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MONTSERRAT, W.I.

ATTORNEY GENERAL CHAMBERS
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IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

IN THE COLONY OF

MONTSERRAT

(CIVIL)

CASE NO: MINIHCV2015/0002

BETWEEN:

KEVIN WEST
YVETTE SWEENEY — Applicants

AND

SHAMROCK INDUSTRIES LTD.
PLANNING AND DEVELOPMENT AUTHORITY
THE ATTORNEY GENERAL — Respondents

Appearances:

Dr. David Dorsett for the Applicants
Mr. David Brandt for the 1st Respondent
Miss Karen Reid for the 2nd and 3rd Respondents

2015: November 28
2016: March 10

Judgment

[1] **Redhead, J. (Ag):** The applicants herein Kevin West and Yvette Sweeney apply to the court for the following order.

(1) Nigel Osborne Enterprise Limited be substituted in this matter in the place of Shamrock Industries Ltd.

[2] This application is governed by Part 19[1]:

[3] Rule 19.2 (5) provides, "the Court may order a new party to be substituted for an existing one if the:

(a) Court can resolve the matters in dispute more effectively by substituting the new party for the existing party; or

(b) existing party's interest or liability has passed to the new party."

[4] Rule 19 (3) (2) an application for permission to add, substitute or remove a party may be made by:

(a) An existing party; or

(b) A person who wishes to become a party.

[5] The grounds of the application are:

(1) By a fixed date Claim Form filed on 16th February 2015. The applicants sought an order seeking among other things an injunction against Shamrock Industries Ltd prohibition from proceeding with development to property adjacent to the applicant's property.

(2) It has come to the attention of the Applicants that the entity that is actually doing the said development is Nigel Osborne Enterprises Ltd.

(3) It is also now evident that the principal behind both Shamrock Industries and Nigel Osborne Enterprises Ltd is Mr. Nigel Osborne.

(4) Mr. Osborne has deposed several affidavits in the matter but he has failed to disclose that the planning, permission and development that lies at the instant matter is planning permission granted to his company , namely Nigel Osborne Enterprises Ltd and that likewise the Contested development is development being undertaken by the said Nigel Osborne Enterprises Ltd.

(5) Mr. Osborne has fully participated in the proceedings from the outset. Since the Contested development involves Nigel Osborne Enterprises Ltd (and not Mr. Nigel Osborne's other company, the currently names 1st Respondent). It is proper that

[1] CPR 2000

the real party involved in the instant case as a matter of fact be substituted instead of the currently named 1st Respondent.

(6) The Court has the power to substitute a party at this stage of the proceedings.

(7) The Court is duty bound to look into the substance of the matter.

(8) Nigel Osborne Enterprises Ltd was under a duty of candor which it failed to properly discharge.

(9) The court can resolve the matter in dispute more effectively by substituting Nigel Osborne Enterprises.

[6] The first question I need to answer in order to exercise my discretion in substituting the new party, is whether the court can resolve the matter in dispute more effectively by substituting Nigel Osborne Enterprises in place of Shamrock Industries Ltd?

[7] Mr. Brandt, learned counsel, for the first respondent argues that Nigel Osborne Enterprise and Shamrock Enterprises are separate companies I suppose that learned counsel was making the point that these companies have separate legal entities.

[8] This in my view, is so, and cannot be questioned. But having distinct legal entity, would that be a bar to substitution of one party for the other. I think not, because if e.g. the court were to substitute e.g. John Brown for Tom Smith. Which is on the face if it is permissible? That would be entirely two legal entities.

[9] So on the face of the application in my opinion, it cannot be wrong to allow the substitution merely on the ground that it is two separate legal entities.

[10] The important issue to be considered in my view is whether the court can resolve this matter in dispute more effectively by substituting the new party for the existing party i.e. by substituting Nigel Osborne in place of Shamrock Industries. I would add whether by doing so any injustice would be caused.