



[2022] JMSC Civ 137

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. SU2019 CV 03181

BETWEEN	JAMAICA ASSOCIATION OF COMPOSERS AND PUBLISHERS LIMITED	CLAIMANT
AND	INNTECH COMMUNICATION LIMITED	DEFENDANT

IN CHAMBERS (IN PERSON HEARING CONDUCTED IN COURT ROOM 11)

Mr. Joerio Scott instructed by Messrs. Samuda & Johnson for the Claimant

Mr. Ruel Woolcock instructed by Ruel Woolcock & Co for the Defendant

HEARD: July 11, 18 and 25, 2022

Civil Procedure – Application to Enter Default Judgment on Terms – Meaning of Registered Office of a Company – Whether a company can have more than one registered offices – How to treat with a purported registered address which includes both a physical address and a P.O. Box Number – Whether or not the Defendant was served with the Claim Form and Particulars of Claim.

DALE STAPLE J (AG)

BACKGROUND

[1] The matter before the Court today is an application by the Claimant to enter judgment in default against the Defendant. The Claimant company says that it served the Defendant company on the 19th December 2019. The Defendant company said that this was not the case. Who is correct?

ISSUES

- [2] The fundamental question to be resolved is whether or not I am satisfied, on the balance of probabilities, that the Claimant served the Defendant at its registered address on the 19th December 2019.
- [3] If I am so satisfied, I must then decide whether or not the judgment can be entered as prayed.
- [4] There was no other method of service raised by the Claimant upon which they are asking the Court to act.
- [5] More to the point then it comes down to whether or not I am satisfied, that it is more likely than not that Mr. Ian Smith, the former Bailiff for Portland, did in fact serve the Claim Form, Particulars of Claim and supporting documents on the Defendant company at their registered address.

THE LAWS OF SERVICE

- [6] Service on a registered company can be effected in several ways under the Civil Procedure Rules. The Companies Act also sets out the methods by which a limited liability company can be served.
- [7] I need not go through all of the methods as they are not all relevant to this claim. The relevant rule for these purposes is found under rule 5.7(b). That rule simply says that service on a limited company may be effected by leaving it at the registered office of the company. Section 387 of the **Companies Act** says that a document may be served on a company by leaving it at...the registered office of the company.

- [8] The Defendant, in their submissions, highlighted all of rule 5.7 and sought to argue that the registered office of the Defendant was a P.O. Box and not a physical address. Their argument is that the physical address is really a place of business for the company and not its registered address. Ergo rule 5.7(b) was not the applicable provision, but rule 5.7(d) which speaks to service at a place of business.
- [9] The Claimant's counter to this submission is that there was no ambiguity in the registered address of the Defendant and that it was a physical address at Francis Avenue, Buff Bay in Portland. So their position is that it is rule 5.7(b) of the CPR and s. 387 of the **Companies Act** that applies.
- [10] It is not a complicated provision in either instance. If the documents are left at the registered office of the company, then the company has been duly served. Alternatively, if it is, "served personally on an officer or manager of the company at any place of business of the company which has a real connection with the claim¹", then that is good service as well. Section 2 of the **Companies Act** states that "officer", in relation to a body corporate, includes a director, secretary or manager.

OBTAINING DEFAULT JUDGMENT

- [11] The rules relating to the obtaining of default judgment are found under Part 12 of the Civil Procedure Rules.
- [12] A Default Judgment may be obtained where there has been proved service of the Claim Form and Particulars of Claim, but there has been no acknowledgment of service within the time limited for filing the acknowledgment of service, or no defence filed within the time limited for filing the defence as the case might be.

¹ See Rule 5.7(d) Civil Procedure Rules 2002 (as amended)

[13] Usually, the procedure for obtaining default judgment is an administrative one carried out through the registry. But there are some instances where one has to apply for permission to have the default judgment entered, for example where one is seeking default judgment against a State.

[14] One such instance is found under rule 12.10(4). This is where the Claimant is asking for the Court to enter judgment for some other remedy than a specified sum of money, an unspecified sum of money or for the delivery of goods. In such a case, the Claimant will proceed under rule 12.10(5). I will set it out here:

An application for the court to determine the terms of the judgment under paragraph (4) need not be on notice but must be supported by evidence on affidavit and rule 11.15 (service of application where order made on application made without notice) does not apply.

[15] It is important to note that under 12.10(4), the “remedy shall be in such form as the court considers the claimant to be entitled to on the particulars of claim.”

[16] So the affidavit evidence required under part 12.10(5) must be such as would satisfy the court, on the balance of probabilities, that the Claimant is entitled to the remedy sought in the Particulars of Claim.

[17] It seems to me therefore that a Claimant in such a case must prove the following:

- (a) Service of the Claim Form and Particulars of Claim on the Defendant using an approved method;
- (b) That the time for filing an acknowledgment of service or defence (as the case might be) has passed.
- (c) That they are entitled to the remedy sought in the Particulars of Claim.

[18] In other claims, once the default judgment is entered, liability is conclusive². Here, the Claimant would have to demonstrate, through affidavit evidence, that they can get the remedy they seek.

THE EVIDENCE OF SERVICE

[19] The Claimant must first satisfy me that it was more likely than not that the Defendant was properly served. To do this, they relied on the evidence of Mr. Ian Smith, the former Bailiff for Portland, who they say was the one who effected service on the Defendant company.

What is the address of the registered office?

[20] I must first resolve a question based on the submissions of the Defendant: what is the registered office of the Defendant as opposed to their place of business? Mr. Woolcock made a very nuanced argument based on the stated registered office of the Defendant.

[21] Section 106(1) of the **Companies Act** mandates that a company must have a registered office to which all communications and notices may be addressed. It further provides that notice of this office must be set out in the prescribed form. There is no requirement for the address to be a physical building. It must simply be somewhere to which all communications and notices may be sent.

[22] In his second affidavit, the Defendant's Managing Director exhibited the annual returns for the Defendant for the years 2010 and 2019. The portion of the returns giving the location of the registered office given in the returns is set out:

² See the case of *Blagrove v Metropolitan Management Transport Holdings Ltd et al* (Unreported) SCCA 111/05, Court of Appeal, Jamaica, December 10, 2006.

Location of Registered Office:

Street or District: Francis Avenue

Town: Buff Bay

Post Office: P.O. Box 31, Buff Bay

Parish: Portland

[23] Mr. Woolcock submitted that the registered office is P.O. Box 31, Buff Bay P.O. But I do not find that this is so. If this were the case, then there would be no need to state the street name. That section would be left blank. Indeed, when one looks at the form in the 16th Schedule to the **Companies Act**, the section relating to the location of the registered address gives varying options for identifying the company's registered address. This form is the form for first registration of the company. It has fields for:

- (i) a physical location with a building/complex/apt./suite;
- (ii) a street number and name;
- (iii) the town/District
- (iv) the post office;
- (v) the P.O. Box number
- (vi) The parish
- (vii) The Country
- (viii) The postal code.

[24] So in giving the registered address of the company a physical location, as in a street name and town, and parish as opposed to **solely** (emphasis mine) a P.O. box number, P.O. name and Parish, then it raises a question as to whether the registered office is the physical location, or the P.O. Box Number.

[25] Mr. Woolcock further submitted that there is a difference between the Defendant's place of business as opposed to its registered office. The place of business is Francis Avenue, Buff Bay in Portland. I agree that there is a difference between a company's place of business and its registered address in theory. But in many instances, the place of business is also a company's registered address. Care needs to be taken by corporate secretaries and officers of the company in properly

identifying the registered address of the company in the relevant forms. Perhaps the Office of the Registrar of Companies may need to give better directions on the filling out of this aspect of the form so that there is less confusion for lay persons who are acting on their own.

[26] In this case the address the Defendant gives for it's registered office is also, on the face of it, Francis Avenue, Buff Bay, Portland. By not exclusively stating the P.O. Box number as the address for it's registered office, the Defendant itself has, in my view, made it so that it's registered office could reasonably be interpreted to be Francis Avenue, Buff Bay in Portland.

[27] Mr. Innis never helped to clarify matters either. Here is the exchange between he and Mr. Scott during cross-examination on this issue:

Q: You said earlier that your address is 11 Lexington Avenue. What is the address of the Defendant? The Registered Address?

A: Francis Avenue, P.O. Box 31, Buff Bay, Portland.

[28] The Companies Act does restrict a company to only one address for its registered office. So it cannot be both a P.O. Box and a physical address. I find therefore that the registered office for the Defendant is also Francis Avenue, Buff Bay in Portland in addition to that address being its place of business.

Did Mr. Smith serve the Defendant?

[29] But here is the rub of it. Did Mr. Smith go to Francis Avenue, Buff Bay in the Parish of Portland to the Defendant's address as he said he did? Having read the submissions of both the Claimant and the Defendant on the question of service, it is clear that this comes down to a question of whether or not I am able to rely on Mr. Smith's evidence. If I accept his evidence, and am satisfied to the required

standard, then I would hold that the Defendant was properly served. Unfortunately, for the Claimant, I do not believe he did.

[30] I had the advantage of seeing Mr. Smith give evidence in the witness box under cross-examination. His evidence was given in a manner which suggested that he was uncertain about his evidence. I found that I could not rely on him as a witness.

[31] He had trouble remembering what the building looked like. He could not say for certain whether the building, used to broadcast music etc, had any antennae and what it or they looked like. He said he **may** have gone to serve the Defendant before. Even in this statement, the witness was hedging his bets. So I find his recollection unreliable.

[32] Here is an exchange on a crucial matter of the description of the building:

Q: You said you went to the Defendant's registered office on the 19th December 2019. Can you describe the exterior of that office?

A: I think (emphasis mine) the building is more of a house and the colour could have been cream or an off-whitish colour.

Q: But you are not sure?

A: I am not 100% sure. The property is situated about 5 minutes' walk from the Court in Buff Bay.

Q: Was there anything on the building that would make you certain that that building was associated with the Defendant in this matter?

A: I think there may have been antennas as well.

Q: But you are not sure?

A: I cannot recollect.

[33] When Mr. Scott attempted to rehabilitate in re-examination, it did not go well. Mr. Scott asked him to describe the antennae and he said they were poles pointing in the air. He then asked if there was just one and Mr. Smith said it was a **possibility**

(emphasis mine) that there was more than one. This certainly does not inspire confidence in Mr. Smith as a reliable witness. I say this because a building used to broadcast is a rare sight. Especially so in rural Jamaica. Surely such a unique building would stand out in one's memory. Especially a person whose major roles include the serving of process.

[34] Then we come to the question as to the person upon whom Mr. Smith said he served the documents. In his Affidavit evidence sworn on the 4th May 2022, Mr. Smith said he served Ms. Suzette Griffiths, the secretary.

[35] The evidence from Mr. Innis, which I accept and which was not challenged by the Claimant, is that there was no employee of the Defendant in 2019 by the name of Suzette Griffiths.

[36] Mr. Smith admitted in cross-examination that he did not verify the name of the person whom he spoke with by requesting any form of identification. It is therefore possible that he got the wrong name. But he was quite adamant on the name. So I do believe he gave the documents to a person named Suzette Griffiths. The problem though is that no such person was employed to the Defendant in 2019.

[37] Mr. Scott argued that it would be irrelevant the identity of the person upon whom the documents were served, so long as I was satisfied that it was delivered to the registered office of the Defendant. I would agree with this argument and the authorities provided in support. However, I have analysed it in the context of answering the question as to whether he went to the correct location in the first place. The fact that he identified a person, who is not evidentially connected to the Defendant at all, as the person with whom he left the document, suggests that he may have gone to the wrong location.

[38] Mr. Scott did not seek to ask Mr. Innis if they hired any substitute employees or anything of that nature that would explain how a Suzette Griffiths could have come to be working at the Defendant's office in December of 2019. In fact, Mr. Innis did

say that they had casual employees. But Mr. Scott never pursued that line of enquiry any further. So there ends that.

[39] I accepted the evidence of Mr. Innis. He was a firm and forthright witness and was not at all shaken in cross-examination. I was satisfied, that it is more likely than not that there was no employee to the Defendant named Suzette Griffiths in 2019. This is supported by the employee returns of the Defendant for the period which were not challenged by Mr. Scott. I accepted the documents as proof of what they were saying.

[40] In the circumstances therefore, I find that Mr. Smith was not a reliable witness concerning the location where he went to serve the documents. His vague descriptions and uncertainty in testimony concerning the physical location of the Defendant's registered office did not impress me at all.

[41] As a bailiff, it is one of his paramount duties to serve court process. He is expected to and indeed required to provide proof of service of documents in a manner sufficient to convince a court that the process he is given to serve was properly served. So one would expect him to be able to give a detailed account of the circumstances of service of any document when called upon so to do. He has failed in that regard. Accordingly, I am not satisfied that he actually went to the Defendant's registered office or even its place of business.

[42] While I do believe he served a Suzette Griffiths with the documents, I believe that this person was not in any way connected to or located at the Defendant company on the 19th December 2019. I find that Mr. Smith went to the wrong location to deliver the documents.

CONCLUSION

[43] In light of my findings above, I am not satisfied that it is more likely than not that the Defendant was served with the Claim Form, Particulars of Claim and other supporting documents.

[44] In the circumstances therefore the Claimant's application for entry of default judgment is refused.

[45] The Claimant is therefore directed to refile a fresh claim as the life of the Claim Form in this matter has expired and cannot now be revived. Upon the refiling of the fresh claim, the Claimant may seek to effect service on the Defendant anew.

DISPOSITION

1. Claimant's Application for Court Orders filed on the 2nd December 2020 is refused.
2. Costs to the Respondent to be taxed if not agreed.
3. The Claimant is directed to file a fresh claim as the life of the current claim form has expired.
4. Defendant's Attorneys-at-Law to prepare file and serve this Order on or before the 29th July 2022 by 3:00 pm.
5. Leave to appeal is refused.

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D. Staple, J (Ag)