PART 20 Addition And Substitution Of Parties

PART 20

Parties - General

20.1

Any number of claimants or defendants may be joined as parties to a claim.

20.2

Parties may be removed, added or substituted in existing proceedings either on the Court's own initiative or on the application of either an existing party or a person who wishes to become a party.

20.3

The application may be dealt with without a hearing where all the existing parties and the proposed new party are in agreement.

20.4

The application to add or substitute a new party should be supported by evidence setting out the proposed new party's interest in or connection with the claim.

20.5

The application notice should be filed in accordance with Rule 23.2 and, unless the application is made under Rule 20.9, be served in accordance with Rule 23.25.

Change of parties - General

20.6

Rules 20.6 to 20.9 apply where a party is to be added or substituted except where the case falls within Rules 20.27 to 20.29 (special provisions about changing parties after the end of a relevant limitation period).

20.7

The Court may order a person to be added as a new party if:

(1) it is desirable to add the new party so that the Court can resolve all the matters in dispute in the proceedings; or

(2) there is an issue involving the new party and an existing 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.

20.8

The Court may order any person to cease to be a party if it is not desirable for that person to be a party to the proceedings.

20.9

The Court may order a new party to be substituted for an existing one if:

(1) the existing party's interest or liability has passed to the new party; and

(2) it is desirable to substitute the new party so that the Court can resolve the matters in dispute in the proceedings.

20.10

Where a claimant claims a remedy to which some other person is jointly entitled with him, all persons jointly entitled to the remedy must be parties unless the Court orders otherwise.

Procedure for adding and substituting parties

20.11

The Court's permission is required to remove, add or substitute a party, unless the claim form has not been served.

20.12

An application for permission under Rule 20.11 may be made by:

(1) an existing party; or

(2) a person who wishes to become a party.

20.13

An application for an order under Rule 20.9 (substitution of a new party where existing party's interest or liability has passed):

(1) may be made without notice; and

(2) must be supported by evidence setting out the proposed new party's interest in, or connection with, the claim.

20.14

An order for the removal, addition or substitution of a party must be served on:

(1) all parties to the proceedings; and

(2) any other person affected by the order.

20.15

When the Court makes an order for the removal, addition or substitution of a party, it may give consequential directions about:

(1) filing and serving the claim form on any new defendant ;

(2) serving relevant documents on the new party; and

(3) the management of the proceedings.

Addition or substitution of claimant

20.16

Nobody may be added or substituted as a claimant unless:

(1) he has given his consent in writing; and

(2) that consent has been filed with the Court .

20.17

If any person does not agree to be a claimant , he must be made a defendant , unless the Court orders otherwise.

20.18

Where an application is made to the Court to add or to substitute a new party to the proceedings as claimant , the party applying must file:

(1) the application notice ;

(2) the proposed amended claim form and particulars of claim; and

(3) the signed, written consent of the new claimant to be so added or substituted.

20.19

Where the Court makes an order adding or substituting a party as claimant but the signed, written consent of the new claimant has not been filed:

(1) the order; and

(2) the addition or substitution of the new party as claimant ;

will not take effect until the signed, written consent of the new claimant is filed.

20.20

Where the Court has made an order adding or substituting a new claimant , the Court may direct:

(1) a copy of the order to be served on every party to the proceedings and any other person affected by the order;

(2) copies of the statements of case and of documents referred to in any statement of case to be served on the new party; and

(3) the party who made the application to file within 14 days an amended claim form and particulars of claim.

Addition or substitution of defendant

20.21

These Rules apply to a new defendant who has been added or substituted as they apply to any other defendant .

20.22

Where the Court has made an order adding or substituting a defendant whether on its own initiative or on an application, the Court may direct:

(1) the claimant to file with the Court within 14 days (or as ordered) an amended claim form and particulars of claim for the Court file;

(2) a copy of the order to be served on all parties to the proceedings and any other person affected by it;

(3) the amended claim form and particulars of claim, forms for admitting, defending and acknowledging the claim and copies of the statements of case and any other documents referred to in any statement of case to be served on the new defendant ; and

(4) unless the Court orders otherwise, the amended claim form and particulars of claim to be served on any other defendants .

20.23

A new defendant does not become a party to the proceedings until the amended claim form has been served on him.

Removal of party

20.24

Where the Court makes an order for the removal of a party from the proceedings:

(1) the claimant must file with the Court an amended claim form and particulars of claim; and

(2) a copy of the order must be served on every party to the proceedings and on any other person affected by the order.

Transfer of interest or liability

20.25

Where the interest or liability of an existing party has passed to some other person, application should be made to the Court to add or substitute that person.

20.26

The application must be supported by evidence showing the stage the proceedings have reached and what change has occurred to cause the transfer of interest or liability.

Special provisions about adding or substituting parties after the end of a relevant limitation period

20.27

Rules 20.28 to 20.29 apply to a change of parties after the end of a period of limitation under:

(1) the Court Law

(2) the Contract Law 2004;

(3)the Law of Damages and Remedies 2005;

(4) the Law of Obligations 2005;

(5) the Trust Law 2005; or

(6) any other enactment which allows such an amendment, or under which such an amendment is allowed.

20.28

The Court may add or substitute a party only if:

(1) the relevant limitation period was current when the proceedings were started; and

(2) the addition or substitution is necessary.

20.29

The addition or substitution of a party is necessary only if the Court is satisfied that:

(1) the new party is to be substituted for a party who was named in the claim form in mistake for the new party;

(2) the claim cannot properly be carried on by or against the original party unless the new party is added or substituted as claimant or defendant ; or

(3) the original party has died or had a bankruptcy order made against him and his interest or liability has passed to the new party.

Special Rules about parties in claims for wrongful interference with property

20.30

A claimant in a claim for wrongful interference with property must, in the particulars of claim, state the name and address of every person who, to his knowledge, has or claims an interest in the property and who is not a party to the claim.

20.31

A defendant to a claim for wrongful interference with property may apply for a direction that another person be made a party to the claim to establish whether the other person:

(1) has a better right to the goods than the claimant ; or

(2) has a claim which might render the defendant with double liability.

20.32

In Rule 20.31 “double liability” means the double liability of the wrongdoer which can arise:

(1) where one of two or more rights of action for wrongful interference is founded on a possessory title; or

(2) where the measure of damages in an action for wrongful interference founded on a proprietary title is or includes the entire value of the goods, although the interest is one of two or more interests in the goods.

20.33

Where the person referred to in Rule 20.31 fails to attend the hearing of the application, or comply with any directions, the Court may order that he is deprived of any claim against the defendant in respect of the goods.

20.34

The application notice must be served on all parties and on the person referred to in Rule 20.31.

Representative parties with same interest

20.35

Where more than one person has the same interest in a claim:

(1) the claim may be begun; or

(2) the Court may order that the claim be continued;

by or against one or more of the persons who have the same interest as representatives of any other persons who have that interest.

20.36

The Court may direct that a person may not act as a representative.

20.37

Any party may apply to the Court for an order under Rule 20.36.

20.38

Unless the Court otherwise directs any judgment or order given in a claim in which a party is acting as a representative under this rule:

(1) is binding on all persons represented in the claim; but

(2) may only be enforced by or against a person who is not a party to the claim with the permission of the Court .

20.39

This rule does not apply to a claim to which Rules 20.41 to 20.46 apply.

Representation of interested persons who cannot be ascertained Etc.

20.40

Rules 20.41 to 20.46 apply to claims about:

(1) the estate of a deceased person

(2) property subject to a trust; or

(3) the meaning of a document, including a Law.

20.41

The Court may make an order appointing a person to represent any other person or persons in the claim where the person or persons to be represented:

(1) are unborn;

(2) cannot be found;

(3) cannot easily be ascertained; or

(4) are a class of persons who have the same interest in a claim and;

(a) one or more members of that class are within sub-paragraphs (1), (2) or (3); or

(b) to appoint a representative would further the overriding objective.

20.42

An application for an order under Rule 20.41:

(1) may be made by:

(a) any person who seeks to be appointed under the order; or

(b) any party to the claim; and

(2) may be made at any time before or after the claim has started.

20.43

An application notice for an order under Rule 20.41 must be served on:

(1) all parties to the claim, if the claim has started;

(2) the person sought to be appointed, if that person is not the applicant or a party to the claim; and

(3) any other person as directed by the Court .

20.44

The Court’s approval is required to settle a claim in which a party is acting as a representative under Rules 20.41 to 20.46.

20.45

The Court may approve a settlement where it is satisfied that the settlement is for the benefit of all the represented persons.

20.46

Unless the Court otherwise directs, any judgment or order given in a claim in which a party is acting as a representative under Rules 20.41 to 20.46:

(1) is binding on all persons represented in the claim; but

(2) may only be enforced by or against a person who is not a party to the claim with the permission of the Court .

Representation of beneficiaries by trustees Etc.

20.47

A claim may be brought by or against trustees, executors or administrators in that capacity without adding as parties any persons who have a beneficial interest in the trust or estate (the 'beneficiaries').

20.48

Any judgment or order given or made in the claim is binding on the beneficiaries unless the Court orders otherwise in the same or other proceedings.

Death

20.49

Where a person who had an interest in a claim has died and that person has no personal representative ("person representing his estate") the Court may order:

(1) the claim to proceed in the absence of a person representing the estate of the deceased; or

(2) a person to be appointed to represent the estate of the deceased.

20.50

Where a defendant against whom a claim could have been brought has died and:

(1) a grant of representation has been made, the claim must be brought against the persons who are the personal representatives of the deceased;

(2) a grant of representation has not been made:

(a) the claim must be brought against 'the estate of' the deceased; and

(b) the claimant must apply to the Court for an order appointing a person to represent the estate of the deceased in the claim.

20.51

A claim shall be treated as having been brought against 'the estate of' the deceased in accordance with Rule 20.50(2)(a) where:

(1) the claim is brought against the 'personal representatives' of the deceased but a grant of probate

or administration has not been made; or

(2) the person against whom the claim was brought was dead when the claim was started.

20.52

Before making an order under Rule 20.49 or 20.50(2)(b), the Court may direct notice of the application to be given to any other person with an interest in the claim.

20.53

Where an order has been made under Rule 20.49 or 20.50(2)(b) any judgment or order made or given in the claim is binding on the estate of the deceased.

Power to make judgments binding on non-parties

20.54

Rules 20.55 to 20.62 apply to any claim relating to:

(1) the estate of a deceased person;

(2) property subject to a trust; or

(3) the sale of any property.

20.55

The Court may at any time direct that notice of:

(1) the claim; or

(2) any judgment or order given in the claim;

be served on any person who is not a party but who is or may be affected by it.

20.56

An application under Rule 20.55:

(1) may be made without notice; and

(2) must be supported by written evidence which includes the reasons why the person to be served should be bound by the judgment in the claim.

20.57

Unless the Court orders otherwise:

(1) a notice of a claim or of a judgment or order under Rule 20.55 must be:

(a) in Form P20/01 (claim) or Form P20/02 (judgment);

(b) issued by the Court ; and

(c) accompanied by a form of acknowledgment of service with any necessary modifications;

(d) a notice of a judgment or order must also be accompanied by a copy of the judgment or order.

(2) a notice of a claim must also be accompanied by:

(a) a copy of the claim form:

(b) such other statements of case, witness statements or affidavits as the Court may direct.

(c) [deleted]

20.58

If a person served with notice of a claim files an acknowledgment of service of the notice within 14 days he will become a party to the claim.

20.59

If a person served with notice of a claim does not acknowledge service of the notice, he will be bound by any judgment given in the claim as if he were a party.

20.60

If, after service of a notice of a claim on a person, the claim form is amended so as substantially to alter the relief claimed, the Court may direct that a judgment shall not bind that person unless a further notice, together with a copy of the amended claim form, is served on him.

20.61

Any person served with a notice of a judgment or order under Rule 20.55:

(1) shall be bound by the judgment or order as if he had been a party to the claim; but

(2) may, provided he acknowledges service :

(a) within 28 days after the notice is served on him, apply to the Court to set aside or vary the judgment or order; and(b) take part in any proceedings relating to the judgment or order.

(3) The following rules of Part 11 (acknowledgment of service) apply:

(a) Rule 11.7; and(b) Rule 11.8, subject to the modification that references to the defendant are to be read as references to the person served with the notice.

20.62

A notice under Rule 20.55 is issued on the date entered on the notice by the Court .

Derivative claims

20.63

Rules 20.64 to 20.69 apply where a company or other incorporated body is alleged to be entitled to claim a remedy and a claim is made by one or more members of the company or body for it to be given that remedy (a 'derivative claim').

20.64

The company or body for whose benefit a remedy is sought must be a defendant to the claim.

20.65

After the claim form has been issued the claimant must apply to the Court for permission to continue the claim and may not take any other step in the proceedings except:

(1) as provided by Rule 20.67; or

(2) where the Court gives permission.

20.66

An application in accordance with Rule 20.65 must be supported by written evidence.

20.67

The:

(1) claim form;

(2) application notice ; and

(3) written evidence in support of the application;

must be served on the defendant within the period within which the claim form must be served and, in any event, at least 14 days before the Court is to deal with the application.

20.68

If the Court gives the claimant permission to continue the claim, the Court will give directions for the management of the claim.

20.69

The Court may order the company or body to indemnify the claimant against any liability in respect of costs incurred in the claim.

Definition

20.70

A Group Litigation Order ('GLO') means an order made under Rule 20.72 to provide for the case management of claims which give rise to common or related issues of fact or law (the 'GLO issues').

20.71

This Section III of Part 20 (group litigation orders) also applies where the multiple parties are defendants . The Court will give such directions in such a case as are appropriate.

Group Litigation Order (GLO)

20.72

The Court may make a GLO where there are or are likely to be a number of claims giving rise to the GLO issues.

20.73

An application for a GLO must be made in accordance with Part 23, may be made at any time before or after any relevant claims have been issued and may be made either by a claimant or by a defendant .

20.74

The following information should be included in the application notice or in written evidence filed in support of the application:

(1) a summary of the nature of the litigation;

(2) the number and nature of claims already issued;

(3) the number of parties likely to be involved;

(4) the common issues of fact or law (the GLO issues) that are likely to arise in the litigation; and

(5) whether there are any matters that distinguish smaller groups of claims within the wider group.

20.75

A GLO may not be made without the consent of the Chief Justice .

20.76

Subject to obtaining the appropriate consent referred to in Rule 20.75 the Court may make a GLO of its own initiative.

20.77

A GLO must:

(1) contain directions about the establishment of a register (the 'group register') on which the claims managed under the GLO will be entered; and

(2) specify the GLO issues which will identify the claims to be managed as a group under the GLO.

20.78

A GLO may:

(1) in relation to claims which raise one or more of the GLO issues:

(a) order their stay until further order; and

(b) direct their entry on the group register;

(2) direct that from a specified date claims which raise one or more of the GLO issues should be entered on the group register; and

(3) give directions for publicising the GLO.

The Group Register

20.79

A claim must be issued before it can be entered on a group register.

20.80

An application for details of a case to be entered on a group register may be made by any party to the case.

20.81

An order for details of the case to be entered on the group register will not be made unless the case gives rise to at least one of the GLO issues.

20.82

The Court , if it is not satisfied that a case can be conveniently case managed with the other cases on the group register, or if it is satisfied that the entry of the case on the group register would adversely affect the case management of the other cases, may refuse to allow details of the case to be entered on the group register, or order their removal from the register if already entered, although the case gives rise to one or more of the GLO issues.

20.83

The group register will normally be maintained by and kept at the Court but the Court may direct this to be done by the legal representative of one of the parties to a case entered on the register.

20.84

Rules 6.9 to 6.19 (supply of documents from Court records) apply where the register is maintained by the Court . A party to a claim on the group register may request documents relating to any other claim on the group register in accordance with Rule 6.9 as if he were a party to those proceedings.

20.85

Where the register is maintained by a legal representative , any person may inspect the group register during normal business hours and upon giving reasonable notice to the legal representative ; the legal representatives may charge a fee not exceeding the fee prescribed for a search at the Court office.

Effect of the GLO

20.86

Where a judgment or order is given or made in a claim on the group register in relation to one or

more GLO issues:

(1) that judgment or order is binding on the parties to all other claims that are on the group register at the time the judgment is given or the order is made unless the Court orders otherwise; and

(2) the Court may give directions as to the extent to which that judgment or order is binding on the parties to any claim which is subsequently entered on the group register.

20.87

Unless Rule 20.88 applies, any party who is adversely affected by a judgment or order which is binding on him may seek permission to appeal the order.

20.88

A party to a claim which was entered on the group register after a judgment or order which is binding on him was given or made may not:

(1) apply for the judgment or order to be set aside , varied or stayed ; or

(2) appeal the judgment or order;

but may apply to the Court for an order that the judgment or order is not binding on him.

20.89

Unless the Court orders otherwise, production of any document relating to the GLO issues by a party to a claim on the group register is production of that document to all parties to claims:

(1) on the group register; and

(2) which are subsequently entered on the group register.

Case management

20.90

Directions may include directions:

(1) varying the GLO issues;

(2) providing for one or more claims on the group register to proceed as test claims;

(3) appointing the legal representative of one or more parties to be the lead legal representative for

the claimants or defendants ;

(4) specifying the details to be included in a statement of case in order to show that the criteria for entry of the claim on the group register have been met;

(5) specifying a date after which no claim may be added to the group register unless the Court gives permission;

(6) for the entry of any particular claim which meets one or more of the GLO issues on the group register;

(7) for the trial of common issues; and

(8) for the trial of individual issues.

Statements of case

20.91

The Court may direct that the GLO claimants serve ‘Group Particulars of Claim’ which set out the various claims of all the claimants on the group register at the time the particulars are filed. Such particulars of claim will usually contain:

(1) general allegations relating to all claims; and

(2) a schedule containing entries relating to each individual claim specifying which of the general allegations are relied on and any specific facts relevant to the claimant .

20.92

The directions given under Rule 20.91 should include directions as to whether the Group Particulars of Claim should be verified by a statement or statements of truth and, if so, by whom.

20.93

The specific facts relating to each claimant on the group register may be obtained by the use of a questionnaire. Where this is proposed, the Court should be asked to approve the questionnaire. The Court may direct that the questionnaires completed by individual claimants take the place of the schedule referred to in Rule 20.91(2).

20.94

The Court may also give directions about the form that particulars of claim relating to claims which are to be entered on the group register should take.

Removal from the register

20.95

A party to a claim entered on the group register may apply to the Court for the claim to be removed from the register.

20.96

If the Court orders the claim to be removed from the group register it may give directions about the future management of the claim.

Test claims

20.97

Where a direction has been given for a claim on the group register to proceed as a test claim and that claim is settled, the Court may order that another claim on the group register be substituted as the test claim.

20.98

Where an order is made under Rule 20.97, any order made in the test claim before the date of substitution is binding on the substituted claim unless the Court orders otherwise.