

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

Claim No. 2015/CLE/gen/FP/00422

BETWEEN:

DESKENNIE LTD

Claimant

SPRINGFIELD INVESTMENT LTD

Defendant

Before : Deputy Registrar Olivia Blatch

Appearances: Mr. Jacy Whittaker for the Claimant

Dates: September 12th and 22nd, 2023

This is an application by the Claimant for substituted service and an extension of time for serving the claim Form pursuant to part 5:13, 5:14 and 8:13 of the Supreme Court Civil Procedure Rules 2022.

Background

An ex parte Summons was filed 8th April 2016, seeking substituted service as the Claimant submitted the inability to serve the Registered Office of the Defendant. Order Granted.

An ex parte summons filed 31 July 2017, supported by Affidavit filed 31st July 2017 seeking an extension of Originating summons filed 14 December 2015. The originating summons was extended for a period of 12 months from 14th December 2016 to 13th December 2017.

An ex parte summons filed 13th February 2018 supported by Affidavit of Sheila Taylor filed 14th February 2018 seeking an order extending the validity of the originating summons from the 14th December 2017 to 13th December 2018 in order to effect service on the Defendant.

An ex parte summons filed 12th March 2019 seeking to extend the validity of the Originating summons for a period of 12 months. The validity of Originating summons extended from December 14th, 2018 to December 13th 2019.

The Notice of Application was filed 19th, July 2023 for an Order to extend the validity of the originating summons filed on December 14th, 2015 and for an Order for substituted service of the Originating summons.

Claimant Submissions

The Claimant relies on the Affidavit of Dominic Wilson filed December 14th, 2018; the Affidavit of Service filed March 12th, 2019. The Claimant submits “personal service could not be effected on the Director and that it is impractical at the time of making this application to personally serve the Director. The process server has exhausted all efforts to have the Originating summons served on the Director, all efforts were futile as the director is deliberately avoiding service of the said document.

The process server on Friday 20th July 2018 and Friday 27th July 2018 visited the residence of the Director for the name defendant but upon his arrival at the residence, the director was not present at his home on both dates. The process server later attempted to facilitate the director by suggesting they meet at a location that is more convenient for the director. They agreed to meet at Polaris drive address but the director failed to show up.

On or around August 2018 the process server attempted to contact the Director by telephone to ascertain a more convenient date and time and address to serve the documents but was informed by the Director that he was off the island and unsure when he would return to Freeport, Grand Bahama.

The Director has been unreachable since August 2018, which makes personal service impracticable. The process server made reasonable efforts to locate the director so that he could have the originating summons served on him but all attempts were futile.

Law

5.13 Alternative methods of service. (1) A claim form a party may choose an alternative method of service after taking reasonable steps to personally serve the claim form

8.12 Time within which claim form may be served. (1) The general rule is that a claim form must be served within six months after the date when the claim was issued. (2) The period for — (a) service of a claim form out of the jurisdiction; or (b) service of an Admiralty claim form in rem; is six months.

8.13 Extension of time for serving a claim form.

(1) The claimant may apply for an order extending the period within which a claim form may be served. (2) The period by which the time for serving a claim form is extended may not be longer than six months on any one application.

(3) An application under paragraph (1) — (a) must be made within the period — (i) for serving a claim form specified by rule 8.12; or (ii) of any subsequent extension permitted by the Court; and (b) may be made without notice but must be supported by evidence on affidavit.

(4) The Court may make an order under paragraph (1) only if it is satisfied that — (a) the claimant has taken all reasonable steps to, but has been unable to — (i) trace the defendant; and (ii) serve the claim form; (b) there is some other special reason for extending the period.

(6) No more than one extension may be allowed unless the Court is satisfied that — (a) the defendant is deliberately avoiding service; or (b) there is some other compelling reason for so doing

Issues/Analysis

The requirement CPR rule 1.1(2)(d) that the Court ensure that cases are “dealt with expeditiously and fairly” means that cases must progress swiftly and time limits stipulated in the CPR must be strictly observed, unless there is good reason to depart from them and it is fair and just to do so.

The case *Aktas*, Rix LJ said at paragraph 91 that a claimant is to “adhere strictly to [the time limit for serving the claim form] or else timeously provide a good reason for some dispensation” and the Court is to strictly regulate the period granted for service of the claim form.

Has the Applicant demonstrated that he had taken all reasonable steps to trace the Defendant and to serve the claim form.

In the case *Hashroodi v Hancock*, Dyson LJ said this: “If the reason why the claimant has not served the claim form within the specified period is that he (or his legal representative) simply overlooked the matter that will be a strong reason for the court refusing to grant an extension of time for service.

One of the important aims of the Woolf reforms was to introduce more discipline into the conduct of civil litigation. One of the ways of achieving this is to insist that time limits be adhered to unless there is good reason for a departure. “

In *Biguzzi*, Lord Woolf said at p 1933D: “If the court were to ignore delays which occur, then undoubtedly there will be a return to the previous culture of regarding time limits as being unimportant.” “If the court were to ignore delays which occur, then undoubtedly there will be a return to the previous culture of regarding time limits as being unimportant.”

The Claimant in 2018 made two attempts at the residence of the director to serve the claim and attempted once via telephone to contact the Director in 2018. The validity of the summons was last extended to 2019; however, no attempts were made after 2018. While I note that the Island of Grand Bahama was hit with a CAT 5 storm in 2019, and the world faced with a pandemic. It appears that the continuation of the proceeding became an oversight until now, therefore I am not satisfied that all reasonable attempts were made to serve the defendant.

In my analysis, I question could two six-month extensions be granted in respect of a single application to extend the validity of the claim form.

The period by which the time for serving a claim form is extended may not be longer than six months on any one application. No More than one extension may be allowed. This application was filed after the amended CPR Rules, which took effect March 2023 where the life of the claim form validity was decreased from 12 months to six months.

8.13 Extension of time for serving a claim form. (1) The claimant may apply for an order extending the period within which a claim form may be served. (2) The period by which the time for serving a claim form is extended may not be longer than six months on any one application.

The case [2019] JMSC Civ 261 IN THE SUPREME COURT OF JUDICATURE OF JAMAICA IN THE CIVIL DIVISION CLAIM NO. 2018 HCV03966 BERIS FORD WATSON CLAIMANT AND JUDITH BROWN was a case where there was an application to extend the validity of the claim form for an order for service. MASTER N. HART-HINES in making his decision took into consideration the law, reasonable steps to trace the Defendant and to serve the claim form, two six-month extensions and when a claim has become time barred. The application to extend the validity of the claim form is refused.

In the case [[2020] JMSC Civ 30 IN THE SUPREME COURT OF JUDICATURE OF JAMAICA IN THE CIVIL DIVISION CLAIM NO. 2016HCV04917, ANNETTE MCLEAN CLAIMANT AND PRINCESS EDMONDSON 1ST DEFENDANT AND CONSTANTINE MILLS 2ND DEFENDANT. This case involve Application to extend the validity of the claim form and application for an order for service by a specified method , whether multiple extensions might be granted on hearing one application to extend the validity of the claim form and whether there are compelling reasons for granting more than two six-month extensions . In considering the application, MASTER N. HART-HINES looked at issues as to whether the Applicant demonstrated that she had taken all reasonable step to locate the Defendants and to serve the claim form, in applying the test the court looked at the number of attempt to serve the claim form. If multiple extensions be granted in respect of one application the court took compliance with CPR 8.14 , Is there a compelling reason to grant five six-month extensions to extend the validity of the claim form from November 17, 2017 to May 17, 2020, the court considered the time expired and also would it be appropriate to grant the application after the claim is time-barred, if this would deprive the Defendants of a limitation defence, in this particular issue the court considered the statue barred. The application to extend the validity of that claim form was refused.

Conclusion

The application to extend the validity of the claim form and substituted service in this application is refused.



Olivia M. Blatch

Deputy Registrar

