

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

COMMON LAW AND EQUITY DIVISION

2020/COM/COM/00049

**IN THE MATTER OF The International Business Companies Act (Ch. 309)
And the Companies Act Chapter 308 Statute Laws of The Bahamas**

And

IN THE MATTER OF JET TEST INTERNATIONAL LIMITED

BETWEEN

GLOYD ROBINSON

**(An Ultimate Beneficial Owner "UBO" and Shareholder and Director of Jet Test
International Limited)**

Plaintiff/Applicant

AND

STEVEN J. GIORDANO

**(A former Ultimate Beneficial Owner "UBO" and Shareholder and Director of Jet Test
International Limited)**

1st Defendant

AND

ROBERT ALLEN

**(A former Ultimate Beneficial Owner "UBO" and Shareholder and Director of Jet Test
International Limited)**

2nd Defendant

AND

WESLEY GARDNER

(A former Independent Contractor of Jet Test International Limited)

3rd Defendant

Before: The Honourable Madam Justice Camille Darville Gomez

Appearances: Mr Denis Williams for the Plaintiffs
Mr Sean Moree, KC and Mrs Erin Hill and Mrs Peteche Mitchell for the
Defendants

Hearing Date: October 3, 2023

DARVILLE GOMEZ, J

DECISION

1. The Plaintiff commenced this action against the Defendants by Writ of Summons filed on October 5, 2022. The action concerns a dispute involving an International Business Company incorporated in The Bahamas.
2. This action pre-dates the Civil Procedure Rules, 2023 and is therefore, governed under the Rules of the Supreme Court, 1978 ("the RSC").
3. It is unchallenged that each of the Defendants reside outside of the jurisdiction.
4. After the commencement of the action by Writ of Summons, the Plaintiff sought by Summons filed on October 21, 2022 the following reliefs:
 - (i) That it be served on each Defendant outside of the jurisdiction of The Bahamas in person or at their last known address.
 - (ii) Alternatively that it be served on the law firm McKinney, Bancroft and Hughes who has previously represented the 1st and 2nd Defendants.
 - (iii) Alternatively, that it be served on the 1st, 2nd and 3rd Defendants by advertisement in a local daily in their last known place of address (substituted service).
5. It was supported by an Affidavit filed on the same date and the relevant paragraphs are set out below:

"3. That the matter herein concerns a corporate dispute of a Bahamian registered International Business Company duly incorporated under the International Business Companies Act of which the registered office and proxy directors are within the jurisdiction of the Bahamas.

4. That at all material times the corporate accounts of Jet Test International Ltd. are present and under the control of a Bahamian corporate entity with the jurisdiction of The Bahamas.

5. That the Defendants names and last known addresses are:

6. That in former proceedings before the Honourable Court involving Jet Test International Ltd. Mr Sean Moree of McKinney, Bancroft and Hughes represented the 1st and 2nd Defendants.

7. That to the best of my knowledge and information all Defendants are presently residing outside of the jurisdiction of The Bahamas.

8. That if an order is not granted as prayed in the Summons herein the Plaintiff would be unable to effect proper service and prosecute his case before the courts."

6. The Plaintiff by Supplemental Affidavit filed on November 22, 2022 stated as follows:

*“3. That I received knowledge that sometime before October 19th, 2022 the 1st and 2nd Defendants were served outside the jurisdiction.
 4. That I received information that the 1st and 2nd Defendants lawyer in the Bahamas contracted the firm and disputed service (now find attached Exhibit “AH-1” a letter from Sean Moree of McKinney, Bancroft and Hughes).
 5. That as per the contents of the exhibited letter the 1st and 2nd Defendants had access to McKinney Bancroft and Hughes and vice versa.
 6. That this Affidavit is made in support of service out of the jurisdiction and in the alternate for that service to serve the Writ on all of the Defendants via service on McKinney Bancroft and Hughes.”*

7. The Defendant’s attorney letter dated October 19, 2022 to the Plaintiff’s attorney articulated the issues surrounding the defective service of the Writ of Summons on the First Defendant out of the jurisdiction and explained the proper means of service abroad. Further, the Defendants’ attorney warned that any further steps to effect service on all of the Defendants would result in sanctions being sought.
8. Despite this communication, the Plaintiff proceeded to file a Summons two (2) days later and on November 24, 2022 obtained an Order of the Deputy Registrar in the following terms:
 - (i) Leave is granted to serve the Writ of Summons filed herein by the Plaintiff on each Defendant outside the jurisdiction of the Commonwealth of The Bahamas in person or at their last known place of address.
 - (ii) Further or in the alternate Counsel for the Plaintiff is to serve the 1st, 2nd and 3rd Defendants via substituted service by printing a copy of the Notice of the Writ of Summons filed herein and posting it in the Nassau Guardian and Tribune newspapers three (3) times within the timeframe of one week.
 - (iii) Further or in the alternate Counsel for the Plaintiff is to serve the 1st, 2nd and 3rd Defendants by printing a Notice of the Writ of Summons filed herein in a local daily newspaper within the vicinity of their last known place of address of the 1st, 2nd and 3rd Defendants respectively.

The Present Application

9. The Defendants’ attorney wrote again to the Plaintiff’s attorney on December 7, 2022, prior to the filing of the instant application stating inter alia, that the purported service of the Writ and the Order upon the Second Defendant out of the jurisdiction was irregular. The procedural issues regarding substituted service and service of the Writ abroad were identified and the Plaintiff’s attorney was invited to rectify the Order failing which the Defendants would commence an application seeking the same.
10. The Plaintiff’s attorney refused to voluntarily set aside the Order; hence the present application by Summons filed on December 14, 2022 for the following reliefs in relation to the Order of the Deputy Registrar:

- (i) Setting aside the Order of Deputy Registrar Edmund Turner dated 24th November, 2022;
- (ii) Setting aside the purported service of the Writ of Summons filed on the Defendants;
- (iii) Awarding the Defendants their costs of and occasioned by this application to be borne by the Plaintiff to be paid forthwith.

11. The main issues for determination are: (i) whether the Plaintiff complied with the RSC regarding the service of the Writ of Summons outside of the jurisdiction and (ii) whether the order for substituted service was properly obtained.
12. The Defendants application is made pursuant to the RSC including: Order 12, rule 7, Order 32, rule 6 and or the Court's inherent jurisdiction. Further provisions relied on include, Order 11, rule 3 and 5 which outlines the general provisions for service of the writ or notice of the writ abroad. Finally, order 61, rule 4 provides for substituted service. I do not intend to set out these provisions in any detail save where it is necessary in reaching my decision.

Service outside of the jurisdiction

13. I note that it is pellucid from the reading of Order 11, rule 3 which provides that leave granted pursuant to rule 1 or 2 of this Order shall be for leave for ***service of a notice of the writ and not the writ itself***. (my emphasis added).
14. In the instant case, the Plaintiff's attorney purported to serve the Writ of Summons on the First Defendant (without leave) and subsequently sought and obtained leave to do so from the Deputy Registrar. Thereafter, the Second Defendant was purportedly served in accordance with this Order.
15. I was helpfully aided by the submissions of the Defendants and, in particular with the decision in **Continental Finance Trading Co. SA v. Gollmer** [1992]BHS J. No. 77 where it was held that the service of Bahamian proceedings on a foreign national in another jurisdiction is prohibited under Bahamian law.
16. The cases referred to by the Plaintiff did not assist in addressing the issues before the Court.
17. This is precisely what the Plaintiff in the instant action did by virtue of the Order of the Deputy Registrar.
18. Therefore, and in the circumstances, to use the words of Sawyer, J (as she then was) "it seems plain to me that leave ought not to have been given for service of the Writ of Summons in this case but only of notice of that writ or a concurrent writ."

Substituted Service

19. Finally, the Order of the Deputy Registrar granted leave to serve the Defendants by way of substituted service via notice of the Writ of Summons in the newspaper.

20. It is unclear the factual basis for the grant of such an order where none of the affidavits in support of the application as required by Order 61:

- (i) explained the inability to serve any of the Defendants; particularly where the First Defendant had already been successfully served without leave outside of the jurisdiction and where the Second Defendant was also served pursuant to the Order of the Deputy Registrar at his home also outside of the jurisdiction;
- (ii) articulated any attempts at service on any of the Defendants which were unsuccessful; or,
- (iii) provided evidence of any attempts by any of the Defendants to evade service.

21. Therefore, and in the circumstances, I see no authority or support for the grant of the order for substituted service on any of the Defendants.

Conclusion

22. Accordingly, the Court grants the reliefs sought by the Defendants in their Summons as follows:

- (i) The Order of Deputy Registrar, Edmund Turner dated November 24, 2022 is hereby set aside.
- (ii) The purported service of the Writ of Summons filed herein on the 1st and 2nd Defendants is hereby set aside.
- (iii) Costs of the application to the Defendants in the sum of \$5,500 to be paid by the Plaintiff forthwith and in any event, before the taking of any further step(s) in the action by the Plaintiff.

Dated the 7th day of November, 2023



Camille Darville-Gomez
Justice