

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN
IN CHAMBERS, BEFORE THE HON. MR. JUSTICE HULL
CAUSE NO: 164/85

BETWEEN: WINDJAMMER ENTERPRISES LTD. PLAINTIFF
[Trading as Shop for Pappagallo]

AND: BILLIE GIBSON DEFENDANT

Mr. Giglioli for the plaintiff.

Mr. Rodger for the defendant.

DECISION

It has always been evident that the business known as Shop for Pappagallo is that in respect of which a claim is being made against the defendant.

I accept Mr. Giglioli's explanation that through inadvertence on his part, the business was originally pleaded as being carried on by Windjammer Enterprises Ltd. which correctly it should have been pleaded as having been carried on by Totsville Ltd., both companies having the same beneficial owner, and that the proper plaintiff is therefore Totsville Ltd. An affidavit should however have been filed in support of the present application to verify this for the record.

I do not consider that in rule 26 of the Grand Court Civil Procedure Rules "add" is limited to mean to add as a further plaintiff. Order 15/6 of the White Book enables the court to add a party there. It refers to "substituting" a party, but in my view it does so incidentally, in rule 6(5), rather than in the empowering sub-rules 2 (b) and I do not think it is a term of art. It is clear that in England one plaintiff has been substituted for another, where an error has been made in pleading. (See Hughes v. The Pump House Hotel Co. Ltd. [1902] 2 K.B. 485)

I consider that the same approach can and should be adopted in interpreting Rule 26. I can order the name of the plaintiff to be struck out and, simultaneously, that Totsville Limited be added to the proceedings as

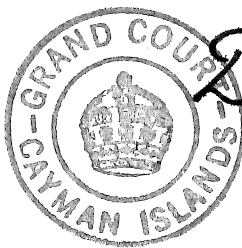
plaintiff. I have no doubt that it is just, for the real questions in issue, to make such an order.

Accordingly I order that on Mr. Giglioli's filing within 7 days -

- (a) an affidavit by him verifying the mistake; and
- (b) an undertaking by or on behalf of Totsville Limited that it will abide by the orders of this Court as to the costs of this action (including all costs prior to its being added as plaintiff) and as to damages in the form contained in the interim injunction (including all damages incurred prior to its being so added) -

Windjammer Enterprises Limited shall be struck out as plaintiff and Totsville Limited shall be added as plaintiff and further that the interim injunction shall continue in favour of Totsville Limited, and that the statement of claim shall be amended as prayed.

The costs of this application will in any event be the defendant's costs.



D. Hull
David Hull
Puisne Judge

9th September, 1985.