COMMONWEALTH OF THE BAHAMAS

IN THE COURT OF APPEAL

SCCivApp & CAIS No. 110 of 2022

BETWEEN

BUCKEYE BAHAMAS HUB LIMITED

Appellant

AND

PEDRO KNOWLES

1st Respondent

AND

SYNGAD SERVICES LIMITED

2nd Respondent

BEFORE: **The Hon Mr. Justice Evans, JA**
The Hon Madam Justice Charles, JA
The Hon Mr. Justice Turner, JA

APPEARANCES: **Mr. Oscar Johnson, Jr, KC, with Ms. Karen Brown, Mr. Keith Major, and Ms. Dennise Newton, Counsel for Appellant**

Mrs. Gia Moxey-Lockhart, Counsel for 1st Respondent

No appearance by or on behalf of 2nd Respondent

DATES: **31 October 2023; 20 November 2023**

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Civil Appeal- Amendment of Pleadings- Misnomer- Limitation Period - Sections 5(1) (a) and 9 of the Limitation Act 1995 - Order 20 Rule 5 of the Rules of the Supreme Court- Judge's Discretion – Whether the Appellant was prejudiced by the amendment

On 10 April 2014, the 1st Respondent, Pedro Knowles, was injured on the job while performing his duties. He later brought a personal injury claim against Syngad Services and Bahamas Oil Refining Company Limited (BORCO) on 10 April 2017, the last day before the limitation period on the claim expired. In 2022, the Respondent Knowles sought to amend his pleadings to name Buckeye as defendant instead of BORCO. Buckeye contested the amendment, arguing that it was made beyond the statute of limitations. The Chief Justice allowed the amendment to correct the misnomer. Buckeye appealed, arguing that the Chief Justice erred by allowing Knowles to amend to name Buckeye as a defendant after the limitation period expired and that this was the incorrect

application of the rules on joinder and amendment as, the amendment unfairly deprived Buckeye of its limitation defense accrued when the period expired in 2017 and the Chief Justice exceeded his powers by overriding the statutory limitation period.

Held: The appeal is dismissed. The costs of the appeal is awarded to the 1st Respondent Pedro Knowles. As the 2nd Respondent Syngad has not participated in this appeal they are not entitled to any costs.

This was not a case where there were two coexisting parties and the wrong one was named. BORCO International, which had merged into Buckeye, was the obvious and required party to be named, as they were the same party. The Chief Justice properly exercised discretion to allow the amendment to correct a misnomer. Order 20 Rule 5 is not in conflict with the conditions of the Limitation Act and hence the Chief Justice was entitled to rely on Order 20 Rule 5 in granting the amendment. The Court rules permit amendments to fix mistakes, even if made after a limitation period expires. There was no unfair prejudice to the Appellant in having to defend the case under its current name, however, refusing the amendment would severely prejudice the Respondent. The amendment did not improperly override the limitation statute and as such, the appeal must be dismissed.

Conticorp SA & Ors v. The Central Bank of Ecuador & Ors (The Bahamas) [2007] UKPC 40 considered
Davies v Elsby Brothers Ltd [1961] 1 WLR 170 distinguished
Mitchell v Harris Engineering Co Ltd **[**1967] 2 QB 703 considered
Volpi and another v Volpi [2022] 4 WLR 48 considered.

JUDGMENT

Judgment delivered by the Hon. Mr. Milton Evans, JA:

1. This appeal emanates from a decision of Winder CJ, dated the 4th August, 2022. The Notice of Appeal was filed on the 23rd November, 2022 pursuant to an Order of this Court (differently constituted) dated the 22nd November,2022, which granted an extension of time within which to file the Appeal.

THE WRIT ACTION

2. The action in the Court below had been commenced by the Plaintiff, Pedro Knowles who is the 1st Respondent **('Knowles')** in the current application, against Syngad Services Limited the 2nd Respondent herein ('**Syngad**') and against Bahamas Oil Refining Company Limited as second Defendant (**BORCO**). Syngad was the 1st defendant in the Court below.

3. In his claim Knowles alleged that he had sustained injuries due to ***'the negligence of the Defendants and/or alternately breach of statutory duty under the Health and Safety at***

Work Act, 2002 of the Defendants and more particularly as against the 1st Defendant in failing to provide a safe system at work and as against the 2nd Defendant in providing substandard equipment used in the performance of the duties of the Plaintiff while at the 2nd Defendant's premises…'

4. It is to be noted that the attorneys for BORCO filed an unconditional appearance to the Writ followed by a Defence which was subsequently amended on the 26th March, 2021. Also, it is to be noted that in paragraph 3 of the Statement of Claim, Knowles averred that "the 2nd Defendant is and was at all material times a company duly incorporated under the laws of and doing business within the Commonwealth of The Bahamas". In its Amended Defence, the 2nd Defendant merely stated "Paragraph 3 of the SOC is admitted." No mention was made of the fact that BORCO was struck off the Register of Companies on 3rd March 2020.

THE APPLICATION FOR AMENDMENT AND JOINDER

5. The Application in the Court below was by Summons filed the 17th March, 2022 in Equity Action No.2017/CLE/gen/NO 00473. By that Summons the Respondent sought the following orders:-

> **i. That the Plaintiff be at liberty to Amend the Writ of Summons filed the 10th April, 2017 and the Statement of Claim filed the 12th April, 2018 pursuant to Order 20, Rule 5 of the Rules of the Supreme Court;**
>
> **ii. That the Plaintiff be at liberty to add Buckeye Bahamas Hub Limited as a party to the Action, pursuant to Order 15, Rule 6 of the Rules of the Supreme Court; and**
>
> **iii. That the Costs of this Application be provided for.**

6. The Application was supported by the affidavit of Lashonda Culmer dated the 17th March 2022 and Dennise Newton swore an affidavit on behalf of Buckeye Bahamas Hub Limited dated the 21st March 2022.

7. The Culmer affidavit asserted that the need for the application become evident when answers to interrogatories were received during the process of moving the matter towards trial. Exhibited to the affidavit were these answers to interrogatories dated the 31st August 2021 provided by Tom Nash, who identified himself as Director of Buckeye Bahamas Hub Ltd. Significantly, at paragraph 3 of that document we see the following:

> **"3. In answer to the second interrogatory, namely, who was the owner and/or manager and/or entity in control at the Second Defendant's terminal facility as at the date of the accident: I say that at the date of the accident, Buckeye Bahamas Hub Limited,**

formerly Bahamas Oil Refining Company International Limited, was in control of general operations at the Second Defendant's terminal facility. However, at the material time, the maintenance of the water collection system was under the control of the First Defendant."

8. In pursuing the application, Knowles relied on two Orders of the Rules of the Supreme Court i.e. Order 20, Rule 5 and Order 15 Rule 6. These provide as follows:-

> **"(5) An amendment may be allowed under paragraph (2) notwithstanding that the effect of the amendment will be to add or substitute a new cause of action if the new cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has already been claimed in the action by the party applying for leave to make the amendment."**
>
> **AND**
>
> **"6. (1) No cause or matter shall be defeated by reason of the misjoinder or non-joinder of any party; and the Court may in any cause or matter determine the issues or questions in dispute so far as they affect the rights and interests of the persons who are parties to the cause or matter.**
>
> **(2) At any stage of the proceedings in any cause or matter the Court may on such terms as it thinks just and either of its own motion or on application —**
>
> **(a) order any person who has been improperly or unnecessarily made a party of who has for any reason ceased to be a proper or necessary party, to cease to be a party;**
>
> **(b) order any of the following persons to be added as a party, namely —**
>
> **(i) any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon; or**
>
> **(ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter,**

but no person shall be added as a plaintiff without his consent signified in writing or in such other manner as may be authorised.

(3) An application by any person for an order under paragraph (2) adding him as a party must, except with the leave of the Court, be supported by an affidavit showing his interest in the matters in dispute in the cause or matter or, as the case may be, the question or issue to be determined as between him and any party to the cause or matter."

9. The Application was opposed by attorneys for Buckeye whose submission, reduced to its essence, was that the joinder of Buckeye as a party was inconsistent with sections 5(1) (a) and 9 of the Limitation Act 1995. Those provisions are as follows:-

"5. (1) The following actions shall not be brought after the expiry of six years from the date on which the cause of action accrued, that is to say —

(a) actions founded on simple contract (including quasi contract) or on tort;"

AND

"9. (1) Subject to subsection (6), this section shall apply to any action for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by any written law or independently of any contract or any such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to the plaintiff or any other person.

(2) Subject to subsection (3), an action to which this section applies shall not be brought after the expiry of three years from —

(a) the date on which the cause of action accrued; or

(b) the date (if later) of the plaintiff's knowledge.

(3) If the person injured dies before the expiry of the period prescribed by subsection (2), the period as regards the cause of action surviving for the benefit of the estate of the deceased shall be three years from —

(a) the date of death; or

(b) the date of the personal representative's knowledge, whichever is the later.

(4) For the purposes of this section, "personal representative" includes any person who is or has been a personal representative of the deceased and regard shall be had to any knowledge acquired by any such person while a personal representative or previously.

(5) If there is more than one personal representative and their dates of knowledge are different, subsection (3) shall be read as referring to the earliest of those dates.

(6) This section shall not apply to an action to which section 12 applies or to an action under the Fatal Accidents Act."

10. The Submission on behalf of Knowles in the Court below was that there were three (3) issues to be determined. These were identified as:-

    i. Whether it is just to allow the amendment?

    ii. Whether the purported amendments shall cause injustice to the parties?

    iii. Whether the purported joinder is necessary to bring final and complete adjudication to the issues between the parties?

11. It is important to note that the application was supported by the 1st Defendant Syngad who was of the view that the amendment was necessary to get the proper parties before the Court.

THE JUDGE'S FINDINGS

12. The position taken by the Chief Justice can be seen from the following extracts from his decision:-

> **"8. Knowles seeks to add Buckeye Bahamas Hub Limited (Buckeye) as a party to the Action. Knowles also seeks to add the Word 'International" in the name of BORCO to make it read as Bahamas Oil Refining Company International Limited. Buckeye and Bahamas Oil Refining Company International Limited, are the same Company. It appears that Bahamas Oil Refining Company International Limited changed its name to Buckeye Bahamas Hub Limited on 29 April 2016. It also appears that notwithstanding BORCO appears in the action by Counsel and filed a Defence on 14 May 2018 it was struck off the Register on 3 March 2020.**

9. Counsel accepts, after prodding by the Court, that the true application is not to join the Company twice but simply for the amendment to the action to replace BORCO as the 2nd Defendant with Buckeye Bahamas Hub Limited (formerly Bahamas Oil Refining Company International Limited).

…

11. Counsel for Buckeye complains that:

(1) It will be deprived of a defence under the Limitation Act;

(2) BORCO was struck off the Register and it is a separate entity from Buckeye;

(3) Buckeye's name change took place a complete year prior the commencement of this action.

…

13. An amendment may be made pursuant to Order 20 rule 5(2) and 5(3) of the rules of the Supreme Court notwithstanding the period of limitation may have expired, where:

(a) It was sought to correct the name of a party even if the effect will be to substitute a new party;

(b) Where the mistake sought to be corrected was a genuine mistake and was not misleading or such as to cause any reasonable doubt as to the identity of the person intending to be sued; and

(c) The Court thinks it just to do so.

I am satisfied that this is a proper case for an amendment as the misnaming of BORCO was a genuine mistake and although Bahamas Oil Refining Company International Ltd is a different entity there is no doubt as to the entity intended to be sued.

…

16. In all the circumstances I find that it is just and proper that the amendment be made to the action to replace BORCO as the 2nd Defendant with Buckeye Bahamas Hub Limited (formerly Bahamas Oil Refining Company International Limited) …"

THE APPEAL

13. The Appellant relied on the following grounds of appeal:

> **1. The Learned Chief Justice erred in law by granting relief to the First Respondent which was not borne out of any of the specific prayers for relief included in the First Respondent's Summons filed in the Action on 17th March 2022 (the "Respondent's Summons") in the absence of either:**
>
> **a. an application and granting of leave to amend the First Respondent's Summons; or**
>
> **b. any invoking of the Court's inherent jurisdiction by the First Respondent;**
>
> **2. The Learned Chief Justice erred in law by failing to have any or sufficient regard to the proviso at the commencement of Order 20, rule 5 (1) of the RSC which reads: "Subject to Order 15, rules 6, 7 and 8" and as a result erroneously disposed of the First Respondent's joinder application as if it were an amendment application, by purportedly granting the First Respondent leave to amend its Writ of Summons, inter alia, not by correcting the name of a party but instead by entirely replacing/substituting the name of a party with the name of another entity not already joined to the proceedings, namely: Buckeye Bahamas Hub Limited, the Appellant;**
>
> **3. The Learned Chief Justice erred in law and in fact by considering and having regard to matters he ought not to have and in not arriving at a determination / determinations which a reasonable Judge properly applying the law and test as set out inter alia in Davies v Elsby Brothers Ltd. — [1961] 1 WLR 170, and considering the facts, would have arrived at;**
>
> **4. The Learned Chief Justice erred in law by having no or insufficient regard to the relevant test and principles to be considered before granting the amendment, namely: the injustice to Buckeye Bahamas Hub Limited as a non-party to the Action of being joined in 2022 and being required by the Ruling to defend/participate in litigation which it otherwise had an affirmative defence to since 2017 (i.e. in excess of five years);**
>
> **5. The Learned Chief Justice erred in law and acted ultra vires by effectively enlarging the limitation period prescribed by Parliament through the Limitation Act, 1995 in the absence of the discretion and jurisdiction to do so; and**

6. Any other ground that the Court may deem just and equitable.

DISCUSSION, ANALYSIS AND CONCLUSIONS

Ground 1. The Learned Chief Justice erred in law by granting relief to the First Respondent which was not borne out of any of the specific prayers for relief included in the First Respondent's Summons filed in the Action on 17th March 2022 (the "Respondent's Summons") in the absence of either: a. an application and granting of leave to amend the First Respondent's Summons; or b. any invoking of the Court's inherent jurisdiction by the First Respondent;

Ground 2. The Learned Chief Justice erred in law by failing to have any or sufficient regard to the proviso at the commencement of Order 20, rule 5 (1) of the RSC which reads: "Subject to Order 15, rules 6, 7 and 8 and as a result erroneously disposed of the First Respondent's joinder application as if it were an amendment application, by purportedly granting the First Respondent leave to amend its Writ of Summons, inter alia, not by correcting the name of a party but instead by entirely replacing/substituting the name of a party with the name of another entity not already joined to the proceedings, namely: Buckeye Bahamas Hub Limited, the Appellant;

14. Grounds one and two of the notice of Appeal can be dealt with together and I find them both to be without merit. It is clear that what the summons sought was (i) an amendment to the name of the Second Defendant to include the word 'International' into the Second Defendant's name; and (ii) the addition of Buckeye Bahamas Hub Limited as a third Defendant. This is the reason reference was made to both Order 15 and Order 20. The draft attached to the Culmer affidavit is clear evidence of this.

15. It is evident that once it was disclosed that the 2nd Defendant's name had been changed to Buckeye it served no purpose in adding both defendants as they constituted one and the same company. It was obviously in these circumstances that the learned Judge opted to grant leave to amend to change the name. He was not in effect adding a new party. In my view there was no need for an amendment to the Summons to facilitate such an order.

Ground 3. The Learned Chief Justice erred in law and in fact by considering and having regard to matters he ought not to have and in not arriving at a determination / determinations which a reasonable Judge properly applying the law and test as set out inter alia in Davies v Elsby Brothers Ltd. — [1961] 1 WLR 170, and considering the facts, would have arrived at.

16. The Appellant's submissions under this ground is misconceived. **Davies**' case is easily distinguishable from the present case. In that case the writ was issued within the limitation period for the claim against 'Elsby Brothers (a firm)'. In fact, the firm's business had been taken over by Elsby Brothers Ltd before the proceedings had been issued. By the time the plaintiff applied for leave to amend the writ to change the name of the defendant, the limitation period had expired. The Court held that the amendment involved the addition of

a new defendant, and was not merely the correction of a misnomer. Accordingly, following long established rule of practice the court held that the amendment should not be allowed. It is noted however, that Lord Denning in the case of ***Mitchell v Harris Engineering Co Ltd*** **[**1967] 2 QB 703 clearly stated that "**Order 20, r. 5 (2), (3), (4) and (5). Sub-rule (3) has removed the injustice caused by the decision in *Davies v. Elsby Brothers*."**

17. In the present case the learned Judge clearly found that the purpose of his order was to correct a misnomer. The undisputed evidence is that the Company who was named was mistakenly listed as Bahamas Oil Refining Company Limited rather than Bahamas Oil Refining Company International Limited. That Company subsequently changed its name to Buckeye Bahamas Hub Limited. The learned Judge found that the misnomer was the result of a genuine mistake and ought to be corrected. Buckeye was the natural and necessary party to be named once BORCO International transformed into Buckeye, given they were in fact the same party. This was not a case where there were two coexisting parties and the wrong one was named.

Ground 4. The Learned Chief Justice erred in law by having no or insufficient regard to the relevant test and principles to be considered before granting the amendment, namely: the injustice to Buckeye Bahamas Hub Limited as a non-party to the Action of being joined in 2022 and being required by the Ruling to defend/participate in litigation which it otherwise had an affirmative defence to since 2017 (i.e. in excess of five years);

18. It is clear that the learned Judge had regard to the fact that his decision was governed by the requirement to do justice between the parties. He gave consideration to the fact that the misnomer was the result of a genuine mistake. He also drew attention to the fact that Tom Nash confirmed that Buckeye was responsible for the premises at the time of the accident. It was also clear that the 2nd Defendant has entered an unconditional appearance and filed both a Defence and an amended Defence to the claim. This was a clear indication that they were not prejudiced in any way in defending the claim.

19. With regard to Mr. Knowles' position. BORCO no longer exists. BORCO International has become Buckeye. All of this is information which the BORCO affiliate groups and Buckeye in particular are deemed to have more knowledge than Mr. Knowles. In my view, Buckeye would be placed at no disadvantage in defending this action.

20. Finally, on this point, the decision of **Volpi and another v Volpi** [2022] 4 WLR 48 is instructive where the court considered the approach of an appellate court to an appeal raising questions of fact. The headnote conveniently sets out the decision of the court:

> **"(i) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.**
>
> **(ii) The adverb "plainly" does not refer to the degree of confidence felt by the appeal court unless it would not have**

reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.

(iii) An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it.

(iv). The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.

(v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.

(vi). Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract (post, paras 2, 67, 68)." [Emphasis added]

Ground 5. The Learned Chief Justice erred in law and acted ultra vires by effectively enlarging the limitation period prescribed by Parliament through the Limitation Act, 1995 in the absence of the discretion and jurisdiction to do so;

21. As I have indicated above I am satisfied that the learned Judge was correct to find that this was a proper case for an amendment as the misnaming of BORCO was a genuine mistake. However, the final issue is the submission raised by Mr. Major that the passage of the Limitation Act 1995 overrides the discretion granted to the Court under Order 20 Rule 5. He contends that as the Limitation Act is primary legislation passed by Parliament and therefore ranks in priority to the Rules of the Supreme Court, which was subsidiary legislation derived by way of powers delegated by Parliament to the Rules Committee by virtue of Sections 75 and 76 of the Supreme Court Act.

22. In response Mrs. Moxey-Lockhart referred us to two cases which dealt with this issue raised by Mr. Major. The first was the English case of ***Mitchell v Harris Engineering Co Ltd*** **[**1967] 2 QB 703. In that case Mr. Mitchell was employed by Harris Engineering

Company Ltd at their works at Tunbridge Wells. On August 27, 1963, he fell and hurt himself. His solicitors claimed damages from his employers, who passed it on to their insurers. The claim was disputed. There was great delay in pursuing it, and nearly three years had passed before Mr. Mitchell's solicitors issued a writ. When the solicitors drafted the writ, they inserted the name of the defendants, "Harris Engineering Company Ltd., whose registered office is situate at York Works, Browning Street." But then they sent a junior clerk along to Somerset House. He searched the English register of companies and found only the company "Harris Engineering Company (Leeds) Ltd.," with its registered office situate at York Works, Browning Street. He assumed very naturally that this must be the correct name of the defendants and altered the draft by inserting "(Leeds)." The plaintiff applied under Order 20, r. 5, for leave to amend the writ by substituting "Harris Engineering Company Ltd." for "Harris Engineering Company (Leeds) Ltd." The defendants objected to this being done. They said that "Harris Engineering Company Ltd." had a statutory defence because the period of limitation had expired, and that the writ should not be amended so as to deprive them of that right**.**

23. **Lord Denning** in response to that submission opined as follows:-

> **"Prior to the new rule, there was a long line of authority which said that, once a person had acquired the benefit of a Statute of Limitations, he was entitled to insist on retaining that benefit: and, what is more, the court would not deprive him of that benefit by allowing an amendment of the writ or of the pleadings. For instance, there was a case where a firm called Elsby Brothers turned themselves into a company called Elsby Brothers Ltd. An injured workman, within the three years permitted by the statute, issued a writ against "Elsby Brothers." After the three years, he discovered his mistake and sought to amend by substituting "Elsby Brothers Ltd." as defendants. He was not allowed to do so: see Davies v. Elsby Brothers Ltd. Another case was where a man had been killed and his widow claimed compensation under the Fatal Accidents Acts. She brought an action within the one year permitted by the statute against the employers. But she described herself in the writ "as administratrix" of her husband's estate, when she had not then taken out letters of administration. When the mistake was discovered she sought to amend the writ by striking out the words "as administratrix." But the one year had by that time expired, and she was not allowed to do so: see *Hilton v. Sutton Steam Laundry*. Other instances are: *Weldon v. Neal*, where an amendment was not allowed to substitute a new cause of action; and *Mabro v. Eagle ar & British Dominions Insurance Co.*, where an amendment was not allowed to substitute a new plaintiff.**

Some of the judges in those cases spoke of the defendant having a "right" to the benefit of the Statute of Limitations: and said that that "right" should not be taken from him by amendment of the writ. But I do not think that was quite correct. The Statute of Limitations does not confer any right on the defendant. It only imposes a time limit on the plaintiff. Take the statute here in question. It is section 2 of the Limitation Act, 1939, as amended by section 2 (1) of the Limitation Act, 1954. It says that in the case of actions for damages for personal injuries for negligence, nuisance or breach of duty "the action shall not be brought" after the expiration of three years from the date on which the cause of action accrued. In order to satisfy the statute, the plaintiff must issue his writ within three years from the date of the accident. But there is nothing in the statute which says that the writ must at that time be perfect and free from defects. Even if it is defective, nevertheless the court may, as a matter of practice, permit him to amend it. Once it is amended, then the writ as amended speaks from the date on which the writ was originally issued and not from the date of the amendment. The defect is cured and the action is brought in time. It is not barred by the statute: see *Hill v. Luton Corporation* and *Pontin v. Wood*.

In my opinion, whenever a writ has been issued within the permitted time, but is found to be defective, the defendant has no right to have it remain defective. The court can permit the defect to be cured by amendment: and whether it should do so depends on the practice of the court. It is a matter of practice and procedure. As such it can be altered by the Rule Committee under section 99 (1) (*a*) of the Supreme Court of Judicature (Consolidation) Act, 1925. That is what has been done by Order 20, r. 5 (2), (3), (4) and (5). Sub-rule (3) has removed the injustice caused by the decision in *Davies v. Elsby Brothers*. Sub-rule (4) has removed the injustice caused by *Hilton v. Sutton Steam Laundry*. Sub-rule (5) has removed the injustice caused by such cases as *Marshall v. London Passenger Transport Board* and *Batting v. London Passenger Transport Board*.

In my opinion, therefore, the rule was within the powers of the Rule Committee: and the attack on it fails. It is a most beneficial provision which enables the courts to amend proceedings whenever the justice of the case so requires. The amendment relates back to the date of the issue of the writ." [Emphasis added]

24. The second case cited by Mrs. Moxey-Lockhart where this issue was previously considered was the case of **Conticorp SA & Ors v. The Central Bank of Ecuador & Ors (The Bahamas)** [2007] UKPC 40. In that case ***Lord Neuberger of Abbotsbury*** **delivering** the decision of the Board observed as follows:-

> **"43.That leaves the final issue, namely whether the Court of Appeal was right to conclude that the plaintiffs should be allowed to re-re-amend the statement of claim by adding paragraphs 33A to 33D. These paragraphs added a claim against the Ortegas based on dishonest assistance. In that connection, Order 20, Rules 5 (2) and (5) of the Rules permit a plaintiff to add a claim against a defendant outside the limitation period even if the claim is based on a new cause of action, provided that it "arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has already been claimed in the action" against that defendant.**
>
> **44.The plaintiffs correctly accept that, by the time they applied for leave to re-amend, the time for issuing fresh proceedings against the Ortegas based on dishonest assistance had passed, as any such claim would have been time-barred under the provisions of the Bahamian Limitation Act 1995 ("the 1995 Act"). As their Lordships understood it, the appellants correctly accept that (a) the cause of action of dishonest assistance raised in paragraphs 33 A to 33D arises out of substantially the same facts as the causes of action already pleaded, and (b) that, if the court properly could have exercised its discretion to allow those paragraphs to be added by amendment, the exercise of that discretion could not be challenged. <u>The only point which is therefore at issue is whether, as the appellants contend and Lyons J effectively concluded, Order 20 Rule 5(5) is *ultra vires* because it contravenes the provisions of the 1995 Act (which has no equivalent to section 35 of the English and Welsh Limitation Act 1980, which statutorily permits an amendment such as that contemplated by Order 20 Rule 5 (5) as quoted above).</u>**
>
> **45. In their Lordships view, there is nothing in that contention of the appellants, at least in relation to the proposed re-re-amendment in this case. The cause of action sought to be raised in paragraph 33A to 33D of the re-re-amended statement of claim is ultimately nothing more than a variation or refinement of the legal basis upon which the plaintiffs seek the relief already claimed. All the facts upon which the plaintiffs rely, and all the**

heads of relief which they seek, were already pleaded in the re-amended statement of claim (and indeed almost all of them were pleaded in the amended and the original statement of claim), which was served well within the limitation period, as the Judge pointed out.

46.At least where, as here, the new cause of action is simply a fresh legal formulation of the plaintiffs' case, involving no factual allegation other than those already pleaded as founding the original causes of action, and involving no new head of relief other than those already pleaded, it appears to their Lordships that it cannot be said that permitting such a cause of action to be pleaded outside the limitation period infringes the provisions of the 1995 Act, even if it contains no specific provision mirroring Order 20 Rule 5 (5). This conclusion is plainly supported by the decision of the English Court of Appeal in *Mitchell v Harris Engineering Co Ltd* [1967] 2 QB 703. Although that was a case concerned with the addition of parties, the logic of the conclusion and reasoning of Lord Denning MR and Russell LJ must apply equally to the addition of a new cause of action: indeed this case appears to their Lordships to be a stronger case than *Mitchell* for holding that the amendment permitted by the Rules does not fall foul of the Statute. The decision and reasoning in *Morris* was more recently applied by the English Court of Appeal in *Signet Group PLC v Hamilton UK Properties PLC* (The Times, 15 December 1997). It is only right to record that Lyons J, who decided that the provisions of the Limitation Act precluded his permitting the re-re-amendment, was not referred to the latter case." [Emphasis added]

SUMMARY

25. In the circumstances as I have found them I am satisfied that Order 20 Rule 5 is not inconsistent with the terms of the Limitation Act and thus the Chief Justice was entitled to rely on Order 20 Rule 5 in granting the amendment. Secondly, after having considered the facts of this case I am satisfied that the Learned Chief Justice was correct in finding that the justice of the case required that the amendment be made. It is clear that there was no prejudice to Buckeye comparable to the prejudice which Knowles would suffer if his amendment was refused and his action struck out as urged by Mr. Major.

CONCLUSION

26. It is for the foregoing reasons I would dismiss the appeal and award the costs of the appeal to the Respondent Knowles. As Syngad has not participated in the appeal they are not entitled to any costs.

The Honourable Mr. Justice Evans, JA

27. I agree.

The Honourable Madam Justice Charles, JA

28. I also agree.

The Honourable Mr. Justice Turner, JA