

IN THE CARIBBEAN COURT OF JUSTICE
Original Jurisdiction

CCJ Application No AGOJ2021/001

Between

Ellis Richards
Medical Benefits Board
Spencer Thomas
Others Listed in Appendices 1 to 4 Claimants

And

The State of Trinidad and Tobago Defendant

THE COURT,

composed of A Saunders, President and W Anderson, M Rajnauth-Lee, A Burgess and P Jamadar, Judges

having regard to the issue as to the establishment of a Register of Claimants and expansion of the said Register of Claimants beyond the number of Claimants listed at the time Special Leave was granted to commence these proceedings raised by the Claimants at the Case Management Conferences held on 9 February 2022, 14 June 2022 and 21 March 2023, the written submissions and authorities of the Claimants filed on 26 May 2023 and the written submissions and authorities of the State of Trinidad and Tobago filed on 26 May 2023 and the reply submissions of the Claimants thereto filed on 2 June 2023 and those of the State of Trinidad and Tobago thereto filed on 2 June 2023

and after considering the written submissions and oral observations of:

- **Ellis Richards, Medical Benefits Board, Spencer Thomas & Others**, by Mr Simon Davenport KC, appearing with Dr Kenny Anthony, Mr Robert Strang, Mr Gregory Pantin, Mr Matthew Happold, Mr George Kirnon, Mr Miguel Vasquez, Attorneys-at-Law
- **the State of Trinidad and Tobago**, by Ms Deborah Peake SC, appearing with Ms Tamara Toolsie, Mr Brent James, Mr Murvani Ojah Maharaj, Attorneys-at-Law

issues on **3 July 2023** the following:

DECISION

[1] At the Case Management Conference held on 21 March 2023, this Court promised to provide a definitive decision on the Application by the Claimants to add new potential Claimants to those Claimants listed in the Appendices to the Originating Application filed on 18 October 2021. The following is that decision.

History of the Application

[2] At the first Case Management Conference held on 9 February 2022, the Claimants raised the issues of management of each Claimant's claim, and the approach the Court should take to the existence of additional potential Claimants across CARICOM countries having the same or a similar claim. The Claimants were directed to file a categorized register of Claimants on or before 9 March 2022. Two different Registers of Claimants were filed by the Claimants. At the second Case Management Conference on 14 June 2022, the Court once again directed that the Claimants complete and file a categorized Register of Claimants containing the details of the Claimants specified in the four appendices to the Originating Application and the potential Claimants, to be listed separately, by 31 July 2022. The Defendant opposed any expansion of the Register of Claimants beyond those listed in the Appendices to the Original Application.

[3] The Court stated that it would address the issue of how to treat a list of *potential Claimants* being compiled by the Claimants at a date and time and in a manner to be determined. However, the matter was deferred for the parties to make written and oral submissions, and for the Court to consider and decide urgent and important preliminary points of law. The judgment on these preliminary points of law was delivered on 8 March 2023.¹

¹ [2023] CCJ 1 (OJ).

[4] By Order issued at the third Case Management Conference on 21 March 2023, the Court directed that the parties file written submissions on the issue of whether the Claimants were entitled to expand the Register of Claimants beyond the number listed at the time Special Leave was granted to commence these proceedings. These submissions were duly filed on 26 May 2023 with Reply Submissions on 2 June 2023. On 16 June 2023, by way of an interlocutory Application, the Claimants sought approval of a mechanism for adding new potential Claimants. This Application was again opposed by the Defendant.

Nature of the Application

[5] The Application arises because the Claimants seek to file lists of hundreds of potential Claimants from Dominica, Saint Lucia, Montserrat, Saint Kitts and Nevis, and Saint Vincent and the Grenadines and to have these Claimants added to the list of Claimants listed in the Appendices to the Originating Application. It is intended that these potential claimants would bring claims materially identical to those filed by the Claimants. The only difference, it is said, would be the addition/substitution of the description and nationality of the potential Claimants.

[6] The Claimants argue that, if the potential Claimants were to issue an application for special leave, accompanied by a draft Originating Application in materially identical terms to that of the Claimants, there could be no realistic objection to the grant of leave, given that leave was granted to the Claimants. The Claimants suggest that allowing these additional Claimants access to justice in these proceedings would further the overriding objective and allow both the Claimants and the potential Claimants to share the costs and burden of a complex, expensive, and time-consuming litigation.

Decision

- [7] The Court has carefully considered the powerful points made in support of the Application but is not persuaded by them when the hurdles that must be overcome are weighed and juxtaposed with the fact that these additional Claimants may ultimately not be irredeemably prejudiced, or, indeed, prejudiced to any significant degree, by the refusal of this Application.
- [8] In the first case, the Caribbean Court of Justice (Original Jurisdiction) Rules 2021 do not readily allow for the Court to do what the Claimants have asked. Article 222 of the Revised Treaty of Chaguaramas must be complied with by every private entity who seeks an audience before the Court and there is no way the Court can obviate that process. Given the Defendant's stance in this matter, considerable delay and inconvenience could attend that special leave process.
- [9] Secondly, the Claimants' argument is not well made that, if the potential Claimants were to be required to pursue their own separate claim or claims, the result would be a multiplicity of proceedings in which identical issues arise. The reality is that, if the Claimants who have obtained special leave are successful in these proceedings, then, assuming, as the Claimants suggest, these potential claimants have identical claims, nothing will preclude the potential Claimants from bringing collectively, not a multiplicity of proceedings, but a single subsequent proceeding.
- [10] Thirdly, and related to the foregoing, both sides accept that pursuant to Article 221 of the Revised Treaty, judgments of the Court shall constitute legally binding precedents for parties in proceedings before the Court unless such judgments have been revised in accordance with Article 219. Article 221 has been repeatedly interpreted by this Court as establishing that decisions of the Court constitute binding precedent for the Member States of the Community: See: *Trinidad Cement Ltd. and another v The Co-operative Republic of Guyana*²; and *Myrie v State of*

² [2009] CCJ 1 (OJ), (2009) 74 WIR 302, at [6].

Barbados.³ Accordingly, if liability was established against the Defendant in the current proceedings, that liability would constitute binding precedent in respect of any subsequent claim which was essentially the same claim as that litigated in the present proceedings.

[11] The Claimants conveniently elide the distinction between, on the one hand, the possibility of just *two* sets of proceedings, the latter of which will likely contain significant elements of *res judicata* and, on the other hand, a genuine multiplicity of separate proceedings brought by each of the potential Claimants.

Conclusion

[12] For these reasons, and in all the circumstances of the case, the Application is refused.

[13] The Court reserves the issue of the costs of this Application to a later time.

/s/ A Saunders

Mr Justice Saunders (President)

/s/ W Anderson

Mr Justice W Anderson

/s/ M Rajnauth-Lee

Mme Justice Rajnauth-Lee

/s/ A Burgess

Mr Justice A Burgess

/s/ P Jamadar

Mr Justice P Jamadar

³ [2013] CCJ 3, (2013) 83 WIR 104 at [16] – [21].