[2020] JMSC Civ 18

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN THE CIVIL DIVISION
CLAIM NO. SU2019CV03008

BETWEEN	**CLAUDIUS GAYLE**	**CLAIMANT**
AND	**ORVEL COLLINS**	**DEFENDANT**

Ms. Alessandra LaBeach instructed by Bignall Law for the Applicant/Claimant.

Heard February 7, 2020.

Civil procedure – Claim form filed close to the expiration of limitation period – Application to extend the validity of the claim form filed within life of the claim form – Whether it is appropriate to extend validity of the claim form after claim became time-barred – Rule 8.15 of the Civil Procedure Rules, 2002 as amended.

MASTER N. HART-HINES

[1] The application for the consideration of the Court is an application to extend the validity of the claim form, pursuant to rule 8.15 of the Civil Procedure Rules ("CPR"). The Applicant/Claimant also seeks an order to permit service by a specified method, pursuant to rule 5.14 of the CPR.

[2] One issue before the Court was whether the limitation period was a relevant consideration in an application filed pursuant to rule 8.15 of the CPR.

BACKGROUND

[3] By Without Notice Application ("the application") filed on September 3, 2019, the Applicant/Claimant applied for an order extending the validity of the claim form. The Applicant also sought an order dispensing with personal service of the claim form and permitting service via publication of a Notice of Proceedings in a newspaper, or, service on JN General Insurance Company Limited ("JNGI"), which insured the Defendant's vehicle.

[4] The claim arises from a motor accident which occurred on December 24, 2013, along Main Street, Ewarton in the parish of Saint Catherine. It is alleged by the Applicant that he was injured when a vehicle licensed 5970ES was so negligently operated by the Defendant that he caused a collision with vehicle licensed PC1136, in which the Applicant was a passenger.

[5] The claim form and the particulars of claim were filed on July 23, 2019, approximately five (5) months before the expiration of the limitation period in respect of the personal injury claim. A medical report dated December 19, 2014 prepared by Dr. Ravi Sangappa is attached to the particulars of claim. The medical report is addressed to the Supreme Court of Jamaica and states that the patient was first seen six days after the accident, on December 30, 2013.

[6] On September 3, 2019 the application was filed, supported by an affidavit sworn by Attorney, Mr. Vaughn Bignall and an affidavit sworn by Mr. Howard Wilks, Process Server. The grounds of the application can be summarised as follows:

1. The Process Server unsuccessfully attempted to serve the Defendant.
2. The whereabouts of the Defendant is unknown.
3. The Defendant was insured by JNGI at the time of the accident.
4. Publication of the Notice of Proceedings in The Gleaner is likely to give the Defendant notice of the action.
5. The granting of orders sought therein will enable the court to proceed with the claim fairly and expeditiously.

[7] The affidavit of Howard Wilks filed on September 3, 2019 stated that in the course of his employment as Process Server employed to Bignall Law, he received instructions on July 26, 2019 to serve the claim form, the particulars of claim and other accompanying documents on the Defendant. As a result of instructions received, he proceeded to 23 Selvon Avenue, Kingston 20 in St. Andrew, on July 29, 2019 between 7 a.m. and 8 a.m. and on August 10, 2019 between 5 p.m. and 6 p.m. However, his attempts to locate the Defendant were unsuccessful as he was told by residents that they do not know the Defendant.

[8] The affidavit of Vaughn Bignall filed on September 3, 2019 indicated that he received instructions from the Claimant and as a result, he commenced the action against the Defendant. Mr. Bignall averred that the Defendant's motor vehicle licensed 5970ES was insured at the time of the accident by JNGI and that Notice of Proceedings were served on JNGI on July 23, 2019 and it accepted same. As such, Mr. Bignall alleged that there was a contractual relationship with between JNGI and the Defendant and that service on JNGI would cause the claim form to come to the Defendant's knowledge. In addition, Mr. Bignall stated that the claim form would expire on January 22, 2020. Finally, Mr. Bignall stated that the Claimant had taken all reasonable steps to locate the Defendant and effect service within the prescribed period but has not been able to do so.

[9] On December 24, 2019, the claim became statute barred. The claim form expired on January 22, 2020. The application was fixed for hearing on January 30, 2020, one month after the claim became time-barred. The application was heard on February 7, 2020.

THE HEARINGS AND SUBMISSIONS

[10] During the hearing on February 7, 2020, the Court identified an issue for consideration in respect of the application made pursuant to CPR rule 8.15, and allowed counsel an opportunity to make representations in relation to that issue.

The Court enquired of counsel whether or not she had given consideration to the English Court of Appeal decision in ***Ehsanollah Bayat and others v Lord Michael Cecil and others*** [2011] EWCA Civ 135. Counsel Ms. LaBeach submitted that the ***Bayat*** case is merely persuasive. It was also submitted that the Applicant had satisfied the requirements of CPR rule 8.15(4)(a) in that all reasonable steps had been taken to locate the Defendant and to serve the claim form. It was further submitted that the extension should be granted because:

1. the claim form was filed before the expiration of the limitation period, and
2. the application was filed before the claim form expired.

[11] Ms. LaBeach submitted that once the claim form and application are filed before the limitation period expired, the claim form would be kept alive despite the fact that the application was not heard. Counsel further submitted that a limitation defence was not a consideration for the Court. In support of this contention, Ms. LaBeach sought to rely on paragraphs 49 and 50 of the decision in ***Glasford Perrin v Donald Cover*** [2019] JMCA Civ 28, wherein our Court of Appeal was not persuaded by the appellant's argument that he would be deprived of a limitation defence and that it would be extremely prejudicial to him if an order was amended to reinstate or validate the claim against him.

[12] Ms. LaBeach also submitted that because JNGI was served with the Notice of Proceedings, the Defendant was put on notice of the proceedings, and would not be prejudiced by service of the claim form after the limitation period expired.

THE ISSUES

[13] The issues for the Court's consideration were:

1. Whether the Applicant had demonstrated that he had taken all reasonable steps to locate the Defendant and to serve the claim form on him.
2. Whether it was appropriate in this case to make an order extending the validity of the claim form after it expired, having regard to the fact that the limitation

period expired on December 24, 2019, and such an order would deprive the Defendant of a limitation defence.

THE LAW

[14] For the purpose of this application, the relevant portions of CPR rule 8.15 provide:

> ***"(1) The claimant may apply for an order extending the period within which the claim form may be served.***
>
> ***(2)*** *The period by which the time for serving the claim form is extended* ***may not be longer than 6 months on any one application****.*
>
> *(3) An application under paragraph (1)*
> *(a) must be made within the period*
> *(i) for serving the claim form specified by rule 8.14; 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 for extension of validity of the claim form only if it is satisfied that***
> ***(a) the claimant has taken all reasonable steps***
> ***(i) to trace the defendant; and***
> ***(ii) to serve the claim form, but has been unable to do so;*** *or*
> *(b) there is* ***some other special reason*** *for extending the period. (My emphasis)*

[15] In determining whether to grant an application for an extension of the the validity of the claim form, I must consider whether the Applicant has demonstrated that he has taken "all reasonable steps" to locate and to serve the claim form on the Defendant, as stipulated by CPR rule 8.15(4)(a). In determining whether the Applicant has satisfied the test in the rule, I must consider the nature and number of attempts made at service, and the reason proffered for the failure to serve the claim form within the six-month period specified by that rule. However, in a case where the limitation period has expired, it seems to me that the Court is not obliged to only consider the threshold test in CPR rule 8.15(4)(a). The Court must also be guided by the overriding objective when exercising its discretion under rule 8.15, and the Court must seek to dispense justice to both parties.

[16] I have found no judgments in this jurisdiction interpreting CPR rule 8.15(4)(a) specifically. I therefore had regard to English cases. The corresponding rule in

the English CPR (rule 7.6) is slightly different from the Jamaican provision in four respects. Firstly, the English rule allows applications to be made after the end of the four-month period within which the claim form may be served (CPR 7.6(3)). Secondly, the rule does not stipulate a maximum period for an extension. Thirdly, either the Court or a claimant may serve the claim form, and it may be served by post. Finally, the rule has a two-part cumulative test, and CPR 7.6(3)(b) is one threshold condition. Notwithstanding these differences, the condition in CPR 7.6(3)(b) is a similar test to our CPR rule 8.15(4)(a) in that it refers to the need for a claimant to take "*all reasonable steps*" to serve a defendant. I am therefore persuaded to apply the English cases considering CPR 7.6(3)(b).

[17] For the sake of completeness, the English Rules 7.6(2) and 7.6(3) state:

> *"**7.6**…**(2)** The general rule is that an application to extend the time for compliance with rule 7.5 must be made-*
>
> *(a) within the period specified by rule 7.5; or*
>
> *(b) where an order has been made under this rule, within the period for service specified by that order.*
>
> ***(3)** If the claimant applies for an order to extend the time for compliance after the end of the period specified by rule 7.5 or by an order made under this rule, the court may make such an order only if –*
>
> *(a) the court has failed to serve the claim form; or*
>
> *(b) **the claimant has taken all reasonable steps to comply with rule 7.5 but has been unable to do so**; and*
>
> *(c) in either case, the claimant has acted promptly in making the application."*

[18] The principles distilled from the English cases can be summarised thus:

1. Unless "*all*" reasonable steps have been taken, the Court cannot extend time. A claimant applying to extend the time for service of a claim form must demonstrate that he has taken "all" reasonable steps to effect service on the defendant before the time permitted for service expired.

2. Claimants are not to leave service to the last moment. In ***Drury v Broadcasting Corporation and another*** [2007] EWCA Civ 497, Lady Justice Smith stated this at paragraph 40:

> *"40. This court has on more than one occasion stressed that* ***one of the intentions behind the Civil Procedure Rules is that litigation should proceed expeditiously and that time limits should be taken seriously****: see for example Vinos v Marks & Spencer PLC [2001] 3 AER 784 at 789-790.* ***Also, this court has warned litigants of the dangers of leaving until the last minute the taking of a procedural step governed by a time limit:*** *see for example Anderton v Clwyd County Council (supra) at page 3184. If repetition of this warning is necessary, let this case provide it. A litigant is entitled to make use of every day allowed by the rules for the service of a claim form. But it is well known that hitches can be encountered when trying to effect service.* ***A litigant who leaves his efforts at service to the last moment and then fails due to an unexpected problem is very unlikely to persuade the court that he has taken all reasonable steps to serve the claim in time.*** *…* ***A litigant who delays until the last minute does so at his peril****. (My emphasis)*

3. The Court is required to give effect to the overriding objective when it interprets any rule or exercises any power under the CPR (see rule 1.1). Consequently, the power to extend time for the service of a claim form must be exercised in accordance with the overriding objective (see ***Hashtroodi v Hancock*** [2004] EWCA Civ 652 at paragraphs 18 and 22).

4. When an application is made for an extension of the validity of the claim form, the Court must conduct an enquiry into the reason the claim form was not served within its life (see ***Hashtroodi*** at para 18). This is in keeping with the overriding objective of enabling the court to deal with cases justly.

5. An important consideration for the Court is whether the limitation period has expired. In ***Hashtroodi***, Dyson LJ, while citing Adrian Zuckerman's text, Civil Procedure, said at paragraph 18:

> *"****For it is only fair to ask whether the applicant is seeking the court's help to overcome a genuine problem that he has encountered in carrying out service or whether he is seeking relief from the consequences of his own neglect****. A claimant who has experienced difficulty should normally be entitled to the court's help, but an applicant who has merely left service too late is not entitled to as much consideration.* ***Whether the limitation period has expired is also of considerable importance….****" (My emphasis)*

6. It is permissible for a claimant to file proceedings on the last day of the limitation period and serve the claim within the period specified for service (see ***Aktas v Adepta*** [2010] EWCA Civ 1170 at paragraph 91).

7. The Court is to insist that time limits be adhered to, unless there is good reason for a departure (see ***Hashtroodi***, paragraph 20). The Court must strictly regulate the period granted for service, otherwise the limitation period could be unduly extended. In ***Aktas***, Rix LJ said at paragraph 91:

> *"91. …. the additional time between issue and service is, in a way, an extension of the limitation period.* ***A claimant can issue proceedings on the last day of the limitation period and can still, whatever risks he takes in doing so, enjoy a further four month period until service, and his proceedings will still be in time****. In such a system,* ***it is important therefore that the courts strictly regulate the period granted for service****.* ***If it were otherwise, the statutory limitation period could be made elastic at the whim or sloppiness of the claimant or his solicitors****. For the same reason,* ***the argument that if late service were not permitted, the claimant would lose his claim, because it would become time barred, becomes a barren excuse****…. It is sufficient for the rules to provide for service within a specified time and for the courts to require claimants to adhere strictly to that time limit or else timeously provide a good reason for some dispensation." (My emphasis)*

8. Even if the extension of the time for serving a claim form is just outside the limitation period, it would deprive the defendant of his limitation defence. This defence should not be circumvented except in exceptional circumstances. In ***Bayat and others v Cecil and others*** [2011] EWCA Civ 135 at paragraphs 54 and 55, Stanley Burnton LJ said:

> *"54. …* ***in the law of limitation, a miss is as good as a mile****. …* ***The primary question is whether, if an extension of time is granted, the defendant will or may be deprived of a limitation defence.****"*
>
> *"55. It is of course relevant that the effect of a refusal to extend time for service of the claim form will deprive the claimant of what may be a good claim.* ***But the stronger the claim, the more important is the defendant's limitation defence, which should not be circumvented by an extension of time for serving a claim form save in exceptional circumstances****." (My emphasis)*

9. Further, even if good reason had been shown for the failure to serve the claim form, it must be shown how this "good reason" surmounted the issue of the limitation defence. In ***Bayat v Cecil*** Rix LJ said at paragraph 108:

> *"108. …It is therefore for the Claimant to show that his "good reason" directly impacts on the limitation aspect of the problem, as for instance where he can show that he has been delayed in service for reasons for which he does not bear responsibility, or that he could not have known about the claim until close to the end of the limitation period. If he cannot do that, he is unlikely to show a good or sufficiently good reason in a limitation case."*

[19] In summary, the cases state that a Claimant must take all reasonable steps to serve the claim form and must also demonstrate that there is good reason to extend the validity of the claim form after the claim has become time-barred.

[20] In addition to the English cases, I found and considered a case from the British Virgin Islands ("BVI"), ***Steinberg et al v Swisstor & Co et al*** BVIHCVAP 2011/0012. It should be noted that the BVI CPR rule 8.13 is more akin to our rule 8.15 than to the English rule 7.6, save that the BVI rule allows for retrospective applications. Notwithstanding, the BVI Court of Appeal considered and applied several cases decided on the English rule 7.6(3) (including ***Hashtroodi*** and ***Aktas***) that an extension of time should not deprive the defendant of any limitation advantage. The Court also applied the pre-CPR House of Lords decision of ***Dagnell and Another v J.L. Freedman & Co. (a firm) and others*** [1993] 1 W.L.R. 388 where Lord Browne-Wilkinson (at page 396D) described a defendant's "*right to be served with proceedings (if at all) within the statutory period of limitation plus the period for the validity of the writ*" as a "*fundamental consideration*" or fundamental right.

[21] In ***Steinberg***, the BVI Court of Appeal held that the respondents had a right to be sued by means of a claim issued within the statutory period of limitation and served within the period of its validity, and, that once the respondents could show that they might be deprived of a defence of limitation if time for service of the claim form was extended, it was enough for the extension to have been set aside.

Mitchell JA [Ag] applied dictim in ***Aktas*** and said:

> *"73. … The statutory limitation period should not be made elastic at the whim or sloppiness of a litigant. Public interest requires that claimants adhere strictly to the time limit for service or else provide a good reason for dispensation."*

[22] In ***Perrin v Cover***, by notice of application (filed on June 3, 2015 and amended on July 10, 2015) the Claimant sought to have the validity of the claim form extended for six months from "the date hereof", that is, the date of the order, rather than the date of filing of the application. The application was heard on July 13, 2015 and the order was made in terms of the application, extending the validity of the claim form from that date to January 13, 2016. After the claim form was served, the Defendant filed an application seeking a declaration that the claim form be struck out on the basis that it had expired on June 12, 2015 and had not been extended by an order taking effect on or before that date, and the Court therefore had no jurisdiction to try the claim. The Defendant's Attorney submitted that in order to effectively extend the validity of the claim form filed on June 12, 2014, the order ought to have been made extending its validity from the date of its expiration or the date of the initial application (June 3, 2015) to December 12, 2015. Reliance was placed on dictum in ***Vinos v Marks & Spencer Plc*** [2001] 3 All ER 78 that if a claimant waits until near the end of the limitation period to file a claim and then fails to comply with the time limit for serving the claim form, his claim will be time barred.

[23] It does not appear that it was actually submitted in ***Perrin*** (either at first instance or in the Court of Appeal) that a claim form should not be extended after the expiration of the limitation period, without good reason. Instead, it was submitted that the application was clumsily drafted and allowed for a gap between the date of the expiration of the claim form and the actual date of the six-month extension granted. The Claimant had therefore failed to meet the timeline set by CPR rule 8.14 to serve the claim form, and the Defendant's right to a limitation defence had accrued. However, the learned judge refused the application to strike out the claim form, corrected the error made in the application and consequent order,

and held that the Court had jurisdiction to try the claim. The learned judge said:

> "*[18] … the administration of justice would be advanced by the court seeking to cure the defect in the drafting of the application by the attorneys for the claimant and rectify the subsequent order made on July 13, 2015.*
> *[19] … the court retains the jurisdiction to correct or cure certain defects depending on the circumstances, and if the interests of justice require it*".

[24] The defendant appealed the decision of a judge to amend the order made, thereby reinstating the claim. It was submitted that the judge could not cure the defect and that the defendant had been deprived of a limitation defence. The issue was whether or not the judge had inherent jurisdiction to amend a perfected order, in order to cure the defect and extend the claim form from the date of expiration. The *ratio decidendi* in the case is that a judge has jurisdiction to correct obvious errors in orders made, in order to preserve the clarity and functioning or efficacy of the order. At paragraphs 35 to 48, the Court of Appeal said that a Court is not permitted to change its mind on an issue, but rather, a Court may correct an obvious error or accidental slip. On the facts of that case, the Court of Appeal held that the judge was permitted to correct her order to reflect her true intention that the claim be extended to permit service of a valid claim.

[25] At paragraphs 49 and 50, Pusey JA (Ag) also said:

> *[49] I have considered the appellant's argument that he would be deprived of the benefit of a defence under the Limitation of Actions Act, in circumstances where the respondent initiated proceedings close to the expiration of the limitation period. Further, he complains that the respondent did not act carefully in proceeding with the claim, and that if the order is modified in any way to reinstate or validate the claim, it would be extremely prejudicial to him.*
>
> *[50] These submissions did not find favour with the court below and were not persuasive in this court either. This court will give effect to the order of the learned judge made on 12 May 2017, whereby having clearly stated in her reasons for judgment, and which can be discerned from her orders made then, she endeavoured to vary her earlier order made on 13 July 2015, which had been made in error, in order to give effect to the intention of the court. The claim had been properly instituted and the respondent had taken the necessary steps to proceed with the claim, although he had failed to pay proper attention to the wording in the application before the court to ensure the extension of the validity of the claim form.*

[26] It seems to me that the dictum in paragraphs 49 and 50 regarding the submission

on the limitation defence does not represent the *ratio* of the decision, and was not meant to establish a precedent or rule that a Master or Judge should never consider the limitation period when considering whether to extend the life of a claim form. Instead, based on the facts of that case, the Court of Appeal saw no reason to disturb the Judge's decision as she had properly exercised her discretion to amend the order to give effect to her intention to extend the validity of the claim form. Further, the submission was not made that a claim form should not be extended after the expiration of the limitation period. The Court of Appeal was therefore not asked to consider this issue, which is an issue before this Court.

ANALYSIS

Were "all reasonable steps" taken to locate and serve the Defendant?

[27] The test of whether the Claimant or those instructed by him have taken all reasonable steps in compliance with rule 8.15(4)(a) of the CPR is an objective one, having regard to the circumstances. In ***Drury*** Smith LJ considered what was required of a claimant and stated this at paragraph 37:

> *"37. … It seems to me that the right approach is to consider what steps were taken in the four-month period and then to ask whether, in the circumstances, those steps were all that it was reasonable for the claimant to have taken.* ***The test must…be objective;*** *the test is not whether the claimant believed that what he had done was reasonable.* ***Rather it is whether what the claimant had done was objectively reasonable, given the circumstances that prevailed****…" (My emphasis)*

[28] The reason proffered by the Applicant for the failure to serve the claim form, is that the Defendant was not found at his home address. Only two attempts were made to locate the Defendant at that address. No other enquiries were made. In the circumstances I am not satisfied that the Applicant had taken all reasonable steps to serve the Defendant, as required by rule 8.15(4)(a). Neither do I find that the delay by the Civil Registry in fixing the hearing date would amount to "*some other special reason*" for extending the period pursuant to rule 8.15(4)(b).

Is it appropriate to grant the application after the claim is time-barred?

[29] It is accepted that in deciding whether or not to exercise my discretion under CPR rule 8.15(4), I must assess what is fair in all the circumstances, having regard to the overriding objective as set out in rule 1.1. In my opinion, having regard to the English cases cited, this process involves the Court giving consideration to the Defendant's right to rely on a limitation defence.

[30] For the purpose of this application, the relevant portions of rule 1.1 provide:

> *"1.1(1) These Rules are a new procedural code with* ***the overriding objective of enabling the Court to deal with cases justly****.*
>
> *(2) Dealing justly with a case includes –*
> *(a) ensuring, so far as is practicable,* ***that the parties are on an equal footing*** *and are not prejudiced by their financial position; …*
> *(d)* ***ensuring that it is dealt with expeditiously and fairly*** *…" (My emphasis)*

[31] The requirement that the Court ensure that "*the parties are on an equal footing"* means essentially that each party must have a reasonable opportunity to present his case under conditions which do not place him at a substantial disadvantage. In this case, I am of the opinion that an order extending the validity of the claim form after the claim is time-barred would place the Defendant at a disadvantage.

[32] 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. In ***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.

[33] In seeking to deliver justice, there should be equality in treatment, proportionality and procedural fairness in applying the rules of the CPR. This means that although the Defendant was not present at the hearing of the application, the Court must consider his rights. The purpose of the Limitation of Actions Act is to protect defendants from stale claims. According to Halsbury's Laws of England,

4th Edition (Volume 28 at paragraph 805) there are three reasons for the enactment of statutes of limitation:

> *"1. A plaintiff with a valid cause of action should pursue it with reasonable diligence.*
> *2. By the time a stale claim is litigated, a defendant might have lost evidence necessary to disprove the claim.*
> *3. Litigation of a long-dormant claim may result in more cruelty than justice."*

[34] Section 46 of our Limitation of Actions Act 1881 ("the Act") provides that the United Kingdom Statute 21 James I, Cap. 16, (Statute of Limitation 1623) has been incorporated into the Laws of Jamaica. Section 46 of the Act therefore provides that an action founded on tort shall not be brought after the expiration of six years from the date on which the cause of action was accrued. Unlike the English Limitation Act (as amended in 1980), our Act does not give the Court the power to extend the limitation period.

[35] It is correct that the claim and application were filed in time. However, the extension sought would deprive the Defendant of his right to rely on a limitation defence. It is preferred that cases be determined on the merits. However, the CPR is not to be used to enlarge, modify or abridge any right conferred on the parties by substantive law. An extension beyond the life of the claim form to a date after the limitation period expired, without good reason, would abridge the Defendant's right to rely on a limitation defence. In ***Hashtroodi***, Dyson LJ said at paragraph 18 that in such circumstances, the claimant is effectively asking the Court "*to disturb a defendant who is by now entitled to assume that his rights can no longer be disputed*". Where no good reason has been proffered as a basis on which to extend the life of the claim form after a claim is time-barred, such an order would offend the spirit of the CPR and the overriding objective. No good reason has been provided here and there are no exceptional circumstances in this case.

Balance of prejudice

[36] I have assessed the balance of prejudice or hardship between the parties. One prejudice to the Defendant by such an order, would be the loss of a statute of

limitation defence. The prejudice to the Claimant if the order is not made, would be his inability to seek redress from the Defendant in respect of any injury sustained during the accident. Having regard to all circumstances, I am not persuaded that it would be appropriate and just to exercise my discretion to extend the validity of the claim form to July 23, 2020. The balance of prejudice tilts in favour of the Defendant. I am not satisfied on the evidence before me that the interests of justice would be served by extending the life of the claim form seven (7) months after the expiration of the limitation period.

Other observations

[37] In my opinion, it is not appropriate for a Claimant or his Attorney to wait until near the expiration of the limitation period to initiate proceedings, without sufficient explanation, and then seek the Court's assistance in getting more time (beyond the initial six months) to serve the claim form. There is no evidence before me that any previous claims were filed before July 23, 2019. Having regard to the fact that the medical report was prepared in 2014 and the doctor allegedly examined the Claimant on December 30, 2013, I would expect that some explanation would be offered for any delay in filing a claim immediately thereafter. No explanation is offered.

[38] In ***Hashtroodi*** at paragraph 21, Dyson LJ said that the three-year limitation period for personal injury claims in England and the four-month time limit within which to serve the claim form were already "*generous*" and that these time limits should not be overlooked when considering an application to further extend the time in which to serve the claim form. In this case, the Claimant had six years to file and serve the claim. This is ample time to file and serve the claim form.

[39] Once it became apparent by August 10, 2019 that the process server could not find the Defendant, it was open to the Claimant to act promptly to obtain an order pursuant to rule 5.14 to permit service on the Defendant via his insurance company. There is no evidence before this Court that the Applicant pursued the

Supreme Court Civil Registry for a hearing date between September and December, 2019, before the expiration of the validity of the claim form and before the claim became time-barred. Had an application pursuant to rule 5.14 been heard before December 24, 2019, it might have been granted and service could have been effected on JNGI.

[40] The Court has also considered the fact that there was a delay by the Civil Registry in fixing the application for hearing. Attorneys should be mindful of the Court's resources and the fact that many files and applications are filed daily. Having regard to the fact that the Claimant's Attorneys knew when the claim would become time-barred and knew when the claim form would expire, they should have sought to have the application heard much earlier. Rule 1.3 of the CPR provides that the parties have a duty to help the Court to further the overriding objective of dealing with cases justly and expeditiously. It is the duty of Claimant's Attorneys to prosecute the claim and this includes writing to the Registrar of the Supreme Court to ensure that the application for service by a specified method was fixed for hearing at the earliest possible date, before the claim form expired. The application pursuant to rule 5.14 cannot now be granted, as it is not appropriate to extend the validity of the claim form.

[41] I have also considered Ms. LaBeach's submission that service of the Notice of Proceedings on JNGI has put the Defendant on notice of the proceedings, and he would not be prejudiced by service of the claim form after the limitation period expired. It did not follow that because JNGI was served with the Notice of Proceedings, that JNGI informed the Defendant that a claim had been filed against him. Further, the Notice of Proceedings is not a substitute for the claim form and the law requires that the claim form be served on the Defendant. It is important to note the purpose of service of the claim form. In ***Hoddinott v Persimmon Homes (Wessex) Ltd*** [2008] 1 WLR 806, it was said at page 821 at paragraph 54:

> *"…service of the claim form serves three purposes. The **first** is to notify the defendant that the claimant has embarked on a formal process of litigation and to inform him of the nature*

*of the claim. The **second** is to enable the defendant to participate in the process and have some say in the way in which the claim is prosecuted: **until he has been served, the defendant may know that proceedings are likely to be issued, but he does not know for certain and he can do nothing to move things along**. The **third** is to enable the court to control the litigation process.… But until the claim form is served, the court has no part to play in the proceedings…" (My emphasis)*

CONCLUSION

[42] I am not satisfied that the Claimant took all reasonable steps to locate the Defendant and to serve the claim form as required by CPR rule 8.15(4)(a). No special reason is indicated in the affidavit evidence to justify an order pursuant to rule 8.15(4)(b). Further, no good reason has been advanced to allow the Court to extend the validity of the claim form after the claim has become time-barred. I am not persuaded to exercise my discretion to extend the validity of the claim form to July 23, 2020, as this would deprive the Defendant of his right to a limitation defence, which accrued on December 24, 2019.

ORDERS

[43] The Court therefore makes the following orders:

1. The application to extend the validity of the claim form is refused.
2. Leave to appeal granted.