



[2024] JMSC Civ.181

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

SU2023CV02218

BETWEEN NICOLE LEWIS CLAIMANT

A N D DAPHNE BARBEE-WOOTEN DEFENDANT

IN CHAMBERS - VIA VIDEO LINK (ZOOM PLATFORM)

Ms. Ashley Clarke instructed by Georgia Hamilton & Co. for the Claimant/Respondent

Mr. John Givans instructed by Givans & Co. for the Defendant/Applicant

HEARD: November 15, 2024 and December 13, 2024.

*Civil Practice and Procedure – Commencement of Action – Filing of Claim Form – Rule 8.1 – When is a Claim Commenced – Whether Date for Commencement of Action can be extended under rule 3.2(5) Where the Period for Doing an Act Requiring the Court’s Action Ends on a Day When the Court’s Office is Closed*

*Statutory Interpretation - Limitations of Actions Act – When Limitation Period Ends in a Case Involving a “Fraction of a Day”*

D. STAPLE J

BACKGROUND

[1] It is appropriate for us to remember the words of Harman LJ in the case of *Baker v Bowketts Cakes Ltd*<sup>1</sup>,

---

<sup>1</sup> [1966] 1 WLR 861 at 867

*“...Now it is true that you may wait until the 364th day of the [last year of the limitation period] before issuing your [claim form] and until the [last day of the validity of the claim form] before serving it and you will still be in time. **But if you choose to wait until the last moment like that, you must be very careful to be right, and there is no reason why you should be given any further indulgence. The nearer you get to the last moment, the stricter ought to be the attitude of the court...**” (emphasis mine)*

[2] In my previous decision in this case on whether to allow the defence to be amended, the Court construed Rule 3.2(5) as stating that the Civil Procedure Rules Could not extend to apply to the timeline set under the **Limitation of Actions Act**.

[3] However, Counsel for the Claimant, unlike the last time this issue faced the Court, has put before the Court several compelling authorities which have necessitated the Court looking at the issue afresh in light of the question now before the Court as to whether the Claimant’s case should be struck out as being filed out of time. It would have been greatly helpful and would have saved time had this industry been applied then.

#### *Was the Action Commenced After the Limitation Period?*

[4] The Claim Form was filed on the 7<sup>th</sup> July 2023. The Court takes judicial notice of the fact that July 7, 2023 was a Friday. It was filed at 3:24 pm. No dispute was raised about this evidence from Mr. Givans’ affidavit. On a Friday, the Civil Registry of the Supreme Court closes for business at 3:00 pm. This fact is known to counsel who practice at the Civil Division of the Supreme Court.

[5] Ms. Ashley argued that rule 3.2(5) could save her. I will set it out here:

When the period specified by –

- (a) these Rules;
- (b) a practice direction; or
- (c) any judgment or order,

for doing any act at the registry ends on a day on which the registry is closed, it shall be in time if done before close of business on the next day on which the registry is open.

- [6] Her argument was that since the Claim Form was filed at a time when the Registry was closed, the rule operates to treat the document as if filed in time as it would be done before the close of business on Monday the 10<sup>th</sup> July 2023.
- [7] I had ruled initially that this argument was invalid. I held the view then that the rule only applies to periods specified by **the rules, a practice direction or a judgment or order of the Court (emphasis mine)** and that It did not apply to any period specified by statute.
- [8] Counsel Ms. Clarke submitted this time around that the authority of ***Pritamkur v S. Russel & Sons Limited***<sup>2</sup>, which was applied with strong approval by our Court of Appeal in the case of ***Stokes et al v Abrahams***<sup>3</sup>, establishes in Jamaica that that rule also applies to times prescribed by Statutes.
- [9] Having examined the authorities provided, Counsel is still incorrect on this particular aspect of the case, but she will ultimately win the argument as I will attempt to explain below.
- [10] ***Pritamkur*** concerned the case of a widow whose husband had been killed at work on September 5, 1967. The solicitors for the widow and administratrix of a foundry worker who had been killed at work on September 5, 1967. Her lawyers issued a writ on her behalf on September 7, 1970, against her late husband's employers claiming damages for negligence and breach of statutory duty under the Fatal Accidents Acts 1846 to 1959 and the [Law Reform \(Miscellaneous Provisions\) Act 1934](#). Under section 2 (1) of the Limitation Act 1939 as amended the three-year

---

<sup>2</sup> [1973] QB 336

<sup>3</sup> Unreported Court of Appeal of Jamaica SCCA No. 80/88 delivered on the 26<sup>th</sup> March 1992

period "from the date on which the cause of action accrued" expired on September 5, 1970.

- [11] However, that date was a Saturday and the court offices were closed, as they were also on Sunday the 6th. On Monday, September 7, the next available date on which the court offices were open, the solicitors took the writ to the district registry where it was stamped and duly issued. The employers entered a conditional appearance, but by paragraph 1 of their defence they claimed that the cause of action did not accrue within three years before the commencement of the action and that they could therefore rely on section 2 (1) of the Act of 1939, as amended; and they applied to have the writ set aside.
- [12] The question whether the writ had been issued in time was tried as a preliminary issue by Willis J. who held that the action was statute-barred; but he gave the widow leave to appeal.
- [13] On Appeal, the Court of Appeal held that the Claim was not statute barred and was filed within time.
- [14] The Court of Appeal said, in summary, that where an Act of Parliament prescribed a period for doing an act which could only be completed if the court offices were open, the court could construe the period, in a case where it expired on a day when the court offices were not open, as being extended to the next day on which they were open. As therefore the three-year period for issuing the writ expired on a *dies non juridicus*, September 5, the plaintiff's writ, issued on the next available day when the offices were open to complete the act, September 7, was issued in time, and her action was not statute-barred.

[15] Insofar as the construction of the rule is concerned, the Court of Appeal actually held that the **rule of court** could not operate to extend the limitation period established by Parliament. Denning MR (as he then was) said as follows<sup>4</sup>:

*At the outset I would emphasise that the period of limitation (three years) is prescribed by the statutes. It is not prescribed by the Rules of Court. If it had been prescribed by Rules of Court, there is a rule in the High Court (Ord., 3, r. 4), and a rule in the county court (Ord. 48, r. 10 (3)), which say that if the court offices are closed, the time is extended till the next day on which that office is open. But neither of those rules, as I read them, applies to cases when the time is prescribed by statute. I am aware that the county court rule only uses the words "time prescribed," but I think that it implies "time prescribed by these rules." I am afraid that I do not agree with the contrary view expressed by Davies L.J. in *Hodgson v. Armstrong* [1967] 2 Q.B. 299, 317.*

[16] So to be clear, what Denning said was that if the time prescribed was set by Statute and not the rules, then the rule could not be applied to extend the statutory time limit.

[17] But in true Denning fashion, he proceeded to fashion a remedy. This was the quote from him referenced by Counsel Ms. Clarke in what I found to be her excellent and compelling submissions filed on the 22<sup>nd</sup> November 2024:

***In laying down a rule, we can look to parallel fields of law to see the rule there. The nearest parallel is the case where a time is prescribed by the Rules of Court for doing any act. The rule prescribed in both the county court and the High Court is this: If the time expires on a Sunday or any other day on which the court office is closed, the act is done in time if it is done on the next day on which the court office is open. I think we should apply a similar rule when the time is prescribed by statute. By so doing, we make the law consistent in itself: and we avoid confusion to practitioners. So I am prepared to hold that when a time is prescribed by statute for doing any act, and that act can only be done if the court office is open on the day when the time expires, then, if it turns out in any particular case that the day***

---

<sup>4</sup> n. 2 supra at 348-349

*is a Sunday or other dies non, the time is extended until the next day on which the court office is open*<sup>5</sup>.

- [18] So what Denning did was to take a construction from a differently worded rule and gave it broader application to a scenario which fit the case before him.
- [19] An important aspect of the *Pritamkaur* case is that that broader rule relied upon by Denning, did not exist in the High Court in which the Appellant's case was filed.
- [20] Megarry J, one of the appellate judges in the *Pritamkaur* case, made the point rather elegantly. It is an extensive, but necessary quote to explain the evolution of the argument and the ultimate conclusion to which I have arrived. Here is what he said<sup>6</sup>:

*"A somewhat odd procedural point emerged during the hearing of this appeal. The present Rule of the Supreme Court on the expiry of time, Ord. 3, r. 4, provides that "where the time prescribed by these Rules, or by any judgment, order or direction," for doing any act at an office of the Supreme Court expires on a day on which the office is closed, the act is to be in time if done on the next day on which the office is open. **That provision is plainly confined to times prescribed by the Rules, and so on, and cannot be read as applying to times laid down by statute.** The rule in this form was introduced by Rules of the Supreme Court (Revision) 1962. Before that, the rule had been Ord. 64, r. 3, and it began, "Where the time for doing any act or taking any proceeding" expires on a day on which the offices are closed, and so on. This former wording closely corresponded with the County Court Rule that was construed in *Hodgson v. Armstrong* [\[1967\] 2 Q.B. 299](#), so that on the footing that that rule was decisive in that case, the result of other cases might well, by the change in the wording of the Rules of the Supreme Court, be made to depend on whether the case falls within the County Court or High Court jurisdiction: if the former, time would in effect be extended under the Rules; if the latter, not. Such a distinction would hardly be creditable to the law. With great respect, I find much*

---

<sup>5</sup> Id at page 349

<sup>6</sup> Id at p. 352-353

*difficulty in following the view that Ord. 48, r. 10 (3) of the County Court Rules applies to periods fixed by Act of Parliament.”*

*So if the Statute Cannot Extend the Time Set By Statute, How Did They Resolve the Problem?*

[21] So what did he do? He construed the statute itself to find the solution to the problem. The reasoning, in my view, was that Parliament must have had in their contemplation that the person would have been entitled to the benefit of the period up until the last moment of the period. Parliament must also have contemplated that there would be scenarios where the end point of the period falls on a day when the Court’s office is closed and so the litigant would not be able to benefit.

[22] Thus he drew upon a rule of **statutory interpretation** and said that if the Court’s office is closed on the last day, and the Court’s intervention is at least partially needed in order for the litigant to do the act allowed on that last day, then time should be extended to the next day on which the Court’s office is open. This was a much better solution than that arrived at by the esteemed Master of the Rolls in my view and I prefer this solution to Denning’s. Megarry J set it out eloquently as follows:

*“The operation of the Statutes of Limitation has sometimes been called an act of peace, in that the statutes prevent long dormant claims being stirred up. **An arbitrary period has to be fixed in order to make the Act certain and workable**; but in applying that period to cases where the courts are shut on the last day, **the policy of the statute seems better effectuated by allowing an extra day or two than by subtracting a day or two. The difference between three years and three years and a day cannot normally make much difference to a defendant; it may be disastrous to a plaintiff.** It is true, as Russell L.J. pointed out in *Hodgson v. Armstrong* [[1967](#)] [2 Q.B. 299](#), 323, that as the offices of the court close each afternoon, a litigant does not get his full period and may fail to issue his writ in time if he arrives an hour or two after the offices have closed on what for him is the last day; **but I think that the legislature may be safely assumed to have contemplated that the offices will not remain open until midnight each day, and that a litigant will get the full period intended if the offices are***

***open during the prescribed hours on his last day.” (emphases mine)***

- [23] This last point of emphasis bears highlighting. What Megarry J here is saying is that the litigant is deemed to receive the full benefit of the last day if the Court’s offices are open during its prescribed hours on the last day of the limitation period.
- [24] So if it’s the last day for filing and the Court’s offices are opened for normal hours and the litigant files the Claim after the closing hours on that day, then the Claim would be statute barred as the Claimant would have filed outside of the prescribed hours of the Court on the last day. He would not have taken advantage of the benefit of this last day.
- [25] In my view, and this is *obiter*, if for some reason(s) the Registry’s normal opening hours are curtailed, then it could be argued that the Claimant would not receive “the full benefit” of the last day for filing his action and so time could be extended to the next day on which the Court is open for business.
- [26] The ***Pritamkaur*** decision was applied by our Court of Appeal in the case of ***Stokes et al v Abrahams***. In that case, the Court of Appeal, among other things, had to determine whether or not an application for conditional leave to appeal to her Majesty in Council (as the monarch then was), was filed within time to be considered by the Court of Appeal.
- [27] The Court had to construe rule 3 of the **Jamaica (Procedure in Appeals to the Privy Council) Order in Council 1962**. Bear in mind that this is a statute or deemed to have the force of statute. It provided as follows:

*Applications to the Court for leave to appeal shall be made by motion or petition within twenty-one days of the date of the judgment to be appealed from and the applicant shall give all parties concerned notice of his intended application*

- [28] In the matter before the Court of Appeal, the 21<sup>st</sup> day fell on the 1<sup>st</sup> January, a public holiday when the Court of Appeal was closed. It was argued that the filing



of the motion on the 2<sup>nd</sup> January was out of time. The Court of Appeal rejected that contention relying on the ruling in *Pritamkaur*.

[29] So in conclusion, the time for bringing a claim is specified by the **Limitation of Actions Act**. The Civil Procedure Rules cannot extend this time limit as they are subsidiary legislation.

[30] However, the **Limitation of Actions Act** has been interpreted to say that if the limitation period ends on a day when the Court is entirely closed for business (for whatever reason, I would hasten to add) or even potentially its hours abnormally curtailed, then the time to file the claim will be extended to the next day on which the Court would be open for business.

#### **APPLICATION TO THE PRESENT CASE**

[31] In the case at bar, the Claim Form was received at the Registry on the 7<sup>th</sup> July 2023 at 3:24 pm. The Claim Form was therefore filed at a time when the Registry was closed for business. In that case, it would be treated as being received on the next day the registry was open for business. That would have been Monday the 10<sup>th</sup> July 2023. So the Claim was not commenced until Monday the 10<sup>th</sup> July 2023.

[32] By virtue of the fractions of a day principle, the limitation period for this case was commenced on the 9<sup>th</sup> July 2017, the day following the collision on the 8<sup>th</sup> July 2017. It is common ground between the parties that the collision did not occur near midnight, but in the afternoon.

[33] The limitation period therefore expired, not on the 7<sup>th</sup> July 2023, but on the 8<sup>th</sup> July 2023. This is because, the fraction of day principle says that the law does not recognise fractions of day and so, if the cause of action arose on at a time of a day that was not close to midnight, then that day is not to be counted for the purposes

of determining the limitation period and the counting starts from the next day. See the case of ***Matthew et al v Sedman et al***<sup>7</sup>.

[34] I take judicial notice of the fact that the 8<sup>th</sup> July 2023 was a Saturday. As such, the Court's Office was closed for business on the Saturday. The Claimant could not therefore take advantage of this day.

[35] However, because of the filing on the 7<sup>th</sup> July 2023, even though it was late, it was deemed filed on the 10<sup>th</sup> July 2023. Applying the ***Pritmakaur*** rule of statutory interpretation explained above, the limitation period did not expire until the end of court's business day on the 10<sup>th</sup> July 2023. This was the date the Claim was deemed filed.

## **CONCLUSION**

[36] In all the circumstances, it is my view that the Claimant's claim is not statute barred.

## **DISPOSITION**

- 1 It is declared that the Claimant's claim is not statute barred and may continue to trial
- 2 Costs to be the Claimant's on this consideration in any event.

.....  
**Dale Staple**  
**Puisne Judge (Ag)**

---

<sup>7</sup> [2021] UKSC 19