

**SUPREME COURT OF BELIZE A.D., 2020**

**ACTION NO.: 88 OF 2020**

(TRACY ANN NICHOLAS\_HANSON                      **APPLICANT**  
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**BETWEEN ( AND**  
(  
(GEORGE HERBERT HANSON                      **RESPONDENT**

**BEFORE THE HONOURABLE MADAM JUSTICE SONYA YOUNG**

**Decision Date:**

18<sup>th</sup> February, 2021

**Appearances:**

Mrs. Robertha Magnus- Usher, Counsel for Petitioner/Respondent

Ms. Darinka Munoz, Counsel for Respondent/Applicant

**KEYWORDS: Matrimonial - Divorce - Procedure - Leave to File Rejoinder - Is the Absence of a Rejoinder an Admission to Matters in Reply - Leave After Pleadings Closed - Is a Rejoinder Necessary - New and Important Matters in Reply.**

**DECISION**

[1.] This decision concerns an Application for leave to file a rejoinder in divorce proceedings. The Petitioner, by her petition, sought a divorce on the ground of

adultery and also asked for custody of and maintenance for the child. As far as allegations go, it stated at paragraph 7 and 8:

*“7. That since the celebration of the marriage the Respondent has committed Adultery with several women including **SHIRLEY ELIZABETH JACOBS** who resides in Punta Gorda Town, Toledo District, Belize.*

*8. That on 28th day of March, 2019 the Respondent moved out of the matrimonial home, (without informing the Petitioner) taking his personal belongings and since that date the parties have not lived together as husband and wife.”*

[2.] The Respondent's answer was not a bare denial of the charge. It comprised three (3) pages and discussed the Petitioner's behavior, his own behavior, their employment history, marriage counseling sessions they attended, his relationship with their daughter and his eventual departure from their matrimonial home on the 28th March, 2019.

[3.] Although he did not oppose a divorce, he went on to detail how the Petitioner had seemingly distanced herself from him so there was minimal affection and intimacy between them with lengthy dry spells. He spoke of being insulted, shouted at and even being threatened and attacked by the Petitioner. It appeared as if he was explaining why the marriage had broken down but he made no counter charge or offered any alternate ground.

[4.] He simply opposed the Petitioner's ground of adultery and asked for dissolution of the marriage. He sought joint custody and offered both a scheme for liberal access and the payment of “reasonable maintenance.”

[5.] This answer clearly demanded a response and the Petitioner replied with eleven (11) pages and a prayer which repeated those of her petition but now

included that the Respondent's own prayers be rejected. She informed that the Respondent at the time of service of the Petition lived with the named woman. She also named another woman with whom he had committed adultery in 2011.

[6.] She discussed the Respondent's behavior towards her which, she said, left her feeling unappreciated, avoided and neglected. She explained that this all led to her withdrawal from intimacy. She spoke of their work history, income and use of income and how they did not share household chores, expenses or childcare equitably. She denied insulting, threatening or attacking the Respondent.

[7.] The Respondent wishes now to have leave to file a Rejoinder. He states in his Application that the Petitioner has raised new allegations in her Reply. He was sure that a failure to file a rejoinder would be an admission of those new allegations raised and would be manifestly unfair to his case.

### **The Issues**

The Court finds the following issues to be determined:

1. What are the effects of not filing a rejoinder
2. Whether leave is necessary before a rejoinder could be filed in Divorce proceedings
3. Whether leave can be granted after pleadings are closed and the Registrar has issued her certificate
4. Whether leave should be granted to the Respondent to file a rejoinder

### **What are the Effects of not Filing a Rejoinder:**

[8.] Counsel for the Applicant offered learning from an American text Will, Arthur P. and Editors et al. Standard Encyclopedia of Procedure + Supplements, Los

Angeles, LD Powell. There it was stated that “(i)n the absence of a denial in the rejoinder all the well-pleaded allegations of fact in the reply are to be taken as true”.

[9.] She also sought to rely on **Joaquin Riverol v Riverol** and **Hamilton Action No 23 of 2011 para 11**. But that paragraph actually speaks to an omission to file a reply where the Answer consists of more than a bare denial of the contents of the Petition. Counsel can find no support here.

[10.] This Court cannot accept the Respondent’s statement as the law in Belize. Rather, my understanding of the law which has been accepted by the Respondent is that a failure to file a rejoinder does not result in an admission of particulars given in the reply.

[11.] The law does not compel the Respondent to file a rejoinder so clearly he cannot be deemed to have admitted the Reply simply because he did not file a rejoinder. He is allowed to lead evidence in rebuttal of those allegations notwithstanding the fact that he did not file any rejoinder.

**Whether leave is necessary before a rejoinder could be filed in Divorce proceedings:**

[12.] There is no doubt that in order for the Respondent to file a rejoinder leave of the Court must be given. Counsel for the Respondent relied on **Rule 54** of the **Matrimonial Causes Rules** for the procedure.

[13.] That particular rule deals with the procedure to be followed when showing cause against a decree nisi being made absolute. It is in fact **Rule 23** which informs

that no pleadings beyond a reply may be delivered in divorce proceedings except with leave:

*“23. Within fourteen days from the filing and delivery of the answer the petitioner may file a reply thereto except where such answer is a simple denial, and so subsequent pleadings shall be delivered except by leave.”*

[14.] While I agree with Senior Counsel that the rule does not specifically state a rejoinder, such a document is obviously included in the term ‘subsequent pleadings’. Leave is therefore quite necessary.

[15.] It is also understandable that leave would be necessary because if matters were properly pleaded there would really be no need for any pleadings beyond that reply.

[16.] Senior Counsel quoted from Rayden on Divorce, para 10.31, Section 3 that it is only *“(i)if a Reply contains matters other than a simple denial of the charges made in the answer such additional matter must be particularised. If a rejoinder is considered necessary, leave to file must be obtained.....as no further pleadings may be filed without leave. It is seldom that farther pleading after a reply is necessary.”* She noted that this learning concerned a specific statutory provision in England.

[17.] This Court finds it quite applicable here. So in essence, a reply need not be limited to a mere denial and a rejoinder may be filed, with leave, but this is a rare occurrence.

**Whether leave can be granted after pleadings are closed and the Registrar has issued her certificate:**

[18.] Senior Counsel for the Respondent submitted that the Applicant is out of time due to the particular procedure set out for Divorce Actions.

*“3. According to **Rule 30 (1) of the Matrimonial Causes Rules Subsidiary Rules of the Supreme Court Act: [tab 1]***

*‘Before a cause is set down for trial or hearing the pleadings and proceedings in the cause shall be referred by the petitioner or any party who is defending the suit to the Registrar who shall certify that the same or correct and in order and the Registrar shall cause any irregularity in such pleading or proceeding to be corrected or refer any question arising thereon to Court for its discretion.’”*

[19.] Pleadings, she informed, go through a certification process, which allows for any defects in the pleadings affecting procedure to be corrected before the matter is set down for hearing. The Applicant failed to avail himself of this opportunity. The Registrar issued her certificate since the 26th October, 2020 and the matter was set down for hearing on the 10th November, 2020. It is, therefore, now inappropriate to seek leave to file a rejoinder at this time.

[20.] Senior Counsel also considered that the rule which dealt specifically with the divorce proceedings did not mention a rejoinder by name. She drew the Court’s attention to **Rule 54**, which deals with applications against making a *decree nisi* absolute, and **Rule 68**, which deals with Maintenance and establishing that a wife has property of her own. Both of which refer specifically to a rejoinder. She proposed that this supports her contention that any leave to file a rejoinder must have been made before pleadings closed.

### **Discussion:**

[21.] Other than stating the above position, Senior Counsel really presented nothing to support this contention. The Applicant did not address this particular issue.

[22.] The Court is of the view that the term subsequent pleadings do not exclude a rejoinder. Rather, it may include pleadings other than a rejoinder as will be explained below.

[23.] This Court knows of no general rule that leave could not be granted to file any pleading after pleadings have closed. Leave is required so that the Court could determine whether or not further pleadings are in fact needed or whether there was just, perhaps, an attempt by the Applicant to change its case or introduce new charges. There must be some discretion where there are cogent reasons to allow the filing of subsequent pleadings and the close of pleadings ought not to be determinative.

Without more, the Application for leave will be entertained even at this stage.

### **Whether Leave should be Granted to the Respondent to File a Rejoinder:**

[24.] Counsel for the Applicant relied heavily on the Ontario Supreme Court Case of **Firestone v Firestone [1974] Carswell Ont 942, para 3**, where Henry J said:

*“I was referred also by counsel to the decision in Regal Films Corp. (1941) Ltd. v. Glens Falls Ins. Co., [1945] O.W.N. 130. Counsel indicated to me that this is the only reported decision of which they are aware which deals with principles that apply to the granting of leave to file further pleadings subsequent to the reply, such as a rejoinder. The general principles to be derived from this decision, having in mind Rule 121 which says no pleading subsequent to reply shall be delivered without leave, is that (a) where a reply introduces new and important matter, such as pleas of waiver and estoppel and events subsequent to the occurrence of the loss over which the action arose, and (b) it would be unreasonable to conclude that the defendant should have anticipated such pleas and pleaded thereto in the statement of defence, leave to file a rejoinder should be granted. I observe in passing that I understood counsel to invite me to consider this case as having application to the content of the joinder of issue, but I record the fact that the case is actually authority for the **principles which might be applied**, as seen by the*

*learned Master who delivered the judgment, in granting leave to file a rejoinder.”*  
(Emphasis mine)

[25.] She submitted that the Petitioner had introduced a new charge of adultery having named a second woman. In her second set of submissions she listed some 16 matters which she said were new matters raised in the Reply. These, she assured, all took the Respondent by surprise and he, therefore, deserved a fair opportunity to respond or the case would become technically uncontested putting a predetermined end to the matter.

[26.] Counsel for the Petitioner was of a decidedly different view. She was adamant that there was no new charge. The ground of divorce remained unchanged. Moreover, to establish adultery one needed to rely on its commission with only one person. But previous acts could show a propensity and may be raised in evidence.

[27.] Persons with whom the adultery had been committed need not even be named (**Russell v Russell C.A. [1924] P1, Rayden Vol 1 18ed Para 9.21**). There was therefore no need for a rejoinder because the Defendant had already denied the ground of adultery and joined on the issue.

[28.] The contents of the Reply, she continued, was in response to the Answer which was far more than a mere denial of the Petition. Many of the matters raised in the Answer are not even in contention before the Court as yet, such as the issue of custody.

[29.] In fact, it was the Respondent who introduced finance, property etc. and the Petitioner merely responded. He cannot be heard to complain now. Nor can he be



allowed to rejoin on unspecified responses as that is far too uncertain and gives too wide an ambit. Without even a draft, one is left to speculate on the very extent and nature of the Rejoinder.

**Discussion:**

[30.] The affidavit in support of the Summons seeking leave states at paragraph 10.b. that the new allegations raised to which he would like to respond “*relate directly to the ground of adultery by which the Petitioner seeks to have the marriage dissolved, and which I fully contest.*”

[31.] Many of the items listed in the submissions do not touch or concern the charge of adultery and an Application for leave to respond to them cannot properly be made in submissions. Making a statement in general terms as was done in paragraph 10.d. that leave is sought “*to respond to these new alleged adulteries, among other matters, in the Reply by way of Rejoinder*” does not open a gateway to widen the scope of the Application.

[32.] The particular issues to which a response in a rejoinder is sought to be made must be specified so that the Court and Counsel on the other side know precisely what is being requested. As far as this Court is concerned, leave will be considered only as it relates to the matters relating to the ground of adultery.

[33.] Counsel for the Applicant found strength in the principles upon which leave is granted repeated in **Firestone (ibid)** (quoted above). She was of the view that the Petitioner had in fact introduced new and important matters so according to the test outlined he ought to be given leave.

[34.] To begin with, **Firestone** was not a case which considered whether or not leave should be granted for a rejoinder to be filed. The decision to grant leave had already been made by the Master in the court below and that had not been appealed. Henry J made this quite clear at paragraph 4 and again at paragraph 7 of his 10 paragraph decision. His repetition was not without reason.

[35.] The appeal actually dealt with whether the rejoinder, filed, had been confined within the bounds and scope of the order or if it in fact concerned more than that for which leave had been given and had, therefore, been properly struck out, in part, by the Master.

[36.] I also notice the very delicate words of Henry J as he states that the above principles "*might be applied.*" He offered no unsolicited validation or endorsement of their correctness. Rather, he says at paragraph 7 "*There can be no question that the object of pleading is to define with clarity the issues to be determined at trial. The party pleading must plead the facts on which he relies, not the evidence by which the facts are to be proved.*" He continued further down "*Paragraph 5, subparas (1) (2) and (3) likewise respond to para. 6 in the reply which pleads for the first time that the plaintiff was ready, willing and able at all times to resume cohabitation - an essential pleading in an alimony action. Ordinarily this issue is raised in the statement of claim and responded to in the statement of defence.*"

[37.] This judgment is, in my view, anything but helpful to the Applicant. The Judge's reluctance to endorse the principles, his insistence on explaining what ought properly to be contained in the Statement of Claim but which had appeared in the Reply (which was not necessary to his decision) and his explanation of the object of pleadings, leads this Court to conclude that he could not say with certainty that the proper procedure had been followed in the Court below or that the correct principles had been applied. But he had not been asked to rule on that.

Since this Canadian case is persuasive at best and I am not bound to follow and I find difficulty in doing so wholesale.

[38.] Rather, I consider what Counsel for the Respondent offered on the role of pleadings. She referred to Chitty's Treatise on Pleadings and Parties to Actions and explained that they are a logical and legal form of the facts which constitute the Petitioner's cause of action, or the Respondent's ground of Defence. The Claimant's pleading must state such facts as allow the Defendant to answer or traverse.

[39.] She then discussed **Leroy Alvarez v Melina Alvarez Action No.274 of 2014** which provided that completely new claims could not be properly made in a reply and if made could not be relied upon. She also referred to **Nelson v Nelson and Slinger [1958] 2All ER 744** and the stated presumption that if new charges of cruelty were allowed to be introduced in the Reply then an Application for leave to file a rejoinder would have to be made.

[40.] It is noteworthy that **Slinger (Ibid)** dealt primarily with whether or not leave could be granted to amend a petition to introduce a ground which had been known to the petitioner at the time of filing the original petition. The Registrar who refused the Application to amend felt constrained by an old decision which the Court of Appeal assured was no longer good law (if ever it was) and allowed the amendment as being the proper procedure.

[41.] Strangely, notwithstanding the Applicant's submission that the proper procedure would have been for the Petitioner to seek an amendment, he does not seek to strike out what he considers offensive in the Reply. Notwithstanding that

the Respondent's Answer noted alleged defects in the Petition and that he submitted that the Petitioner, in her Petition, did not state her case with such fullness and particularity, so that he could understand precisely what the charge was, he sought no further or better particulars nor raised weapon against the Petition.

[42.] Instead, he answered quite lengthily then spent a tremendous amount of time highlighting the shortcomings of the very Petition in his submissions. And having launched no attack at the Petition or the reply, he now asks that he be given leave to file a rejoinder.

[43.] Perhaps here is as good a place as any to explain the function of pleadings. While there are many explanations of far more modern vintage this Court has always liked that stated in Odgers' Principles of Pleadings and Practice in Civil Actions in the High Court of Justice, 20th ed (1970). Be assured that nothing much (names of parties and documents perhaps) has changed since the authors explained at page 76 that:

*"Before a judge or jury is asked to decide any question which is in controversy between litigants, it is..... necessary that the matter to be submitted to them should be clearly ascertained. The Defendant is entitled to know what it is the plaintiff alleges against him; the plaintiff in his turn is entitled to know what defence will be raised in answer to his claim. The defendant may dispute every statement made by the plaintiff, or he may be prepared to prove other facts which put a different complexion on the case. He may rely on a point in law, or raise a cross-claim of his own. In any event, before the trial comes on it is highly desirable that the parties should know exactly what they are fighting about, otherwise they may go to great expense in procuring evidence to prove at the trial facts which their opponents will at once concede. It has been found by long experience that the most satisfactory method of attaining this object is to make each party in turn state his own case and answer that of his opponent before the hearing. Such statements and the answers to them are called pleadings.*

[44.] Pleadings are supposed to concisely state material facts not the evidence by which those facts are to be proven. So the Petitioner must state the facts which give him the right to the redress he claims and the Respondent must state the facts which afford him a Defence.

[45.] At page 234 the authors discuss a rejoinder: *“The defendant’s answer, if any, to a reply, is called a Rejoinder; but it is now very seldom pleaded, except where there has been a counterclaim and the defendant desires to confess and avoid some allegation in the defence to counterclaim. (See Precedent No. 85). Further pleadings are possible; there can be a Surrejoinder, a Rebutter, and a Surrebutter; but they are very seldom met with. None of these pleadings can be served without leave (Order 18, r. 4) and the time for serving them will be stated in the master’s order. He must be satisfied that such a pleading is necessary. If to any such pleading no answer is delivered, every material statement in it will be deemed to be denied, not admitted (rule 14). The principle of rule 8 of Order 18 applies to all these subsequent pleadings. Hence, if the defendant desires to give evidence at the trial of any fresh facts by way of confessions and avoidance in answer to the plaintiffs’ reply, he must allege them specially in his rejoinder, and not merely join issue. Unless a pleading subsequent to a reply is ordered the pleadings are deemed to be closed at the expiration of fourteen days after service of the reply or defence to counterclaim; or, if there is no reply or defence to counterclaim, fourteen days after service of the defence (rule 20). There is then (except in the case of a counterclaim to which no defence has been pleaded) an implied joinder of issue and every material allegation of facts in the pleading last served is deemed to have been denied (rule 14).”*

[46.] The fact is that there must indeed be finality in the pleading process so the filing of a rejoinder ought only to be allowed where it is necessary. The Court is of the view that if new facts are pleaded in a reply then a Respondent should be given a chance to challenge the truth in a rejoinder. Permission should not be granted in a routine manner and only after all of the circumstances are considered.

[47.] That rejoinder ought not to introduce new or inconsistent pleas which may change the very basis of the Answer or create an entirely new case altogether. It should not duplicate matters already pleaded and it should be as short as possible raising only the points in issue.

**The Circumstances:**

[48.] The Court considers that the Reply had been filed since the 23<sup>rd</sup> June, 2020. The Applicant never disclosed when he was served with this reply but I assume it to be on or close to the date of filing since he says at paragraph 7 of his affidavit in support: *“The Petitioner filed a reply dated June 23, 2020, and duly served my Attorneys-at-Law...”* The proceedings were certified on the 26<sup>th</sup> October, 2020 and the application to file a rejoinder was made on the 3<sup>rd</sup> November, 2020, more than four months after the Reply had been filed.

[49.] This Court is of the view that an application of this nature could well have been made before and may have been properly made to the Registrar before she certified the pleadings. But this alone cannot be sufficient to refuse the application. We must also consider the claim that new facts or a new charge have been pleaded in the Reply.

**New Facts or New Charge:**

[50.] The Applicant seems to have somehow lost sight of what ground had been pleaded in the Petition. What is to be proved by the Petitioner is that the Respondent had, since the celebration of the marriage, committed adultery. He denied this and raised certain issues in his Answer. Issues which really seem geared to setting up a ground but he never actually does so.

[51.] The state of both the Answer and the Reply causes concern. But I will refrain from commenting any further as this is not an application to amend or an attack of any sort on either of the pleadings. Save to remind that facts are pleaded and evidence is for trial.

[52.] The Applicant was not at all specific about what he wished to respond to and he did not file a proposed rejoinder which would have been the proper procedure to adopt. In that way objections could have been specifically made.

[53.] As the Application stands, this Court finds that there is only one matter which demands the Court's attention and that would be the very vague "*new averments*" relating "*directly to the ground of adultery by which the Petitioner seeks to have the marriage dissolved*".

[54.] The Applicant states that the Respondent made new charges in the Petition. She relied on the definition of charge found in Collins Dictionary of Law which defined it as "*a formal accusation that the Respondent has committed a specified wrong*". She postured that because only Shirley Elizabeth Jacobs was named in the Petition that was the only charge. So naming a second woman in the Reply constituted an entirely new charge.

[55.] This Court would beg to differ. The charge as pleaded was adultery with several women and one was named. Naming another in the Reply is nothing more than new evidence not a new charge.

[56.] As the Respondent points out repeatedly in her submissions, the Defendant had already denied the ground of adultery generally, not just adultery with the person named in the Petition. A rejoinder is not to be used to duplicate denials already made.

[57.] I also agree with the Respondent that the Petitioner will have more than ample opportunity to lead evidence in accordance with his Answer. The procedure provided through trial is specifically for finding out the truth.

[58.] There are, however, two (2) pleaded allegations which the Court considers are related to the charge of adultery and which require a pleaded response. They are that the Respondent was served with the co-respondent at their “*home*” in Punta Gorda and that the Respondent purportedly told the Petitioner that he can take his daughter around any of his women. Both are facts which could be considered admissions of adultery by the Respondent. Such serious allegations deserve an answer.

**Determination:**

[59.] Having considered all the circumstances of this case leave would be granted for the Respondent to file a rejoinder limited to responding to then two allegations of admission in the Reply.

**Disposition:**

1. Leave is granted to the Respondent to file a rejoinder limited to responding only to the two (2) allegations of admission in the Reply being:
  - (1.) that the Respondent was served with the co-respondent at their “*home*” in Punta Gorda and;
  - (2.) that the Respondent told the Petitioner that he can take his daughter around any of his women.
2. The Respondent must lodge and serve a draft Rejoinder on the Petitioner within 1 week of today’s date.



**IT IS ORDERED THAT:**

1. Leave is granted to the Respondent to file a rejoinder limited to responding only to the two (2) allegations of admission in the Reply being:
  - (1.) that the Respondent was served with the co-respondent at their “*home*” in Punta Gorda and;
  - (2.) that the Respondent told the Petitioner that he can take his daughter around any of his women.
2. The Respondent must lodge and serve a draft Rejoinder on the Petitioner within one (1) week of today’s date.
3. The Petitioner may file and serve written objections, if any, to the draft Rejoinder within one (1) week of service.
4. The Respondent may file and serve written responses to any objections made within one (1) week of service of the objections.
5. The Court will determine the objections on paper and an approved draft will be returned to Counsel for the Respondent.
6. The Rejoinder must be filed by the Respondent within one (1) week of receipt of the approved draft.
7. The matter is listed for directions on the 29<sup>th</sup> March, 2021 at 10:30 am.
8. Cost shall be in the cause.

**SONYA YOUNG  
SUPREME COURT JUDGE**