

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2004 HCV 2469

BETWEEN	THERMO-PLASTICS(JAMAICA) LIMITED (IN RECEIVERSHIP)	CLAIMANT
AND	REFIN TRUST LIMITED	1 <sup>ST</sup> DEFENDANT
AND	TPL LIMITED	2 <sup>ND</sup> DEFENDANT

IN CHAMBERS

PRE-TRIAL REVIEW- WITNESS STATEMENTS.

The 26<sup>th</sup> September and 2<sup>nd</sup> October 2008.

Mr. Paul Beswick and Mr. Anthony Levy instructed by G. Anthony Levy and Co. for the Claimant.

Ms. Stephanie Orr, instructed by the Director of State Proceedings present for part of proceedings on 26<sup>th</sup> September for 1<sup>st</sup> Defendant. Mr. Jermaine Spence, instructed by Dunn Cox, who undertook to file a Notice of Change of Attorneys for the 1<sup>st</sup> Defendant, present on 2<sup>nd</sup> October.

Mr. Charles Piper and Ms. Kameika Tomlinson for the 2<sup>nd</sup> Defendant.

MANGATAL J. :

1. This matter came up for pre-trial review, the trial date having been fixed for December 1-5 2008. During the course of the review, Mr. Piper made an oral application on behalf of the 2<sup>nd</sup> Defendant for certain portions of the Witness Statement of Jean-Marie Desulme filed September 15 2008 to be struck out.
2. Firstly, Mr. Piper objected to the attachment of exhibits A-O to the Witness Statement. Secondly, Mr. Piper objected to portions of Paragraphs 20 and 23 of the Witness Statement on the basis that there are extensive quotations of written

documents within the body of these paragraphs. Mr. Piper relied on Rule 29.5(1)(c) of the Civil Procedure Rules 2002 "the C.P.R."

3. Rule 29.5.(1)(c) and 29.5(2) state:

*29.5(1) A witness statement must:*

*....(c) sufficiently identify any document to which the statement refers without repeating its contents unless this is necessary in order to identify the document*

*...(2) The court may order that any inadmissible, scandalous, irrelevant or otherwise oppressive matter be struck out of any witness statement.*

4. I am of the view that the "exhibits" A-O ought not to be struck out / removed and I am also of the view that there is no part of paragraph 20 or 23 which ought to be struck out.

5. Firstly, I agree with Mr. Beswick, Attorney-at-Law for the Claimant, that the word "exhibit" is used in a broad sense, it is really used more in the sense of annexure. Further, when one looks at the English C.P.R. for example, in England a practice direction has been issued with regard to Witness Statements which states that documents referred to in the Witness Statement should be formally exhibited and references to exhibits included. See **Syme, A Practical Approach to Civil Procedure**, 5<sup>th</sup> Edition pages 328-329.

6. In Jamaica, we have not yet issued any practice directions with regard to Witness Statements. However, it seems to me permissible to refer to exhibits; it is still for the court at trial to enter the documents, or to decide whether they should be entered as exhibits.

7. Under Rule 28.19 of the C.P.R. a party is to be deemed to admit the authenticity of any documents disclosed to that party, unless that party serves notice not less than 42 days before the trial that a document is to be proved. Though, as Mr. Piper says, the 42 days has not yet been exhausted, this does not alter my view that the documents may be included / exhibited.

8. After making my ruling, I had the benefit of looking back at the C.P.R., in particular Rules 8.9.(c ) and 10.5( 6 ). These Rules deal respectively with Particulars of Claim and Defence, Statements of Case which are required to be verified by a certificate of truth, generally signed by the lay party. These Rules require that, in the case of a Claimant, the Claim Form or the Particulars of Claim, and in the case of a Defendant, the Defence, are to within the Statement of Case identify, or annex to it any document which the party considers is necessary to their case. Although Witness Statements are given not just by the parties but by other persons, the concept implicit in these Rules bolster my view that the attachment or annexure of the exhibits is perhaps desirable, certainly permissible, or at the very least, unobjectionable.

9. As regards paragraphs 20 and 23 , the documents referred to are both referred to in the 1<sup>st</sup> Defendant's List of Documents. Although Rule 29.5 (1) ( c ) speaks about the identifying of the document without repeating its contents unless this is necessary in order to identify the document, in my judgment "identify" is to be dealt with and interpreted in a broad sense. This is in keeping with the overriding objective of dealing with cases justly, and in keeping with the need to bear the objective in mind when interpreting Rules. In addition, when one reads the paragraphs 20 and 23 in their entirety, it is clear to me that the quotations from these documents, which according to the List of Documents filed by the 1<sup>st</sup> Defendant , are documents which the 1<sup>st</sup> Defendant intends to rely on , are really there to promote ease of understanding. In other words, they are there so that the reader can better appreciate and understand the context of the comments which follow the quotation.

10. There is a useful passage in the **Syme, A Practical Approach to Civil Procedure**, at page 331:

*Exchange of trial witness statements.*

*....Part of the reason why witness statements are exchanged after disclosure of documents is that the witnesses may need to comment on some of the documentation in their statements.*

11. It would seem to me the same applies here, and that the quotations merely identify, in a broad sense, the document, and place the comments on the documents in a context. Indeed, practically speaking, and speaking from my own experience, in any written document where reference is made to another written document and followed by a comment, it aids comprehension to read the relevant aspect of the document referred to just above the follow-on comment, rather than having to flip back and forth from document to document.
12. The oral application by the 2nd Defendant to strike out portions of the Witness Statement of Jean-Marie Desulme is refused.
13. Permission granted to the 2nd Defendant to appeal.
14. The application by Mr. Spence for permission to appeal on behalf of the 1st Defendant, who did not join in or participate in the 1st Defendant's oral application, if appropriate is refused.