

**IN THE SUPREME COURT OF BELIZE, A.D. 2009**

**CLAIM NO. 372 OF 2009**

**BETWEEN**

**SHAWN SPARKS, Personal Representative  
for the ESTATE OF TERRY M. SPARKS**

**Claimant**

**AND**

**MELISSA JUDE LUCA**

**Defendant**

In Chambers.

**BEFORE: CHIEF JUSTICE KENNETH BENJAMIN**

**January 31 and June 1, 2012.**

**Appearances:** Ms. Magali Marin-Young for the Claimant/Applicant.  
Mr. Leo Bradley for the Defendant/Respondent.

**JUDGMENT**

[1] The Claimant filed a Notice of Application on November 14, 2011, seeking permission to amend the Claim Form and the Statement of Claim. Having indicated the refusal of the application, the written reasons are now recorded in this ruling.

**BACKGROUND**

[2] Terry M. Sparks died in the United States of America on January 25, 2009. The Claimant is the son of the deceased and the personal representative of his estate. On April 27, 2009, the Claimant instituted a Claim against the Defendant seeking orders in respect of certain property situate in Cayo District in Belize (“the

property) and registered in the names of the deceased and the Defendant. The Claim seeks a declaration that the property is being held by Defendant in trust for the estate of Terry M. Sparks and an order that the Defendant be removed as trustee and the property conveyed into the Claimant's name as trustee for his father's estate.

[3] The Defendant has filed an amended Defence and a Reply has been filed by the Claimant. The Defendant pleaded that the Claim ought to be denied on the basis that the property was held jointly with the Defendant with a right of survivorship and on the alternative ground of estoppel.

[4] The first and only case management conference was held on February 24, 2010 before Justice Hafiz-Bertram and orders were made in preparation for trial. On the same date, the Claimant was further ordered to provide security for the costs of the Defendant. Both sides have made disclosure and have filed and exchanged witness statements.

[5] On April 28, 2009, Justice Muria granted an injunction restraining the Defendant from dealing with the property in issue upon an application made without notice to the Defendant by the Claimant. In a ruling made on June 15, 2009, it was ordered that the said injunction continue until trial.

[6] The present application for leave to amend the Claim Form and Statement of Claim subsequent to the first case management conference was made on the ground that there has been a change in circumstances in the form of new evidence emanating from the witness statement of the Defendant and the witness statement of Roberta Henley, the Defendant's mother, as well as from documents disclosed by the Defendant.

[7] The stated grounds for the application are as follows:

- "1. There has been a change of circumstances in that new evidence was put before the Court by the Defendant in her witness statement dated 26<sup>th</sup> May, 2010 and the witness statement of

Roberta Henley filed 12<sup>th</sup> May, 2011 after case management on the 24<sup>th</sup> February, 2010.

2. That after case management when the Defendant filed its list of disclosure and after copies of the document so filed were provided to his attorney-at-law Magali Marin Young on the 20<sup>th</sup> May, 2010, the Claimant for the first time saw documents that the late Terry M. Sparks purportedly signed, namely “Joint Property Agreement dated 5<sup>th</sup> November, 2008” between Melissa Jude Luca and Terry Sparks, “Operating Agreement of The Vision Exchange LLC and Share Certificates and Share Register.”
3. For the first time, the Claimant found a note by the late Terry M. Sparks after case management which is undated but signed by him which is annexed to the Claimant’s affidavit which further supports his claim in restitution.
4. For the first time after case management the Claimant found additional wire transcripts by the late Terry M. Sparks that relate to his Belize investment, which came about after speaking to witnesses whose existence he was unaware of at the time of case management, and who were able to explain the purpose for the wires to Belize.
5. The proposed amendments to the Statement of Claim involve the same parties to the Claim and relate to substantially the same facts as the claim or are closely connected therewith and the Claimant has been advised that he has a good cause of action against the Defendant in restitution as per the draft amended Statement of Claim.
6. That in the circumstances there has been a change in circumstances in that new evidence has surfaced which the

Claimant did not have in his possession and new evidence could not have been ascertained given the demise of the late Terry M. Sparks.

7. That the cause of action in restitution is not time barred by the Limitation Act.”

The Claimant’s Application was supported by an affidavit in which he stated that he had no detailed knowledge of the relationship between his father and the Defendant until he read the witness statements of the Defendant and Roberta Henley. He swore that he then learnt that the Defendant was not only a friend of his late father but that he went to her for yoga lessons and to seek spiritual guidance from her and that he was her “client”.

[8] The Claimant also deposed that he has never visited Belize and subsequent to the case management conference his Attorney-at-Law was contacted by one Conrado Felipe Assales and he received e-mail messages in relation to construction works done on the property and purportedly paid for by the deceased. He asserted that it was only after speaking to Assales and one Blayne Wendland, both residents of Cayo District in Belize, that he was able to understand the purpose of certain wire transfers of which he was aware from the bank statements of the deceased

[9] The Claimant deposed that after again going through his late father’s personal effects, he found a handwritten note which he believes can assist in explaining the deceased’s state of mind and his relationship with the Defendant. The position of the Claimant was summed up in the following way in paragraph 18 of his affidavit:

- “18. Given the demise of Terry M. Sparks, it has been difficult putting the pieces of the puzzle, so to speak, of his investments in Belize and his relationship with Melissa Jude Luca as I had never discussed his relationship with Melissa Jude Luca in very great detail and I was only left to ascertain them through enquiries made of third persons and through some of his documents, bank statements and personal effects.”

In essence, the Claimant seeks to amend the Statement of Claim to plead undue influence and seek orders for restitution by virtue of the property being held on a resulting trust by the Defendant for the benefit of the estate of the deceased absolutely.

[10] It is to be noted that in the penultimate paragraph of his affidavit the Claimant stated that he had learnt recently that the Defendant had sold a satellite that had been on the property and which had been paid for by the deceased. He also said that he was told that several items had been sold from the property. No indication was given as to the source of the information. To this end, the Claimant sought to include a claim for an order for an account of all fixtures sold and for any rents and for mesne profits as well as damages for conversion.

[11] Further, upon a perusal of the draft Amended Statement of Claim, it was observed that the Claimant had averred that the property was purchased as a joint investment to establish a spiritual retreat and upon the demise of Terry M. Sparks, the said purpose came to an end and therefore the property was being held in trust for his estate. The draft pleading goes on to seek a declaration that the deceased was induced to enter into the contracts and to execute the Joint Property Agreement, the Purchase and Sale Agreement and the Deed of Conveyance.

[12] The Defendant opposed the application. She swore to an affidavit in which she urged the Court to rule that no new evidence is before the Court and that the Court ought not to allow the Claimant to amend the Statement of Claim more than two years after the filing of the Claim Form. The affidavit detailed the relationship between the deceased and the Defendant. It was stated that the deceased first engaged the Defendant for yoga and massage. Thereafter, a friendship developed and subsequently they became business partners. The business relationship was chronicled in the affidavit.

[13] The Defendant made reference to litigation commenced in Arizona in the United States of America by the Claimant in April 2009. She contended that the matters prayed for in the Amended Statement of Claim were substantially sought in those proceedings which were resisted by a Motion to dismiss. The Defendant's

assertion was that having regard to the contents of the said Motion, there are no new circumstances.

[14] As additional support in opposition to the application, affidavits were sworn to and filed by Marisol Sanchez, a former employee of the deceased and the defendant, and by Katherine Devine from whom the property was purchased. These affidavits purported to attest to the independence of mind of the deceased in his interaction with the defendant and the absence of undue influence in the transaction to convey the property.

[15] The Defendant filed a second affidavit exhibiting the original Complaint filed on April 17, 2009 in the Arizona proceedings. It was therein stated that the Complaint had been dismissed as evidenced by the exhibited Order dated December 27, 2011. It is of significance to this case that in the said Complaint reference was made to the following documents: The Agreement for Purchase and Sale (of the property); activity details of the deceased's bank accounts; the Operating Agreement of Vision Exchange, LLC; the Joint Property Agreement; and the undated signed handwritten note of Terry M. Sparks.

[16] The Claimant responded by way of a second affidavit in reply to the affidavits of the Defendant. So far as relevant to the Application, the Claimant professed lack of personal knowledge that the deceased was undergoing any kind of spiritual therapy. He admitted that copies of the documents (save for the Operating Agreement) were in the possession of his lawyers and tendered an apology for having forgotten that this was the case. It was also admitted that the Complaint referred to Defendant as being his late father's "spiritual advisor" and held a position of confidence over him, had befriended him at a time of grief, depression and vulnerability and had therefore exercised undue influence over him. It is timely to here pause to point out that these were the same averments that were sought to be the subject of the amendment sought on the basis of new circumstances arising after the first case management conference. By way of explanation, the Claimant asserted that these matters were denied by the Defendant in her answer and he did not pursue the claim as he had "very little evidence."

## THE LAW

[17] The basis upon which changes can be made to statements of case is provided for in Part 20 of the Supreme Court (Civil Procedure) Rules 2005. Fundamentally, a party is permitted by Rule 20.1(1) to make changes to a statement of case at any time before the case management conference. Such changes do not require the Court's permission unless a change of statement of case or change of parties is being sought after the relevant limitation period has expired. By Rule 20.1(2), a change to a statement of case may be made at the case management conference.

[18] The application in these proceedings was made after the first case management conference and it was therefore stated to be made pursuant to Rule 20.1(3) which provides:

“(3) The Court may not give permission to change a statement of case after the first case management conference unless the party wishing to make the change can satisfy the court that the change is necessary because of some change in the circumstances which became known after the date of that case management conference.”

The Claimant was therefore tasked with satisfying the court that the change sought is on account of “some change in the circumstances” and that such change only came to his knowledge after the date of the case management conference. This regime has been described as a severe restriction on the ability to amend a statement of case (see: *The Caribbean Civil Court Practice*, First Edition 2008, Note 19.6).

[19] In the case of **Ormiston Ken Boyea and Hudson Williams v Caribbean Flour Mills Ltd**, **Civil Appeal No. 3 of 2004** (St. Vincent and the Grenadines), the Defendant sought amendments to the Defence and Counterclaim after the date set for the filing and exchange of witness statements but before pre-trial review had come on. Indeed, the first case management conference had been held some three

years before the application to change the statement of case was made. On appeal, d'Anvergnés, JA opined:

“30. The discretion of the court to permit changes to statement of case had to be considered with reference to CPR 20.1(3), changes to be made after the first case management conference. It is my view that the overriding objective cannot be used to widen or enlarge what the specific section forbids.”

Her Ladyship went on to state that the power to permit amendment is constrained by the court being satisfied as to certain conditions, in that there must be “some change in circumstances which became known after the date of case management conference.”

[20] The restrictiveness of the Rule is similarly reinforced by the judgment of Alleyne, JA in **Gordon Lester Braithwaite et al v Anthony Potter et al – Civil Appeal No. 18 of 2002** (Grenada). In that case, the defendants sought to amend the Defence to raise the new defence of estoppel by acquiescence or in the alternative a plea of limitation after the case management conference. His Lordship stated that Rule 20.1(3) prescribed a precondition for the exercise by the Court of the discretion to allow an amendment after the first case management conference.

[21] It is significant that the identical rule pertains in Trinidad and Tobago and up to recently applied in the Eastern Caribbean. In the Trinidad and Tobago case of **Winston Padmore v James Morgan CV No. 277 of 2006**, Madam Justice Dean-Anmorer put the matter in this way:

“The conjoint effect of my finding and Part 20.1(3) is that the Court is enjoined from granting leave to amend unless there has been a change in circumstances. In so far as it has been accepted on all sides that there has been no change of circumstances, I must consider whether I hold an inherent discretion to depart from the provisions of Part 20.1(3). Alternatively, I must consider whether I am required by the overriding objective to bend the rule and grant leave to amend. The



overriding objective does not come to the rescue of the Defendant. According to d'Awergne, JA, the overriding objective does not in or of itself empower the Court to do anything or grant to it any discretion residual or otherwise ...

When considering an application for leave to amend a Statement of Case, the Court must exercise its discretion in accordance with Part 20.1.”

As narrow and confining as Rule 20.1(3) may be, a party wishing to invoke it to amend a statement of case after the first case management conference must satisfy the court that, the necessity for the change arose, when it became known to the party seeking the change, that there was some change in the circumstances. The parties to this application were ad idem that this represents the procedural law.

## ARGUMENTS

[22] The Claimant contended that a party is required to sign a Statement of Truth. It was said that since the Defendant had denied Count One of the Complaint in the Arizona proceedings he was left without proof to support the assertion that the Defendant was the Deceased's spiritual advisor. Learned Counsel stated that without proof and in the face of a denial, the Claimant was constrained from including a Claim for restitution on the ground of undue influence by the Defendant over the Deceased. She explained that because of “a change of story” by the Defendant and her mother in their witness statements, the Claimant was thereby unable to prove the existence of undue influence. This was presented to the Court as ‘a change of circumstances’ thus satisfying the pre-condition of Rule 20.1(3).

[23] Learned Counsel for the Defendant submitted that the Claimant had failed to act ‘forthwith’ as required by Rule 20.1(4), having waited for in excess of one year to seek the amendment. This argument can be shortly disposed of as not being germane. Rule 20.1(4) is predicated upon the amended statement of case being filed before the first case management conference or with the permission of the Court given at or after the case management conference.

[24] Predictably, the Defendant primarily asserted that the Claimant was fully aware of the circumstances as to undue influence in 2009 at the time of commencement of suit in Arizona. The signed complaint of the Claimant was offered as proof of this state of affairs. The Court was invited to dismiss the application.

## CONCLUSION

[25] The Court's task is to exercise its discretion within the strict limits of Rule 20.1(3). Not only must the Claimant satisfactorily establish that there has been a change of circumstances necessitating the amendment being sought, but such change of circumstances must be shown to have arisen after the first case management conference. Taking the Claimant's position at face value, such change of circumstances arose when the witness statements of Melissa Jude Luca and Roberta Henley were served presumably around the recorded dates of May 12 and 26, 2010 respectively. A period of some eighteen months prior to the application being filed.

[26] Curiously, it is the Defendant who revealed the Complaint in the Arizona proceedings to the Court. The very first Count (Count one) alleges undue influence. Indeed, in paragraph 5 of the Factual Background of the Complaint it is stated as follows: "On information and belief, Ms. Luca was Mr. Sparks' spiritual advisor." It is true that the Answer denies this allegation, but this ought to merely operate as a matter of evidence to contradict what the Claimant had been informed of and believed. Presumably, he was possessed of evidence on which his information was based. That he did have evidence, however thin, is supported by paragraph 12 of his second affidavit in which he states that he had "very little evidence" to prove that the Defendant was the deceased's spiritual advisor and had exercised undue influence over him.

[27] In my view, it matters not that the Defendant in her Answer denied the assertion that she was a spiritual advisor to the deceased. The state of the Claimant's knowledge as early as April 17, 2009 was to that effect. Indeed when the Claim Form and Statement of Claim were filed on April 24, 2009, the Answer (which was submitted on October 23, 2009) had not been filed. Accordingly, it does lie in

the mouth of the Claimant to say that there has been a change of circumstances subsequent to the first case management conference on February 24, 2009.

[28] When confronted with the Complaint, which was turned up by the Defendant, the Claimant was forced to resile from his initial position that the documents referred to in paragraph 15 of this ruling were not made available until disclosure. It passes strange that the Claimant asserted that the documents were obtained from the Defendant's lawyers. It seems to me that the Defendant would not have engaged lawyers to represent her in Arizona until after the Complaint had been filed and served on her.

[29] For the reasons rendered, the application to amend the Claim Form and Statement of Claim to plead restitution on the basis of undue influence or any other cause of action shall stand dismissed.

[30] The Claimant has stated that a satellite that formed part of the property as well as other items have been sold by the Defendant. He also provided evidence of the Defendant offering the cabanas on the property for rental. In the premises, in the absence of any response from the Defendant, permission is granted to the Claimant to file an amended Claim Form and Statement of Claim to plead such matters and to seek orders for accounts to be rendered by the Defendant and damages of conversion.

[31] It is ordered as follows:

(a) The Notice of Application stands dismissed.

(b) The Claimant is granted permission to file an amended Claim Form and amended Statement of Claim to include prayers for orders for accounts as to the property to be rendered by the Defendant and damages for conversion within 21 days.

(c) The Defendant is granted leave to file a re-Amended Defence within 14 days thereafter.

(d) Costs shall be in the cause.

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KENNETH A BENJAMIN  
Chief Justice