

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE EQUAL OPPORTUNITY TRIBUNAL

E.O.T. No. 0002 of 2016

BETWEEN

ANDREANA HENRY

*Complainant*

AND

PRINCESS ENTERTAINMENT CORPORATION  
TRINIDAD AND TOBAGO LIMITED  
Owners and Managers of ROYAL PRINCESS MEMBERS CLUB

*Respondent*

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DECISION

BEFORE: H.H. Donna Prowell-Raphael.

APPEARANCES: Mr. Ancil Moses for the Complainant.  
Ms. Christlyn Moore for the Respondent.

DELIVERED ON: 25<sup>th</sup>. September, 2019.

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## THE EQUAL OPPORTUNITY TRIBUNAL

1. The Equal Opportunity Tribunal<sup>1</sup> ('the Tribunal') is an anti-discrimination court established by the Equal Opportunity Act<sup>2</sup> ('the Act'). The Act permits a person who claims that he has been discriminated against to submit<sup>3</sup> "*a written complaint ... setting out the details of the alleged act of discrimination*" to the Equal Opportunity Commission ('the Commission'). If the complaint, after investigation cannot be or is not resolved through conciliation by the Commission, the Commission is mandated, with the consent and on behalf of the Complainant, to institute proceedings before Tribunal for judicial determination of the complaint.

## THE COMPLAINT

2. These proceedings were initiated by referral dated 25<sup>th</sup> January, 2016 from the Equal Opportunity Commission ('the Commission'). The Complaint Form is dated and filed 16<sup>th</sup> March, 2016. In these proceedings the Complainant seeks a declaration that she was victimised, damages under various heads, costs and interest.

## THE APPLICATIONS

### The Respondent

3. The Respondent has filed two (2) Notices of Application.
4. In its first Notice ('the Respondent's first application') filed on 20<sup>th</sup> April, 2016, the Respondent seeks an order removing the Princess Entertainment Corporation Trinidad and Tobago Limited as an Interested Party/Respondent in these proceedings. The grounds of this application are that -
  - (i) the Princess Entertainment Corporation Trinidad and Tobago Limited is a limited liability company duly incorporated under the Companies Act Chap 81:01 with its principal place of business at Level 2 Movie Towne Invaders Bay at Audrey Jeffers Highway, Port of Spain;

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<sup>1</sup> *Equal Opportunity Act*, 41. (1) *For the purposes of this Act, there is hereby established an Equal Opportunity Tribunal (hereinafter referred to as "the Tribunal") which shall be a superior Court of record and shall have in addition to the jurisdiction and powers conferred on it by this Act all the powers inherent in such a Court.*

<sup>2</sup> Ch. 22:03. *Laws of the Republic of Trinidad and Tobago.*

<sup>3</sup> *Equal Opportunity Act*, s30: 30. (1) *A person who alleges that some other person has discriminated against him or has contravened section 6 or 7 in relation to him may lodge a written complaint with the Commission setting out the details of the alleged act of discrimination.*

- (ii) Princess Entertainment Corporation Trinidad and Tobago Limited is not the owner or manager of Royal Princess Members Club and or does not trade by that name;
  - (iii) Royal Princess Members Club is an unincorporated body registered under the Registration of Clubs Act Chap 21:01 who was at all material times the employer of the Complainant.
5. This Respondent's first application is supported by the affidavit of Christlyn Moore ('the Respondent's first affidavit') sworn to on 20<sup>th</sup> April, 2016 and filed herein on the same day. In this affidavit she deposes to the same facts and matters set out in the grounds of the application.

#### The Complainant's Concession

- 6 By Notice dated and filed on 15<sup>th</sup> January 15, 2019, ('the Claimant's concession') the Complainant concedes that the Respondent does not constitute a proper party to the proceedings.

#### Notice of Application

7. By Notice of Application dated and filed on the said 15<sup>th</sup> January, 2019 ('the Complainant's application') the Complainant applies for the following orders -

*(i) For leave to amend the intitulation of the proceedings to have the Respondent read as "CHRISTLYN MOORE, OGUZ TAYANC AND HURAN ERBAY, the members of the Committee of the ROYAL PRINCESS CHAGUANAS MEMBERS CLUB";*

*(ii) Leave be granted to the Complainant to serve the said amended proceedings on the Respondents as amended.*

8. The Complainant's application is supported by the affidavit of the Complainant ('the Complainant's affidavit') sworn to on 15<sup>th</sup> January 2019 and filed herein on the same day.
9. The grounds of the application are that -
- (i) the justice of the case requires the said amendment; and
  - (ii) the Complainant concedes that the Respondent/s as currently stated is/are not proper parties to the proceedings.

The Respondent

10. By its second application ('the Respondent's second application) filed on 25<sup>th</sup> March, 2019, the Respondent seeks –

- (i) Costs thrown away to date and consequent on the concession dated 15<sup>th</sup> January, 2019 and admission of the Complainant that the named Respondent does not constitute the proper party to this action;
- (ii) That these costs be assessed in default of agreement;
- (iii) That the application of the Complainant be dismissed as being time barred pursuant to section 30(2) of the Equal Opportunity Act ('the Act') and for want of service on the proposed new parties; and
- (iv) That the claim be dismissed.

11. The Respondent's second application is supported by the affidavit of Anil Barachi ('the Respondent's second affidavit') sworn to on 25<sup>th</sup> March, 2019 and filed herein on the same day. In this application the Respondent deposes to the chronology of the matter and the grounds of the Respondent's first application.

12. The grounds of the Respondent's second application can be summarised as follows –

- (i) The Complainant having conceded that the wrong Respondent is before the Tribunal, costs must follow the event;
- (ii) The proposed substitution constitutes a new claim that is now time-barred;
- (iii) The proposed Respondents have not been served with this application;
- (iv) The Complainant knew or ought to have known or had adequate time and opportunity to discover from the public records the identity of the proposed Respondents.
- (v) The substitution of the proposed Respondents would be prejudicial to them.

THE ISSUES

13. The issues raised for determination by the several applications are

- (i) Whether the said Christlyn Moore, Oguz Tayanc and Huran Erbay ('the Committee members') who were not originally parties to the proceedings can be substituted for the Respondent at this stage?
- (ii) If so, whether the action against these persons would be time-barred?

#### THE SUBMISSIONS

##### *Respondent's First Application The Complainant's Concession*

14. The Complainant's concession that the Respondent is not a proper party to this action rectifies the mischief raised in the Respondent's first application so therefore there is no need for further consideration of that application. I am prepared to give effect to the concession by striking out the existing Respondent which would encompass the relief prayed in the Respondent's first application.

##### The Complainant's Application

15. In support of the Complainant's application, the Complainant has filed the Complainant's affidavit. The Complainant deposes at paragraphs 4 & 5 of that affidavit that pursuant to the Freedom of Information Act (FOIA'), she sought information about the membership of the Royal Princess Members Club and that this information only became available when the requested information was furnished to her attorneys under cover of letter dated 28<sup>th</sup> June, 2018. The letter seeking the information which is annexed and marked "A" to the Complainant's affidavit, is dated 20<sup>th</sup> June, 2018.

16. At paragraph 6 of the Complainant's affidavit she deposes that up to the time she saw that letter, as far as she was aware, the Royal Princess Members Club was her employer. She states that she "*...was led so to believe based on several factors including documents pertaining to [her] employment, in which ROYAL PRIVATE MEMBERS CLUB is referenced, leading to an obvious and reasonable presumption that they were [her] employer*".

17. The Complainant contends that the Tribunal has the power under Part 19 of the Civil Proceedings Rules 1998 (as amended) ('CPR') to substitute Committee Members for the Respondent as prayed by her.

*Respondent's Second Application*

18. The Respondent herein is framed as “*Princess Entertainment Corporation Trinidad and Tobago Limited Owners and Managers of Royal Princess Members Club*”. In its written submissions filed in response to the Application on 6<sup>th</sup> February, 2019 the Respondent reiterates that the Princess Entertainment Corporation Trinidad and Tobago Limited is a legal entity in itself that does not operate under the trade name Royal Princess Members Club. The Complainant has failed to show any contractual nexus between the Princess Entertainment Corporation Trinidad and Tobago Limited and the Complainant.
19. The Complainant is asking the Tribunal to substitute the Committee members as Respondents. The Respondent contends that to do so would create a new action against these persons, who were not originally Respondents. The time for bringing the Complaint against them under the Act would be within six (6) months of the alleged wrongful conduct pursuant to section 30<sup>4</sup> of the Act. The alleged wrongful conduct took place in 2012- 2013, the action would thereby be time barred.

LAW AND ANALYSIS

20. The Tribunal has power under section 46 of the Act to join parties on terms and conditions it considers appropriate<sup>5</sup>. The Equal Opportunity Tribunal Rules of Practice and Procedure (‘ETR’) make provision in Rule 16<sup>6</sup> for the joinder intervention of parties in instances where

<sup>4</sup> CPR: 30. (1) A person who alleges that some other person has discriminated against him or has contravened section 6 or 7 in relation to him may lodge a written complaint with the Commission setting out the details of the alleged act of discrimination. (2) A complaint under subsection (1) shall be lodged with the Commission within six months from the date of the alleged act of discrimination.

<sup>5</sup> ETR: Rule 46. In addition to the powers conferred on it under the foregoing provisions of this Part, the Tribunal may— (a) proceed to hear and determine a matter before it in the absence of any party who has been duly summoned to appear before the Tribunal and has failed to do so; (b) order any person— (i) who in the opinion of the Tribunal may be affected by an order or award; or (ii) who in any other case the Tribunal considers it just to be joined as a party, to be joined as a party to the proceedings under consideration on such terms and conditions as may be prescribed by rules made by the Tribunal; (c) generally give all such directions and do all such things as are necessary or expedient for the expedient and just hearing and determination of the complaint or any other matter before it.

<sup>6</sup> ETR: 16.1 Where any matter or issue connected with the subject matter of the proceedings should be determined not only as between the original parties but also as between either or both of them and a person not already a party, such person may make an application to intervene in the proceedings or may be joined as a party on the application of any party. 16.2 Such application to intervene or to join or be joined shall be by notice supported by affidavit/s and shall contain particulars of the person’s interest in the subject matter of the proceedings. 16.3 In order to make a determination of an application to intervene, the Tribunal shall consider whether – (a) the applicant’s participation will materially assist the Tribunal in determining the matter by providing testimony, cross-examining witnesses, or

new parties are to be added to the original parties. The ETR does not provide for the substitution of parties.

21. Rule 24.1<sup>7</sup> of the ETR provides that where they do not expressly provide the ‘CPR’ would apply *mutatis mutandis*. Part 19 of the CPR provides for the substitution of parties to an action. By virtue of Rule 24.1 of the ETR, material provisions in Part 19 of the CPR would therefore apply *mutatis mutandis* to the issues for determination. Parts 19.1, 19.2, 19.5 and 19.6 of the CPR are reproduced in the footnote below<sup>8</sup>.
22. The amendment being sought by the Complainant seeks to replace the Respondent by the Committee members. I do not understand the intitulation of the Respondent as “Princess Entertainment Corporation Trinidad and Tobago Limited the owner/manager of Royal Princess Members Club” to suggest that it is one entity. I understand it to mean that the Princess Entertainment Corporation Trinidad and Tobago Limited is being sued in the capacity as the owner/manager of Royal Princess Members Club. Taken conjointly with paragraph 2 of the

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offering arguments or other evidence directly relevant to the matters and whether the applicant has a sufficient interest in the subject matter of the proceeding and his intervention will not unnecessarily delay the progress of the matter; (b) the applicant’s position is or is not supportive of the proceedings; (c) the applicant will not repeat or duplicate evidence presented by other parties; and (d) if the application is late, there are satisfactory reasons therefore.

<sup>7</sup> ETR: 24.1 24.1 In any case where the foregoing rules do not expressly provide, the existing rules of the Supreme Court of Trinidad and Tobago shall apply *mutatis mutandis*.”

<sup>8</sup> CPR: Part 19.1 This Part deals with the addition or substitution of parties after proceedings have been commenced. Change of parties—general

CPR: 19.2 (1) This rule applies where a party is to be added or substituted. (2) A party may add a new party to proceedings without permission at any time before a case management conference. (3) The court may add a new party to proceedings if— (a) it is desirable to add the new party so that the court can resolve all the matters in dispute in the proceedings; or (b) there is an issue involving the new party which is connected to the matters in dispute in the proceedings and it is desirable to add the new party so that the court can resolve that issue. (4) The court may order any person to cease to be a party if it considers that it is not desirable for that person to be a party to the proceedings. (5) The court may order a new party to be substituted for an existing one if— (a) the existing party’s interest or liability has passed to the new party; and (b) the court can resolve the matters in dispute more effectively by substituting the Claim not to fail by adding or failing to add parties

CPR: 19.3 The general rule is that a claim shall not fail because— (a) a person was added as a party to the proceedings who should not have been added; or (b) a person who should have been made a party was not made a party to the new party for the existing party. (6) The court may add or substitute a party at a case management conference.

CPR: 19.5 (1) The court may add, substitute or remove a party on or without an application. (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. (3) An application for an order under rule 19.2(5) (substitution of new party where existing party’s interest or liability has passed) may be made without notice but must be supported by evidence. (4) Nobody may be added or substituted as a claimant unless— (a) he has given his consent in writing; and (b) that consent has been filed with the court office. (5) An order for the addition, substitution or removal of a party must be served on— (a) all parties to the proceedings; (b) any party added or substituted; and (c) any other person affected by the order.

(6) Where the court makes an order for the removal, addition or substitution of a party, it must consider whether to give consequential directions about— (a) filing and serving the claim form and any statements of case on any new defendant; (b) serving relevant documents on the new party; and (c) the management of the proceedings.



Particulars of Complaint, my understanding of the existing Respondent is that the Princess Entertainment Corporation Trinidad and Tobago Limited is the owner of the Royal Princess Members Club that employs the Complainant and it is being sued (perhaps wrongly) in that capacity.

23. The Complainant's concession suggests that the Complainant is not employed by the Princess Entertainment Corporation Trinidad and Tobago Limited but rather by the Royal Princess Members Club whose Secretary and officers she is now seeking to enjoin and substitute in this action. The Respondent has admitted that the persons named are the proper parties to be sued as Respondent<sup>9</sup>.
24. The Complainant has raised Part 19.3 of the CPR <sup>10</sup>which provides as a general rule that an action should not fail because a party was not brought before the court or because a wrong party is added. This instant situation is distinguishable. The fact is when the wrong party (as conceded) is removed unless a new party is substituted the action will flounder, as there would be no person against whom the matter could continue. Without the proposed substitution the Complainant's case will fall. Part 19.3 may apply where the wrong party is added or omitted, but there is a viable party remaining whose liability can be assessed in the case. It is inapplicable in this case where the removal of a party without the substitution of another paralyses the litigation process.
25. The Complainant has deposed that she knew the Royal Princess Members Club was her employer. The fact that it was designated a club should have put the Respondent on notice that it was an unincorporated body and due diligence ought to be taken in determining how it should be sued. It was therefore for the Complainant to properly determine the parties who should be required to represent the Royal Princess Members Club before the Commission and to intitle her Complaint in these proceeding before the Tribunal accordingly. This type of research ought not to have been left to some six (6) years after the Complaint was lodged at the Commission. I do not accept that the explanation provided by the Complainant's affidavit is sufficient to displace the onus on her to ensure that the correct parties are before the Tribunal.

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<sup>9</sup> Paragraph 2 of the grounds for the Respondent's second application

<sup>10</sup> Set out above.

26. The lodging of a Complaint at, and its investigation by, the Commission is a statutory precursor to proceedings before the Tribunal<sup>11</sup>. The Act prescribes the process that the Respondent should have the benefit of, in defending a Complaint, having it investigated and conciliated at the Commission before it is referred to the Tribunal as an unresolved Complaint. The Complaint has now reached the Tribunal where it has progressed to the discovery stage. There is no evidence before me that the Committee members have been served in this Application, or put on notice, or given any opportunity to defend the decision to proceed against them. I am being asked to substitute them *ex-parte*.
27. To substitute the Committee members at this time, even in a representative capacity would deprive them of the benefit of the process before the Commission to which they are entitled. Even more, to be accepted by the Commission, a Complaint must have been lodged within six (6) months of the alleged wrongdoing<sup>12</sup>. The alleged wrongdoing occurred 2012/2013. Therefore that six (6) month limitation period for lodging the Complaint would have long expired and the new complaint would be woefully out of time. I therefore hold that, in the circumstances of this application, I have no jurisdiction to substitute the Committee Members for the existing Respondent. To do so would create a new complaint that can only be lodged at the Commission which would, in any event, be time-barred.
28. The foregoing would be sufficient to determine the Complainant's application. For completeness however I do not want to disregard the issue of prejudice. The argument by the Respondent that it may be prejudicial to the Committee members to bring them in at this stage merits some consideration. In the present situation, I have to considered whether the prejudice (if any) that the proposed substitution may cause to the Committee members from the initiation of the Complaint at the Commission to this stage before the Tribunal can be adequately redressed.
29. The Act does not give the Tribunal any jurisdiction to inquire into and or review the conciliation process at the Commission and or to redress it in any way. To redress any prejudice that may have been occasioned by the parties at the stage of the Tribunal, consideration must be given to making any necessary amendments and re- filing and serving the Complaint Form

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<sup>11</sup> See the grounds for the Respondent's second application.

<sup>12</sup> See Section 30 of the Act set out above.

and any other relevant documents on the Committee Members, permitting the Committee members to file a new Defence, and the management of the proceedings thereafter. One of the Committee members proposed to be substituted has the same name and may be the same person as Counsel for the Respondent. New legal counsel may have to be briefed. This would no doubt take the matter back to where it was when it started before the Tribunal in 2016.

30. For these reasons, I therefore hold that it would be prejudicial to the Committee members to substitute them for the existing Respondent and any prejudice sustained by them cannot be adequately redressed at this stage of the proceedings.

31. In the premises the Complaint is left with no respondent and it shall be dismissed.

#### COSTS

32. The Respondent has submitted that as a general rule, save for exceptional circumstances, costs would follow the event<sup>13</sup>. In exercising its discretion as to who should be liable to pay costs a court must have regard to all the circumstances<sup>14</sup>. In doing so it has a discretion to make an award as to how the costs of litigation should be equitably shared. One of the factors to which I must have regard is what is the 'event'? The event in this case is the mistake of the Complainant as to the legal ownership of the employer. As the dust settles the Respondent may have the benefit of that mistake.

33. It is trite that the onus is on the Complainant to ensure that the proper parties are before Tribunal. I accept however that in the case of an unincorporated body of persons such as Royal Princess Members Club some difficulty may arise in deciding who must be sued. Especially as in this case, the ordinary worker may have seen the interaction between principals without having knowledge of the limits of their contractual business arrangements. The relevant information had, in the final analysis, to be extracted through the FOIA as it lay within the bosom of the stakeholders.

34. The Defence put forward by the existing Respondent shows that it is privy to the allegations of the Complainant as it has responded by a cogent version of the material facts. The existing

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<sup>13</sup> See CPR Part 66.6(1).

<sup>14</sup> See CPR Part 66.6(4).

Respondent has stated that the proceedings have not been served on the Committee members<sup>15</sup>. The Respondent maintained conduct of the Complaint before the Commission where the investigation of the Complaint was undertaken. The technical argument that there is a legal distinction between the Princess Entertainment Corporation Trinidad and Tobago Limited and Royal Princess Members Club, though legally persuasive, seems artificial and not borne out by the history of this matter. Even with the less than perfect intitulation, the existing Respondent was able to assess the matter and respond to it in a practical and extensive manner.

35. In exercising my discretion fairly, I must balance the competing equities. I find that the existing Respondent is not a stranger to the facts in issue in these proceedings. I am of the view that the exceptional circumstances of this case, makes it a proper case to depart from the general rule and to order that each party should bear its own costs.

#### DISPOSITION

36. In these circumstances -

- (i) The existing Respondent is struck out.
- (ii) The Complainant's application dated 19<sup>th</sup> January, 2019 to substitute CHRISTLYN MOORE, OGUZ TAYANC AND HURAN ERBAY, the members of the Committee of the ROYAL PRINCESS CHAGUANAS MEMBERS CLUB for the Respondent is dismissed.
- (iii) The Complaint filed on 16<sup>th</sup> March, 2016 is dismissed.
- (iv) Each party shall bear its own costs.

37. This decision is made and delivered by the Chairman pursuant to section 44(7)<sup>16</sup> of the Act.

38. An appeal lies from the Tribunal to the Court of Appeal, whether as of right or with leave, on grounds specified in section 50(2)<sup>17</sup> of the Act, but subject to that the orders, awards, findings

<sup>15</sup> Paragraph 3 of the grounds for the Respondent's second application.

<sup>16</sup> (7) The decision of the Tribunal in any proceedings shall be made by the Chairman and shall be delivered by him.

<sup>17</sup> 50. (1) Subject to subsection (2), the hearing and determination of any proceedings before the Tribunal, and an order or award or any finding or decision of the Tribunal in any matter (including an order or award) — (a) shall not be challenged, appealed against, reviewed, quashed or called in question in any Court on any account whatever; and (b) shall not be subject to prohibition, mandamus or injunction in any Tribunal on any account whatever. (2) Subject to this Act, any party to a matter before the Tribunal is entitled as of right to appeal to the Court of Appeal on any of the

or decisions of the Tribunal in any matter may not be challenged, appealed against, reviewed, quashed or called in question on any account whatever and the Tribunal may not be subject to prohibition, mandamus or injunction in any Tribunal on any account whatever (s 50(1))<sup>18</sup>.

H. H. Donna Prowell-Raphael

Judge/ Chairman

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following ground, but no other: (a) that the Tribunal has no jurisdiction in the matter, but it shall not be competent for the Court of Appeal to entertain such grounds of appeal, unless objection to the jurisdiction of the Tribunal has been formally taken at some time during the progress of the matter before the making of the order or award: (b) that the Tribunal has exceeded its jurisdiction in the matter: (c) that the order or award has been obtained by fraud: (d) that any finding or decision of the Tribunal in any matter is erroneous in point of law: (e) that the Tribunal has erred on an question of fact saved that no appeal shall lie except by leave of the Court of Appeal sitting in full Court: or (f) that some other specific illegality not mentioned above and substantially affecting the merits of the matter has been committed in the course of the proceedings.

<sup>18</sup> See *Suratt and others v. Attorney General of Trinidad and Tobago* [2007] UKPC 55. para 6.