[2025] JMCA Civ 38

JAMAICA

IN THE COURT OF APPEAL

BEFORE: THE HON MISS JUSTICE EDWARDS JA
THE HON MISS JUSTICE SIMMONS JA
THE HON MRS JUSTICE DUNBAR GREEN JA

SUPREME COURT CIVIL APPEAL NO COA2023CV00105

BETWEEN	**BAYVIEW ECO RESORT & SPA**	**APPELLANT**
AND	**TAJHIEVE WEST**	**RESPONDENT**

Written submissions filed by Temple Law for the appellant

Written submissions filed by Samuels Samuels for the respondent

21 July and 19 December 2025

Civil Procedure – Application to amend claim form – Party misnamed in claim form – Party wrongly described by trading name instead of company name – Whether misnaming of party a result of genuine mistake as to name or identity of party – Whether reasonable doubt as to the identity of party – Effect of expiry of limitation period – Whether claim is a nullity – Whether judge erred in granting amendment of the claim form – Civil Procedure Rules, 2002, Rules 19.4 and 20.6

Civil Procedure – Application to strike out or enter summary judgment – Whether striking out or summary judgment applicable where application to amend name of party granted and claim is not a nullity

Civil Procedure – Costs – Multiple applications – Principles to be considered – Whether judge exercised discretion properly – Civil Procedure Rules, 2002, Rule 65.8

PROCEDURAL APPEAL

(Considered on paper pursuant to rule 2.4 of the Court of Appeal Rules 2002)

EDWARDS JA

[1] This is an appeal challenging the decision of Jarrett J ('the learned judge') made in the Supreme Court on 1 December 2023, granting Tajhieve West's ('the respondent') application to correct the name used to refer to the appellant (the 1st defendant in the court below) in the respondent's statement of case, and refusing the appellant's application to strike out the claim against it on the basis that the name used to refer to it is not a legal entity capable of being sued. I have read in draft the judgment of Dunbar Green JA in this matter, and I agree with her reasoning and conclusion. The facts of this case are contained in the judgment of Dunbar Green JA.

[2] I agree with Dunbar Green JA that the learned judge was correct to find that this case involved a misnomer rather than a misidentification, and that the applicable rule, in such a case, is rule 20.6 of the Civil Procedure Rules ('ÇPR'), and not rule 19.4. Under rule 20.6, the court may permit an amendment to correct a mistake as to the name of a party, after the limitation period has passed, only if the mistake was genuine and it would not cause reasonable doubt as to the identity of the party in question. The test, in my view, is whether the claimant intended to sue that corporate entity, and whether that entity knew, or ought to have known, that the claim was intended for it, despite the mistake in the name. The learned judge would have had to examine what was the degree of association between the trading name and corporate name, as well as whether the mistake was genuine. In this case, the appellant indicated from as early as 19 July 2018, in its acknowledgment of service, that the name in the claim form and particulars of claim was incorrect. The appellant again addressed the error in its defence filed 3 October 2018 and served on 4 October 2018, indicating its proper legal name. Yet counsel for the respondent did nothing to make the change.

[3] This failure by the respondent and her counsel, in my view, would cause an enquiry as to whether the mistake was indeed genuine. Even though the learned judge did not consider this omission in the face of the clear indication by the appellant of its correct name, she did find for other reasons that the mistake was genuine. I agree that despite

the dilatory conduct of the respondent's counsel in not amending the name at the earliest opportunity, there was sufficient material on which the learned judge could have found that the intention was always to sue the entity responsible for the operation of the business at which the respondent was injured. The mistake was in not recording the formal corporate name rather than just the trading name.

[4] Rule 20.6 also requires that an amendment of this nature must only be granted where the circumstances are such that reasonable doubt would not be cast on the identity of the party in question. In the circumstances of this case, no reasonable doubt could be cast on the identity of the alleged tortfeasor. The claim provided sufficient information so that the correct defendant would have been able to know that it was the one being sued, despite the incorrect name. That corporate entity acknowledged service of the claim and filed a defence. This, in my view, would satisfy the test for permitting an amendment, and I agree that there is no basis to find the learned judge was wrong to do so.

[5] I also agree, for the reasons given by Dunbar Green JA, that the claim is not a nullity.

[6] On the issue of costs, I entirely agree with the conclusion of Dunbar Green JA. Furthermore, the respondent is not only guilty of delay in making the application for amendment of the name of the appellant but acted with wilful blindness in ignoring the appellant's early indications that the name on the claim was incorrect. This is a relevant consideration in determining the issue of costs and in my view the respondent is not entitled to any costs for the application for amendment of name.

SIMMONS JA

[7] I, too, have read the judgment of Dunbar Green JA and agree with her reasoning and conclusion.

DUNBAR GREEN JA

Introduction

[8] On 1 December 2023, the learned judge delivered a written decision in which she granted the respondent's application to correct the designation of the appellant to Island Eco Resort and Spa Limited trading as Bayview Eco Resort and Spa. In the same decision, the learned judge refused the appellant's application to strike out the claim or grant summary judgment (the grounds of appeal have erroneously stated that these reliefs were sought conjunctively) in its favour. The learned judge also ordered "costs in the claim", among other orders.

[9] It is from that decision that the present appeal arises.

The factual background

[10] The chronology of events, as set out in the appellant's written submissions and unchallenged before this court (the statements of case not having been placed before this court), reveals that the proceedings were commenced in the Supreme Court on 2 May 2018. At that time, the respondent (the claimant below), then a minor, was represented by his mother and next friend, Sarnia Barry. The claim was brought for damages in negligence against the appellant together with the Seventh Day Adventist Churches of the W I Union Conference (the 2nd defendant) and the Portland Primary & High School (the 3rd defendant). Neither the 2nd nor the 3rd defendant is a party to this appeal.

[11] The claim arose from an incident alleged to have occurred on or about 29 June 2015, during which the respondent sustained injuries while visiting Bayview Eco Resort and Spa, purportedly while under the care and supervision of the 3rd defendant.

[12] By way of an acknowledgment of service, filed and served on 19 July 2018, the appellant drew attention to an error in the designation of its name in the claim form and particulars of claim. It asserted that its correct name was Island Coach Limited trading as Bayview Eco Resort and Spa.

[13] In its defence, filed on 3 October 2018 and served on 4 October 2018, the appellant reiterated that its proper legal name was Island Coach Limited, a registered company trading as Bayview Eco Resort and Spa.

[14] On 21 July 2022, the respondent, having attained the age of majority, filed a notice of cessation of the appointment of next friend. Mediation efforts thereafter proved unsuccessful, and the matter proceeded to a case management conference on 24 October 2022.

[15] On 19 April 2023, the appellant filed a notice of application for court orders, supported by an affidavit of urgency and an affidavit sworn by Gordon Townsend. The application sought, *inter alia*:

> (i) a declaration that the appellant was not a legal entity and was incapable of being sued;
>
> (ii) a declaration that the proceedings against the appellant were a nullity;
>
> (iii) an order striking out the claim; and
>
> (iv) alternative to (iii), summary judgment in favour of the appellant.

The basis of the application was that the respondent had instituted proceedings against an entity lacking legal personality. The appellant contended that legal personality properly resided in Island Eco Resort and Spa Limited, formerly known as Island Coach Limited. It was, therefore, submitted that the appellant was not a proper party to the proceedings, rendering the claim a nullity and an abuse of the process of the court.

[16] On 17 July 2023, the respondent filed an application pursuant to rules 19.4 and 20.6 of the CPR, seeking leave to amend his statement of case. The proposed amendment sought to substitute the name Bayview Eco Resort & Spa with Island Coach Limited and/or Island Eco Resort and Spa Limited trading as Bayview Eco Resort and Spa. This

application was supported by an affidavit sworn by attorney-at-law, Raymond Samuels. In support, the respondent relied on the acknowledgment of service and the affidavit filed on behalf of the appellant. The former identified the appellant as Island Coach Limited trading as Bayview Eco Resort and Spa, and the latter as Island Eco Resort and Spa Limited trading as Bayview Eco Resort and Spa. The respondent contended that the original designation was a misnomer, and that the proposed amendment was necessary to properly identify the intended 1st defendant, thereby enabling the court to adjudicate the matter on its merits.

[17] Mr Samuels, on behalf of the respondent, further averred that the appellant had actively participated in the proceedings, was fully apprised of the incident giving rise to the claim and had filed a substantive defence. It was, therefore, submitted that no prejudice would result from the proposed amendment.

[18] The appellant's application to strike out or enter summary judgment in its favour and the respondent's application to amend were heard together by the learned judge, who ultimately ruled in favour of the respondent.

Summary of the learned judge's reasons for granting the amendment

[19] The learned judge determined that the case concerned a misnaming under rule 20.6 of the CPR rather than a misidentification under rule 19.4. It was observed that an application pursuant to rule 20.6 requires consideration of the intention underlying the naming error.

[20] Three principal findings were made in support of that conclusion. First, the pleadings and evidence clearly established that the respondent intended to sue the operator of the hospitality facility located in Anchovy, Portland, where his graduation event was held on 29 June 2015. Second, the appellant had filed a full defence addressing the prior contractual arrangements between the parties, thereby demonstrating awareness of and involvement in the subject matter of the claim. Third, the misnaming

of the appellant as the party to be sued was regarded as a reasonable mistake, and it was equally reasonable to infer that the correct legal entity was aware of the proceedings.

[21] On those bases, the learned judge held that the mistake, being genuine, permitted an amendment to the respondent's pleadings to reflect the proper legal entity. It was further held that such an amendment would not result in prejudice to the appellant, notwithstanding the expiration of the limitation period. In support of this conclusion, reliance was placed on **International Bulk Shipping and Services Ltd v Minerals and Metal Trading Corp of India** [1996] 1 ALL ER 1017, which affirmed the principle that the expiration of the limitation period does not preclude the court from granting relief under Rules of the Supreme Court ('RSC') Order 20 r5 (UK), a rule similar to rule 20.6 of the CPR.

The notice and grounds of appeal

[22] The notice and grounds of appeal were filed on 15 December 2023. The appellant has advanced the following grounds:

> "a. the learned judge erred in holding that the naming of the [appellant] as a party to the proceedings was not a case of misidentification but, instead, a case of misnaming.
>
> b. the learned judge erred in holding that the mistake in naming the [appellant] as the party to be sued was a genuine one.
>
> c. the learned judge erred in holding that the principles enunciated in a plethora of authorities including, for example, **Wilfred Emanuel Forbes and Another v Miller's Liquor Store (DIST) Limited** [2012] JMCA App 13 and **The Junior Doctors Association and Another v The Attorney General for Jamaica** (unreported, Motion No 21/2000, Suit No E127/2000, delivered 12 July 2000) were unhelpful, and, therefore, inapplicable to the case at bar.
>
> d. the learned judge erred when she failed to follow and apply correctly the ratio of the decision of the Court of Appeal in **Grace Turner v The University of Technology** [2014] JMCA Civ 24, as well as the decisions of the Supreme Court in

Gregory Grizzle v RUI Jamaicotel Limited and Another [2020] JMSC Civ 105 and **Caribbean Development Consultants v Lloyd Gibson** Suit No CL 323 of 1996, unreported Supreme Court decision delivered on May 25, 2004.

e. the learned judge erred when she exercised her discretion under CPR 20.6 in granting the [respondent's] application for substitution of a party.

f. the learned judge erred when she granted the application under CPR 20.6 in circumstances where the claim as filed against the [appellant] was an incurable nullity.

g. the learned judge misdirected herself as to the application of CPR 20.6, in circumstances where this was a clear case of misidentification and, as such, no amendment could be made to substitute another party.

h. the learned judge erred when she granted the application under CPR 20.6, though there had been undue delay on the part of the [respondent], in excess of five (5) years.

i. the learned judge erred when she granted the application under CPR 20.6 in circumstances where to do so deprived the substituted [appellant] [sic] a good defence under the limitation statute.

j. the learned judge erred when she dismissed the [appellant's] application for summary judgment and/or strike out [sic], given that the claim as filed against the [appellant] was a mistake as to identification.

k. the learned judge erred when she dismissed the [appellant's] application for summary judgment and/or strike out [sic], given that the claim as filed against the [appellant] was an incurable nullity.

l. the learned judge erred when she made an order that costs be costs in the claim, in circumstances where the [respondent's] application under CPR 20.6 was filed in excess of five (5) years late and the [appellant] had waived its right to claim costs were it to be successful on its application for summary judgment or strike out."

The issues for determination

[23] From these grounds of appeal, the following issues arise for determination:

> 1. Whether the learned judge erred in granting the respondent's application to correct the name of the appellant under rule 20.6 of the CPR (grounds a–i);
>
> 2. Whether the learned judge erred in refusing the appellant's application to strike out the claim or to enter summary judgment in its favour (grounds j–k); and
>
> 3. Whether the learned judge erred in directing that costs be costs in the claim (ground l).

Issue 1: whether the learned judge erred in granting the respondent's application to correct the name of the appellant under rule 20.6 of the Civil Procedure Rules, 2002 (grounds a–i)

[24] This issue forms the central question in the appeal. The parties' submissions on it are summarised as follows.

Submissions for the appellant

[25] Mr Eccleston, appearing for the appellant, submitted that under rules 19.4, 20.1 and 20.6 of the CPR a party may amend its statement of case with or without the court's permission, or substitute parties or amend its statement of case at the end of the limitation period. He, however, relied on **Gregory Grizzle v RUI Jamaicotel Ltd and Another** [2020] JMSC Civ 105 to underscore the principle that amendments outside the limitation period are impermissible where they would deprive a defendant of the right to rely on a limitation defence.

[26] Counsel acknowledged that the learned judge had jurisdiction to permit amendments but emphasised that such discretion is constrained by the conditions set out

in rule 19.4, which govern the addition or substitution of parties, and rule 20.6, which addresses amendments to statements of case, including corrections to parties' names.

[27] He submitted that, in applying rule 20.6, the court must ensure that no injustice is caused to the opposing party and must adhere to the overriding objective, particularly the imperative to deal with cases justly. Counsel distinguished between amendments correcting a mere misnomer, where a claim is brought against an existing legal entity that is misnamed, and those seeking to substitute a non-existent or non-legal entity, which the courts have consistently refused. In support, he cited **Auburn Court Limited v Jamaica Citizens Bank Limited** (1990) 27 JLR 573 ('**Auburn Court Limited**') and argued that no amendment should be allowed where it effectively introduces a new party and thereby deprives the opposing party of a valid limitation defence.

[28] Counsel further contended that the courts have consistently held that proceedings commenced in the name of or against a non-existent legal person are a nullity and cannot be cured by subsequent amendment. Therefore, in determining whether to permit the respondent's amendment under rules 19.4 and 20.6, outside the limitation period, the central issue was whether the original claim was brought against a party with legal capacity. He argued that this required the learned judge to distinguish between a mistake as to identity and a mere misnomer and emphasised that the present case concerns the former.

[29] In reliance on **Grace Turner v University of Technology** [2014] JMCA Civ 24, counsel submitted that amendments under rule 20.6 of the CPR are permissible only where: (i) the mistake in the party's name was genuine; and (ii) the error does not cause reasonable doubt as to the identity of the party. He noted that this test was previously applied under the old rules in **Auburn Court Limited**. Counsel further pointed to **Sardinia Sulcis v Al Tawwab** [1991] 1 Lloyd's Rep 201, where the court held that a *bona fide* error in the name of a party may be corrected if the party can be clearly identified by reference to a specific description in the case.

[30] Counsel explained that in **Grace Turner v University of Technology**, the omission of the word "Jamaica" from the respondent's name was deemed an innocent clerical error. The court, he argued, found that the respondent was a legal entity established by statute and capable of suing in its corporate name. Counsel highlighted that the appellant in that case, being an employee of the respondent, would have been fully aware of its identity; the amendment did not alter the party's identity but merely corrected a misdescription; and no prejudice was caused. Accordingly, he observed, the amendment was allowable under rule 20.6 of the CPR.

[31] With respect to the instant case, counsel submitted that the claim, as originally filed against Bayview Eco Resort and Spa rather than Island Coach Limited, was not a mere misnomer but a fundamental error as to identity. The named party lacked legal personality and was incapable of being sued, he argued. Accordingly, the proceedings were a nullity from inception and could not be cured by amendment under rule 20.6 of the CPR, especially outside the limitation period.

[32] He argued further that the learned judge erred in granting the respondent's application for amendment as the correction sought was not a simple misdescription but an impermissible substitution of a non-existent party with a legal entity. In support of this position, counsel relied on several authorities, including **Wilfred Emanuel Forbes v Miller's Liquor Store (Dist) Limited**; **Lazard Brothers and Company v Midland Bank Limited** [1933] AC 289; **Russell Holdings Limited v L & W Enterprises Inc and Another** [2016] JMCA Civ 39; **Caribbean Development Consultants v Lloyd Gibson** (unreported), Supreme Court of Jamaica, Suit No CL 323/1996, judgment delivered 25 May 2004; **The Junior Doctors Association and Another v The Attorney General for Jamaica** (unreported), Court of Appeal, Jamaica, Motion No 21/2000, judgment delivered 12 July 2000; **International Bulk Shipping and Services Ltd v Minerals and Metals Trading Corp of India** [1996] 1 All ER 1017; and **Davies v Elsby Brothers Ltd** [1961] 1 WLR 170.

[33] Counsel further submitted that the learned judge erred in relying on **Caribbean Pirates Theme Park Limited v Irish Rover Limited** [2015] JMSC Civ 158, which was inconsistent with the Court of Appeal's binding decision in **Grace Turner v University of Technology**. He argued that the learned judge ought instead to have followed **Juici Beef Limited (Trading as Juici Patties) v Yenneke Kidd** [2021] JMCA Civ 29 and **National Recovery Limited v Attorney General for Jamaica** [2020] JMSC Civ 125, where legal capacity in the former and prejudice in the latter were central to the refusal of amendments.

[34] In light of these authorities, counsel submitted that a claim instituted against a party lacking legal capacity to sue or be sued is a nullity and cannot be salvaged by way of amendment. Accordingly, the instant claim, having been commenced against the appellant, was incurable. It was argued, therefore, that the learned judge erred in granting the respondent's application for amendment, which ought properly to have been refused.

Submissions for the respondent

[35] Counsel for the respondent, Mr Samuels, submitted that there is no proper basis for this court to interfere with the learned judge's exercise of discretion. He cited **Hadmor Productions Ltd v Hamilton** [1983] 1 AC 191 and **Attorney General v John McKay** [2021] JMCA App 1, as authority for the principle that an appellate court should be slow to disturb a discretionary ruling unless it is shown to be plainly wrong.

[36] Counsel argued that guidance may be found in pre and post CPR authorities of this court, which establish that amendments may be permitted even where the claim is statute - barred, provided the amendment does not introduce a new or distinct cause of action. He submitted that where a genuine mistake exists, but the identity of the party is clear, the court will permit an amendment. In support of this proposition, reliance was placed on **Sardinia Sulcis v Al Tawwab**; **Gregory v Channel Four Television Corp** [2000] EWCA Civ 214; **Elita Flickenger (Widow of the deceased Robert Flickenger) v David Preble (T/ AS XTABI RESORT CLUB & COTTAGES) and**

another (unreported), Supreme Court, Jamaica, Suit No CL 1997/F-013, judgment delivered 29 April 2009 and **Grace Turner v University of Technology**.

[37] Relying on **National Recovery Ltd v The Attorney General of Jamaica**, counsel contended that amendments are also permissible where necessary to resolve the real issues, where no prejudice would result, and where it would be fair to do so in all the circumstances. He also placed reliance on **Juici Beef Ltd (Trading as Juici Patties) v Yenneke Kidd**, on the basis that an amendment may be granted even if made after the limitation period.

[38] Mr Samuels submitted that the learned judge correctly applied the relevant provisions of the CPR, particularly rule 20.6, which permits amendments to statements of case up to the case management conference and thereafter with the court's permission. He emphasised that rule 20.6 expressly allows for amendments after the expiry of the limitation period to correct a genuine mistake in the name of a party, provided the identity of the party is not in doubt. He argued that the learned judge properly exercised her discretion under rule 20.6 and that the authorities cited by the appellant were inapplicable, as the claim was not a nullity.

[39] Counsel further submitted that the appellant was aware at all material times that it traded as Bayview Eco Resort and Spa, although its registered name was Island Coach Ltd. He pointed to the appellant's own pleadings and participation in mediation proceedings as evidence that it knew who the respondent intended to sue.

[40] Counsel contended that the appellant suffered no prejudice from the amendment, even if it was deprived of a limitation defence. In support, he cited **Mitchell v Harris Engineering Co Ltd** [1967] 2 QB 703 and **Ramon Barton and Another v John McAdam and Others** (unreported), Supreme Court of Jamaica, Claim No CL 1996 B 110, judgment delivered 24 May 2005. He also relied on **Caribbean Pirates Theme Park Limited v Irish Rover Limited** [2015] JMSC Civ 158, where the court considered the overriding objective despite arguments that the claim was a nullity.

[41] Counsel further submitted that instead of disputing the court's jurisdiction under rule 9.5, the appellant took procedural steps that affirmed the court's jurisdiction, including filing a full defence, and, therefore, could not now seek to invalidate the claim.

[42] In conclusion, Mr Samuels submitted that the mistake in this case was genuine and could not have misled the appellant. The particulars of claim clearly identified the resort owner, and Island Coach Ltd had no subsidiaries. He argued that a refusal to permit the amendment would severely prejudice the respondent, and that the overriding objective of the CPR supports granting the amendment to ensure fairness and resolution of the real issues in dispute.

Discussion and disposal of issue 1 (grounds a – i)

[43] The starting point is rule 20.6 of the CPR, which governs amendments to a statement of case after the expiration of the relevant limitation period. The rule distinguishes between misnaming and misidentification of a party to the litigation and requires the court to consider the intention underlying the naming error. Rule 20.6(2) provides:

> "The court may allow an amendment to correct a mistake as to the name of a party but only where the mistake was –
> (a) genuine; and
> (b) not one which would in all the circumstances cause reasonable doubt as to the identity of the party in question."

[44] The provision permits correction of a misnomer only where the error was a bona fide mistake and did not create reasonable doubt as to the identity of the intended party. In **Grace Turner v University of Technology,** at paras. 25 and 27, Harris JA explained that the mistake in naming must be genuine, and the amendment sought must not be misleading or such as to obscure the identity of the party. That analysis underscores that the identity must remain sufficiently ascertainable notwithstanding the misdescription. If the intended plaintiff or defendant can be identified by reference to a description specific to the case, then the amendment may properly be allowed (see **Sardinia Sulcis v Al Tawwab**). The critical inquiry is, therefore, whether the error obscured the party's

identity or whether, despite the misdescription, the intended defendant remained clearly identifiable.

[45] In the instant matter, the affidavit of Mr Raymond Samuels explained how the error in naming the appellant occurred. The claim was initiated based on the information available to the respondent at the time, and the correct legal name of the appellant was subsequently brought to his attention. The name used was the trading name by which the appellant operated and was commonly displayed in the ordinary course of business. While best practice requires counsel to conduct a name search at the Companies Office of Jamaica to confirm the legal identity of a party, prior to filing proceedings, the evidence supports a conclusion that the error was a genuine mistake.

[46] The learned judge found that the trading name was widely recognised by patrons and the public, leaving no real doubt as to the identity of the intended defendant. Although the claim was filed under the trading name rather than the registered corporate name, it was evident that the appellant was the entity the respondent intended to sue. She pointed to paras. 2, 7 and 9 of the particulars of claim, in support. Lloyd LJ's observation in **Sardinia Sulcis v Al Tawwab**, at page 207, supports the learned judge's view that "…if, in the case of an intended defendant, the plaintiff gets the right description but the wrong name, there is unlikely to be any doubt as to the identity of the person intended to be sued".

[47] In **Sardinia Sulcis v Al Tawwab**, the defendant's vessel collided with that of the plaintiff, resulting in arbitral proceedings in which damages were awarded against the defendant. Following the plaintiff's merger with another company, the defendant sought an order to strike out or dismiss the action on the ground that the proceedings had been initiated in the name of an incorrect party, or alternatively, that the named party had ceased to exist. The defendant further applied for a declaration that the arbitral award was null and void.

[48] The Queen's Bench Division (Admiralty Court) rejected the application. It held that, in a merger effected by incorporation, the original entity continues to exist in law and retains its capacity to sue. The misnaming of the plaintiff was found to be a genuine error, devoid of fraud, misrepresentation, or improper motive. Pursuant to rule 5, para. 2 of Order 20 of the RSC, the court was empowered to permit an amendment to correct the name of a party. Accordingly, the application to declare the award null and void was dismissed as lacking merit. The identity of the plaintiff remained clear and unaffected by the misnomer.

[49] The relevant principle was articulated by Evans LJ in **International Bulk Shipping and Services Ltd v Minerals and Metals Trading Corp of India; International Bulk Shipping and Services Ltd v President of India; Himoff Maritime Enterprises Ltd v President of India** [1996] 1 All ER 1017, at 1025 b-d, where he explained that the rule (similar to rule 20.6 of the CPR) envisages that a writ is issued with the intention that a specific person should be the plaintiff. If, having made that choice, the wrong name is used, the mistake can be corrected, provided it does not cause reasonable doubt as to identity. The learned judge adopted the dictum of Evans LJ at para. [21] of her written decision.

[50] In that case, the plaintiff companies had been dissolved prior to the commencement of proceedings, and the court held that substitution could not cure the defect because the identity of the party intending to sue had changed. By contrast, in the instant case, the respondent clearly intended to sue the appellant, and the misdescription involved its trading name rather than its corporate name. The identity of the appellant was never in doubt.

[51] Although the error, in the instant case, did not involve the omission of just a word, as in **Grace Turne**r **v The University of Technology**, reliance on the trading name rather than the registered corporate name engages the same principles. Having engaged those principles, the learned judge correctly found that the trading name did not obscure the appellant's identity; rather, it facilitated its clear identification. Also, the description

was sufficiently specific to the appellant's business operations and did not give rise to any reasonable doubt as to the identity of the intended defendant. The misdescription was nonetheless a genuine mistake, and the appellant's identity remained apparent throughout.

[52] The learned judge found that the appellant readily recognised itself as the intended defendant, understood the nature of the claim, filed a substantive defence (she pointed to paras. 2, 6 and 7 of the defence) and actively participated in the proceedings. She concluded from the evidence, in support of the appellant's application, "that the legal personality of the operator of the facility in question [was] not Bayview Echo Resort and Spa, but island Eco Resort and Spa Limited (formerly Island Coach Ltd). These factors, to my mind, would support her conclusion that "this is not a case of misidentification but is one of misnaming" (see para. [16] of her written decision) and the misnomer caused no prejudice and did not create uncertainty as to the identity of the party intended to be sued.

[53] In those circumstances, the learned judge was entitled to find that the amendment fell within the provisions of rule 20.6 and not rule 19.4. Whereas the former applies to an amendment in a statement of case, after the end of the limitation period, to correct a genuine mistake in the name of a party where there is no reasonable doubt as to the identity of the party ("mistakes involving misnaming"), the latter applies to a change of parties after the end of the relevant limitation period ("mistakes involving misidentification"). The learned judge made the point (correctly so), at para. [18] of her written decision, that a distinction must be made, in accordance with the wording of rules 19 and 20 of the CPR, between the identity of the person intended to be sued (a mistake which cannot be corrected) and the name of that party (a mistake that can be corrected).

[54] Turning next to the question of nullity, this issue must be considered in the light of the appellant's legal status at all material times. The proceedings were initiated in the appellant's trading name rather than its registered corporate name, but the evidence establishes that the appellant was always a duly incorporated company and, therefore,

possessed legal personality. Although its corporate name changed during the proceedings, there is no evidence that it ever ceased to exist as a company.

[55] The instant case is, therefore, distinguishable from **Lazard Brothers and Company v Midland Bank Limited**, where the judgment debtor, a Russian bank, had ceased to exist following nationalisation decrees issued between 1917 and 1921. The House of Lords held that proceedings against a non-existent entity were a nullity and must be set aside. Similarly, in **Wilfred Emanuel Forbes v Miller's Liquor Store (Dist) Limited**, the notice of appeal was declared a nullity because it was filed on behalf of a deceased person without lawful authority or proper representation. Rule 20.6 was not the applicable rule.

[56] The appellant's reliance on **The Junior Doctors Association and Another v The Attorney General for Jamaica** is also misplaced. In that case, the applicants were unincorporated bodies lacking legal personality and were not properly sued in a representative capacity. The proceedings were, therefore, declared a nullity. Again, the applicable rule was not rule 20.6. In contrast, in the instant case, the appellant was at all material times a legal entity. Although the proceedings were commenced using its trading name, the entity remained the same. As the learned judge found, there was no confusion or ambiguity regarding its identity, and it possessed legal personality throughout.

[57] In **Russell Holdings Limited v L&W Enterprises Inc and Another**, the court reaffirmed that proceedings commenced against a non-juristic entity are a nullity and cannot be remedied by amendment. Legal capacity must exist at the time of filing. This was the position in the instant case. That case, therefore, does not help the appellant. Neither does **Davies v Elsby Brothers Ltd**.

[58] In **Davies v Elsby Brothers Ltd**, the plaintiff was employed by a firm. The firm's business was taken over by a company which continued the plaintiff's employment. The plaintiff was injured in an accident which he alleged was due to the negligence of the firm. His solicitors issued a writ against the firm, claiming 'damages for injuries and loss

sustained by plaintiff while an employee of the defendants by the negligence of defendants and/or their servants. After the limitation period expired, the plaintiff's solicitors applied for and were granted leave to amend the writ by changing the name of the defendants from the firm to the company. The Court of Appeal, allowing the defendant's appeal, held that the amendment involved the addition of a new defendant and was not merely the correction of a misnomer. Thus, it should not be granted, since, analogously to the position where leave to add a plaintiff was sought, leave to add a defendant should not be granted after the expiry of the period of limitation.

[59] In **Caribbean Development Consultants v Lloyd Gibson** (unreported), Supreme Court, Jamaica, Suit No CL 323 of 1996, judgment delivered 25 May 2004, the defendant raised a preliminary objection that the claimant, Caribbean Development Consultants ('CDC'), was not a legal entity and therefore lacked the capacity to sue. The court upheld this objection. It was held that this was not a case of misdescription. The claimant named in the writ was precisely the entity intended to be named; it was not a case of an error in description, as the claimant was accurately described. This was not a situation where entity "A" was mistakenly referred to as "B". Rather, it was found that "A", CDC, did not exist as a legal person at the time the writ was filed and issued. That decision was based on rule 19.4 and not rule 20.6.

[60] The appellant placed heavy reliance on **John Adewale Haastrup v Gloria Ngozi Okorie and Others** [2016] EWHC 12 (Ch), contending that the claim here was similarly incurable. That submission cannot be accepted. **John Adewale Haastrup** concerned proceedings brought by a claimant who lacked standing to sue on behalf of an estate, a jurisdictional defect incapable of cure. By contrast, the instant case involved a misdescription of a corporate party, not a lack of standing.

[61] The other authorities cited in support of the appellant's contention that the claim was a nullity, including **Cedric Lanyon Harper v Davis Lee** and **Veronica Flemmings v Everaldo Cargill** [2017] JMCC Comm 06, are likewise distinguishable. In those cases,

the claimants lacked locus standi ab initio. Here, the respondent had standing, and the appellant was a legal entity at all material times.

[62] Accordingly, there seemed to have been no basis upon which the claim could have been considered a nullity. The learned judge was, therefore, entitled to permit the amendment to reflect the appellant's proper corporate name. As previously outlined, rule 20.6 of the CPR permits an amendment to correct the name of a party, after the expiration of the limitation period, provided that the misnaming was a genuine mistake and the identity of the party is not in doubt. Although the limitation period had expired by the time the application to amend was filed, on 17 July 2023, the court having found that the error was a genuine mistake and that there was no doubt regarding the identity of the intended 1st defendant (the appellant), the limitation defence was not triggered. The right party was sued, but under a misdescription.

[63] Having considered the principles articulated in **Hadmor Productions Ltd v Hamilton**, which were affirmed by this court in **Attorney General v MacKay** and in several other decisions of this court, there is no basis upon which to interfere with the learned judge's exercise of discretion to grant the amendment correcting the name of the appellant. I am satisfied that the learned judge correctly applied the relevant legal principles, to the facts, in permitting the amendment to the claim form. This was not an application to substitute a new party for a party named in the claim form by mistake. The evidence shows that the error in naming the appellant was a genuine mistake; the identity of the intended party was never in doubt; no one was misled; and the appellant remained a legal entity at all material times. Further, the amendment did not constitute an abuse of process, nor did it deprive the appellant of a valid limitation defence. The learned judge was correct in applying rule 20.6 of the CPR, and she was entitled to exercise her discretion in allowing the amendment. Accordingly, there is no basis on which to disturb the judge's decision in that regard. Grounds (a)–(i) must, therefore, fail.

Issue 2: whether the learned judge erred in refusing the appellant's application to strike out the claim or enter summary judgment in its favour (grounds j-k)

[64] The appellant sought to rely on rule 26.3(1) of the CPR, which empowers the court to strike out a statement of case, and alternatively on rule 15.2, which permits summary judgment where a claim discloses no real prospect of success. Authorities such as **Evan Bennett v Raymond Ramdatt** [2016] JMSC Civ 2016; **CDF Scaffolding & Building Equipment Ltd v Ivan Smith** [2012] JMSC Civ 96; **John Adewale Haastrup v Gloria Ngozi Okorie**; **Cedric Lanyon Harper v Davis Lee**; **Veronica Flemmings v Everaldo Cargill** [2020] JMSC Civ 67; and **Swain v Hillman** [1999] EWCA Civ 3053 were cited in support of the contention that the claim was incurably defective and should not have been permitted to proceed.

[65] These submissions must be considered in the light of this court's earlier conclusion that the learned judge was entitled to find that the proceedings involved a misnomer, not a nullity, and that the appellant was at all material times a legal entity with capacity.

[66] The application for striking out /or summary judgment was premised on the assertion that the claim was a nullity. Once the finding was made that the claim was not a nullity, the foundation of the striking out or summary judgment application fell away. The claim was not improperly constituted in the sense contended by the appellant. The amendment ensured that one of the parties (namely, the 1st defendant/appellant) intended to be sued was properly named. The merits of the claim were not in issue. Therefore, the contention that the claim was an incurable nullity and disclosed no arguable case could not be sustained.

[67] In the result, I am satisfied that the learned judge did not err in law in refusing the appellant's application to strike out the claim or, alternatively, to enter summary judgment in the appellant's favour. Grounds (j) and (k) must, therefore, fail.

Issue 3: whether the learned judge erred in directing that costs be costs in the claim (ground l)

Submissions for the appellant

[68] Mr Eccleston submitted that the learned judge ought not to have made an award for costs, given that the appellant had elected to waive its entitlement to costs in the event it was successful. Counsel contended that the order, that costs should be in the claim, was inappropriate, as it could lead to an unreasonable outcome. Specifically, if the respondent were ultimately successful at trial, it would be unjust for the appellant to be required to bear the respondent's costs incurred in relation to the applications.

Submissions for the respondent

[69] Mr Samuels submitted that the learned judge was correct in making the order for costs, having regard to the evidence presented and the conduct of the appellant throughout the proceedings. He argued that the appellant had actively and fully participated in the matter and had taken procedural steps from which it could not reasonably resile. In those circumstances, counsel contended that the award of costs was properly made and should not be disturbed.

Discussion and disposal of issue 3 (ground l)

[70] The statutory foundation for the award of costs in civil proceedings, in the Supreme Court, is section 23E of the Judicature (Supreme Court) Act, which provides that the costs of and incidental to all civil proceedings in the Supreme Court shall be in the discretion of the court. The CPR further elaborate on the principles governing costs, with rule 64.6 establishing the general rule that costs follow the event, subject to the court's discretion to make a different order having regard to all the circumstances.

[71] Rule 65.8 specifically addresses costs in procedural applications. It provides that the unsuccessful party must ordinarily pay the costs of the successful party but introduces a qualification: where the application relates to amendments to a statement of case or

could reasonably have been made at a case management conference, the applicant must pay the respondent's costs unless special circumstances exist.

[72] While it is true that the appellant could have brought its application to strike out or enter summary judgment at the case management conference and was ultimately unsuccessful in that application, the learned judge, in assessing the respondent's application, considered the appellant's conduct throughout the proceedings in determining the issue of prejudice. The appellant had actively participated in the matter, filed a substantive defence, and engaged in mediation. In those circumstances, the learned judge was entitled to conclude that the appellant was not unfairly disadvantaged by the respondent's delay.

[73] However, she did not appear to give due weight to the respondent's delay and failure to act promptly, nor to the fact that his application could reasonably have been made at the case management conference, and in particular, the failure of his counsel to undertake proper checks prior to the commencement of proceedings. The CPR places a clear obligation on the court to evaluate all relevant circumstances when exercising its discretion on costs. The procedural delay and the party's failure to act when reasonably expected were, in my view, relevant considerations when determining the issue of costs under rule 65.8(3). The overriding objective of the CPR, as set out in rule 1.1, is to enable the court to deal with cases justly. This includes ensuring that parties are on equal footing, saving expense, and dealing with cases in ways that are proportionate to the complexity and importance of the issues. In the circumstances, I believe, the learned judge should have decided the issue of costs, at the interlocutory stage, as permitted by the Rules, instead of reserving it for trial.

[74] Considering the foregoing, I am satisfied that the learned judge erred in the exercise of her discretion under rule 65.8. The respondent's application to amend the claim could and should have been made earlier, at the case management conference. It was not made until after the appellant's application to strike out the claim or enter summary judgment in its favour. The delay was largely unexplained, and no special

circumstances were presented to justify a departure from rule 65.8(3). However, because the respondent was successful in both applications, it would not be just for him to pay the costs for both. Accordingly, each party should bear its own costs. Ground l of the appeal should, therefore, be allowed. The costs order made by the learned judge should be set aside, and in substitution thereof, each party should be ordered to bear its own costs.

[75] As the appellant has succeeded on only one of the several grounds of appeal, it is entitled to some of its costs, determined at 20%. Accordingly, 80% of the costs of this appeal should be awarded to the respondent. Such costs to be taxed, if not agreed.

EDWARDS JA

ORDER

1. The appeal is allowed in part.
2. Orders a, b and d of the orders of Jarrett J, made 1 December 2023, are affirmed.
3. Order c of the Orders of Jarrett J, made on 1 December 2023, is set aside. Substituted therefor is an order that each party bear its own costs below.
4. The respondent is awarded 80% of the costs of this appeal, to be taxed, if not agreed.
5. A pre-trial review is to be held as soon as is practicable.