GIGLIOLI: It seems plaintiff is attempting to reargue the earlier application.

There is no evidence before the court. It was that absence of evidence which was fatal to his earlier application.

Discretion is given to the court if one attempts to amend after expiry of limitation period.

It is also fatal to this application. Application must show an arguable case for leave.

Universal Surety Co. Ltd.

Submit there is no evidence before us today that there is an arguable case for leave. The short issue is that there was that same lack of evidence on which friend's application in September foundered.

It is clear from the Limitation Law and Order 20 that there must be evidence to allow discretion to be exercised after Limitation period in order to apply the statutory powers and needs evidence.

I take issue with friend about s/c in its original form. Submit the cause of action can't be taken from the statement of claim.

At best one can infer from paragraph 4 that there was some form of contractual entitlement if Bodden had been injured as a result of his employment.

Paragraph 4 includes a contracted entitlement.

Paragraph 5 contains the allegation regarding the injury. Also it is that the plaintiff working and using a shovel and handle stuck him in the groin.

No evidence either defendant responsible.

Could be his lack of attention.

Clause 7.

No where are words "negligence" or "breach of statutory duty."

Could only be a contracted right was looking into.

That we applied to strike out. It was stood over to allow amendment.

Submit no cause of action appears in pleading.

As for absence of a defence, the S/C was too imprecise to formulate defence.

So submit application should be refused. No hope of success.

MR. ROY:

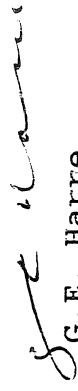
We say it has been established:

1. Employment.
2. He suffered an accident.
3. He is seeking compensation.

COURT:

I will grant leave to appeal in this case. Mr. Roy has advanced points of argument which in my view are capable of leading to a reversal of my decision. And any bias should be in his favour, as indicated by Lord Donaldson in the Iran Naburat in the passages in his judgement quoted in Universal Surety Co. Moreover, the issue is one of importance on which argument before and the decision of the Court of Appeal will be to public advantage.

Leave to appeal granted. Costs in favour of applicant for leave.


G.E. Harre

Chief Justice