

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL #68/2005

BETWEEN: CROWN PACKAGING JAMAICA APPELLANT
AND MUSSON JAMAICA LIMITED RESPONDENT

JUNE 1 & 3, 2005

PROCEDURAL APPEAL

Written submissions by Mr. W. John Vassell, Q.C., and Miss Shena Stubbs instructed by DunnCox, attorneys-at-law for the appellant.

Written submissions by Mr. Ransford Braham and Mrs Suzanne Ridsen-Foster instructed by Livingston, Alexander and Levy, attorneys-at-law for the respondent.

P. HARRISON, J.A.

The appellant in this appeal seeks to set aside the order of Daye, J on May 4, 2005 granting amendments to the defence, set-off and counter-claim and permitting amendments to the reply and defence to counter-claim, if required.

Rule 20.4(2) restricts amendments to the statement of case after the first case management conference unless the court is satisfied:

“that the amendment is necessary because of some change in the circumstances which became known after the date of that case management conference.”

The said conference was held on December 8, 2003. It was then ordered, inter alia, that an expert report of one Valderrabano Romero be filed.

Romero had previously examined the relevant defective cans in 2001, and filed a report which did not "identify the cause of the corrosion" nor deal with the appellant's allegation in its reply and defence to counter-claim filed on October 17 2001, that the corrosion was caused by the respondent's

"... water treatment system ineffective can drying and its storage conditions."

The respondent's attorney-at-law by letter dated May 3 2004, requested Romero to prepare an expert report by effecting a second examination of the cans, do a scientific analysis to:

"... identify the causative factors of the exterior scoreline corrosions,"

and to come to Jamaica to visit the respondent's food factory. Romero did so in February 2005, and filed his report dated March 11 2005.

The appellant's writ of summons dated August 23 2001 claimed for the "... balance of price of goods sold and delivered."

The defence, set-off and counter-claim dated October 11 2001 detailed the purchase of the cans "... in accordance with ... sample ...", the appellant's knowledge of the cans' purpose, that the respondent "... relied on the plaintiff's skill and judgment as to the quality ..." and the implied terms of "... reasonably fit for the purpose" ... and "... merchantable quality" as required by the Sale of Goods Act.

A duty of care in the supplier/manufacturer of such goods is generally envisaged under the said Act.

The appellant itself in paragraph 5 of its reply and defence to counter-claim alleged negligence in the respondent.

The visit to Jamaica and the report of Romero dated March 11 2005, addressing specifically only then the cause of the corrosion to the cans qualifies as "some change in the circumstances ... known after ... case management." The case of *Radcliffe v Pacific Steam* [1910] 1KB 685, relied on by Daye, J and which decided that new medical evidence qualified as changed circumstances is helpful, despite its apparent antiquity.

The cause of action arose in April 1999 and, the application to amend was made on March 24 2005, and heard on April 19 2005. Arguably, the order for amendment would fall outside the limitation period in contravention of Rule 20.1(b) of the C.P.R. However, because the issue of negligence arose on the pleadings, although not particularized specifically, the order of Daye, J is a valid order (See *Drane v Evangelou* [1978] 2 All ER 437).

The overriding objective "to deal with cases justly" is a guiding principle, generally, (Rule 1.1), and should not be viewed in isolation.

The appellant was well aware of a defective feature in the manufacturing process since 1999.

The trial date was rescheduled by Pusey, J (Ag.) to February 22 2006. The previous urgency has lessened. In all the circumstances, Daye, J exercised his discretion on a correct basis. The appeal is dismissed with costs to the respondent.