

**BARBADOS**

**IN THE SUPREME COURT OF JUDICATURE**

**HIGH COURT**

**CIVIL DIVISION**

CV No. 0544 of 2016

**BETWEEN:**

**KINSALE HOLDINGS LTD.**

**CLAIMANT**

**AND**

**HARMONY GENERAL INSURANCE CO. LTD.**

**DEFENDANT**

*Before Master Deborah Holder, BSS, Master of the High Court*

**2017: July 27**

**Appearances:**

**Mr. Bryan Weekes, attorney-at-law for the Claimant**

**Ms. Nicole Roachford, attorney-at-law for the Defendant**

**Introduction**

- [1] On 29<sup>th</sup> June 2017 the Claimant filed an Application with Supporting Affidavit pursuant to **Parts 19.3** and **20** of the Supreme Court (Civil Procedure) Rules 2008, to substitute Larry Warren Ltd. as the Claimant in place of Kinsale Holdings Ltd. and to file an Amended Claim form and Statement of Claim.
- [2] The Affidavit of Larry Warren, a director of both companies explained the error that resulted in Kinsale Holdings Ltd. being made the Claimant

instead of Larry Warren Ltd. and at paragraph 12 he stated that Larry Warren Ltd. was the correct Claimant.

[3] Ms. Roachford objected to the application.

(Arguments were presented by way of written submissions.)

### **Defendant's Arguments**

[4] She argued that (1) The application was not made by the proposed Claimant but by the existing Claimant, thus the Supporting Affidavit was filed on behalf of the Claimant and not the proposed Claimant. (2) The existing Claimant and the proposed Claimant were separate and distinct persons in the eyes of the law and that each company was able to sue and be sued in its own name. (3) The proposed Claimant must give his consent in writing and that consent must be filed in the Registry.

[5] Ms. Roachford contended that (4) The rule did not provide for an exception nor could it be inferred. Further, that though the format of the consent was not provided in the Rules, **Part 19.3 (3)** referred to a separate notice and affidavit and **19.3 (4)** referred to a consent to be filed. She felt that three distinct documents were contemplated and that **Rule 19 (4)** prohibited a court from making the order sought unless consent in writing was filed in the Registry.

### **Claimant's Arguments**

[6] Mr. Weekes made the following submission:

“...C.P.R. **Part 19.3 (4)** is relevant to applications where the party to be substituted is either a natural person or a corporate entity which is not connected or affiliated in any way to the existing Claimant. This is because the Court would have to be satisfied that a party being introduced into High Court litigation as a Claimant knows and consents to being so substituted or added. This is in accordance with logic.

It is the Applicant’s position that C.P.R. **Part 19.3(4)** has been satisfied in the circumstances of the case by the filing of the affidavit of Mr. Larry Warren as he deposes that he is a principal and Director of both companies and so the consent of Larry Warren Ltd. has been signalled and confirmed to the court”.

[7] He also submitted that in the context of this case, to require a consent to be filed in addition to the affidavit of Mr. Warren would be to ask the Claimant to expend costs unnecessarily.

### **The Law**

[8] **The Supreme Court (Civil Procedure) Rules 2008**

**Part 19.3 (1)** The court may add, substitute or remove a party on or without an application.

- (2) An application for permission to add, substitute or remove a party may be made by
  - (a) an existing party; or
  - (b) a person who wishes to become a party.

- (3) An application for an order under rule **19.2 (5)** must be made with notice and must be supported by evidence on affidavit.
- (4) No party may be added or substituted as a claimant unless
  - (a) the party has given his consent in writing;  
and
  - (b) that consent has been filed in the Registry.

### **Discussion**

- [9] The resolution of this matter lies in the interpretation of **Part 19 (3)** of the C.P.R. The wording is clear and unambiguous and there is no need to employ any elaborate rules of interpretation.
- [10] An existing party or a person who wishes to become a party may apply for permission to substitute a party. And, no party may be substituted as Claimant unless the party has given his consent in writing and the consent filed in the Registry.
- [11] Has the Claimant met the requirements of this part and therefore entitled to the order which it seeks? Ms. Roachford suggests that three distinct documents are required to complete this process whereas Mr. Weekes is of the view that **19.3 (4)** is not relevant in the present circumstances.
- [12] The court accepts that:

- (1) The Claimant and proposed Claimant are separate and distinct persons in the eyes of the law.
- (2) Mr. Larry Warren is the Director of the Claimant and also Director of Larry Warren Ltd. and as such he can speak for both companies.
- (3) The existing Claimant can properly file the Application and Supporting Affidavit.

[13] The court is of the view that there are no exceptions to the requirements set out in **Part 19.3 (4)** and there is no basis of twisting what is clearly stated. There is no doubt that **Part 19.3 (4)** must be complied with. The proposed Claimant's consent has to be given and filed in the Registry.

[14] The question still to be considered is whether three distinct documents are needed or whether the Affidavit of Larry Warren, filed in the Registry on 29<sup>th</sup> June 2016 will suffice since he can speak on behalf of the Claimant and the proposed Claimant. Ms. Roachford admits that the rules do not provide a format for the consent.

[15] In this regard, the content of the said Affidavit becomes relevant. Apart from paragraphs one, two and three where Mr. Warren states that he is a Director of the Claimant and Larry Warren Ltd. and that these are two of the companies which he owns, the remaining paragraphs four to eleven are devoted to an explanation of the error that resulted in the incorrect Claimant being named.

[16] Paragraph 12 is as follows:

“The correct Claimant is Larry Warren Ltd. and I swear this Affidavit in Support of an application for an order substituting Larry Warren Ltd. as Claimant for Kinsale Holding Ltd. Limited....”

[17] It is clear from the above that Mr. Warren supports the application.

However there is nothing in this Affidavit to show that Mr. Warren ever spoke as Director of the proposed company and consented on its behalf.

[18] Though it may be somewhat “untidy” for Mr. Warren to speak on behalf of both companies in the same Affidavit, if this was clearly done then the Claimant could find room to argue that there was compliance with **19.3 (4)**, there being no format for the consent.

[19] In answering the question posed above, the court is of the view that three documents are ideal but in an appropriate situation two documents will suffice. For example, where the proposed Claimant includes his consent in the Supporting Affidavit which is filed in the Registry a third document will not be necessary.

[20] Mr. Weekes rightly said that the court would have to be satisfied that a party who was being introduced into litigation knew and consented to being substituted or added. However, there is nothing in the Affidavit of Mr. Larry Warren that can be construed as consent by the proposed Claimant.

[21] The Claimant has not satisfied the requirements and is not entitled to side step the clear provisions of **Part 19.3 (4)** on the ground that it would be made to incur costs unnecessarily.

**Conclusion**

[22] As a result of the foregoing, the application is dismissed.

**Ms. Deborah Holder, BSS  
Master of the High Court**