



[2017] JMSC Civ 223

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**IN THE CIVIL DIVISION**

**CLAIM NO. 2014HCV04608**

<b>BETWEEN</b>	<b>DANE MILLER</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>ISLAND CAR RENTALS LIMITED</b>	<b>FIRST DEFENDANT</b>
<b>AND</b>	<b>SOPHIA WILLIAMS</b>	<b>SECOND NAMED DEFENDANT</b>

**IN CHAMBERS**

Mr. Rudolph Francis for the Claimant

June 10, 2017 and July 26, 2017

Exparte Application for Court Orders Pursuant to – Rules 8.14(1) and 8.15 of the CPR

**MASTER MASON (AG.)**

- [1] This application is as a result of a motor vehicle accident which occurred on May 3, 2014 along Hagley Park Road, Kingston 10 in the parish of Saint Andrew. The Claimant was driving a Toyota Rav 4, Station Wagon Motor Vehicle bearing registration number 1300 FR when a collision occurred with a Suzuki Grand Vitara Motor vehicle bearing registration number 0082 BH owned by the first named defendant and driven by the second named defendant.
- [2] The Claimant is claiming damages for personal injuries and financial loss including costs of repairs to the Toyota Rav 4 Station Wagon Motor Vehicle and loss of earnings.

- [3] On October 1 2014, the Claimant filed a Claim Form and Particulars of Claim and subsequently on October 6 2014, he filed an Amended Claim Form. It is noted that the Claimant filed an Amended Particulars of Claim on February 23 2016
- [4] Mr. Norman Brown, the assistant bailiff of the Resident Magistrate's Court for the Corporate Area (Civil Division), by way of an Affidavit of Service filed on February 10, 2016 deponed that he served an Amended Claim Form and Particulars of Claim on the manager of the first named defendant at the company's office at 17 Antigua Avenue, Kingston 10. He stated that he was unable to effect personal service on the second named defendant, Sophia Williams, on the 9<sup>th</sup> and 10<sup>th</sup> October 2014 at the address she gave to the police on the day of the accident, that being Lot No. 1664 Seaview Gardens, Phase 2, Kingston 11 in the parish of Saint Andrew.
- [5] Consequently, the Claimant, being unable to serve the second named defendant, filed an Ex Parte Notice of Application for Court Orders on February 10, 2017 where he sought the following orders:
- (i) That service of a sealed copy of the Claim Form and the Amended Particulars of Claim in these proceedings be effected on the second named defendant, Sophia Williams of Brooklyn, New York in the United States of America by placing two (2) publications of a Notice of Proceedings herein, in the overseas edition of the Daily Gleaner Newspaper seven (7) days apart.
  - (ii) That service of a sealed copy of the Amended Claim Form and a sealed copy of the Amended Particulars of Claim be served on the second named defendant Sophia Williams by sending a sealed copy of the Amended Claim Form and a sealed copy of the Amended Particulars of Claim to her by registered post to Lot No. 1664 Seaview Gardens, Phase 2, Kingston 11, Saint Andrew, Jamaica.

**[6]** The Ex Parte Application was heard on March 27, 2017 by Master Harris. The Application was withdrawn because the Claim Form had expired in relation to the second named defendant. The court could not make an order for substituted service on a Claim Form that had expired.

**[7]** Notwithstanding the outcome of the Ex Parte Application heard on March 27, 2017 by Master Harris, the Claimant filed another Ex Parte Notice of Application for Court Orders on March 29, 2017 seeking the following Orders:

(i) An Order extending the time for Service of the Amended Claim Form filed on the 6<sup>th</sup> day of October 2014 on the second named defendant to the date of the hearing of this application for a further period of six (6) months to the 5<sup>th</sup> day of October 2017.

(ii) That service of a sealed copy of the Claim Form and the Amended Particulars of Claim in these proceedings be effected on the second named defendant, Sophia Williams of Brooklyn, New York in the United States of America by placing two publications of a Notice of Proceedings herein in the overseas edition of "The Daily Gleaner" newspaper seven (7) days apart.

(iii) That service of a sealed copy of the Amended Claim Form and a sealed copy of the Amended Particulars of Claim be served on the second named defendant, Sophia Williams by sending a sealed copy of the Amended Claim Form and a sealed copy of the Amended Particulars of Claim to her by registered post to Lot No. 1664 Seaview Gardens, Phase 2, Kingston 11, St. Andrew, West Indies.

**[8]** The court is hereby called upon to consider the following issues:

(i) whether permission should be granted to the Claimant to extend the life of the Claim Form so that service can be effected?

- (ii) Whether the Amended Claim Form & Amended Particulars of Claim should be served on the second named defendant by substituted means out of the jurisdiction despite its expiration?

**Issue One:-** Should permission be granted to the Claimant to extend the life of the Amended Claim Form so that service can be effected?

**[9]** Rule 8.14(1) of the CPR states as follows: “The general rule is that a Claim Form must be served within twelve (12) months after the date when the Claim Form was issued or the Claim Form ceases to be valid.”

**[10]** The Claim Form was filed on October 1, 2014 and was amended on October 6, 2014. It took the Claimant two (2) years and five (5) months before he saw it fit to make an application to the Court to extend the life of the Claim Form. It is noted that the language of rule 8.14(1) is mandatory. It explicitly says that the Claim Form must be served within twelve (12) months after the date the Claim Form was issued. Therefore, if as in the instant case, the Claim Form is not served within that time frame, it is deemed to be invalid.

**[11]** There is an exception to the general rule of rule 8.14(1), whereby the Claimant could have applied for an order to extend the time within which the Amended Claim Form may be served – see rule 8.15(1). However, rule 8.15(1) is further qualified by Rule 8.15(3)(a) which states that such an application must be made within the period before the expiration of the Claim Form.

**[12]** The Claimant by his second Ex Parte application, made an application to the Court to extend the time for service of the Amended Claim Form, albeit, some two (2) years and five (5) months after the Claim was filed. By that second Ex Parte application filed on March 29, 2017 the Claimant was asking the Court to extend the Amended Claim Form filed on October 6, 2014 to the date of the hearing of the application and for a further period of six (6) months to October 5, 2017. Rule 8.15(2) allows for an extension of the period for serving the Claim Form but such an extension may not be longer than six (6) months on any one

application. The Claimant at paragraph 1 of the instant Ex Parte Application filed on March 27, 2017 is asking the court to approve two (2) extensions of the Amended Claim Form in one application. This, to my mind, is procedurally incorrect and does not conform with section 8.15(2) of the CPR.

- [13]** The following rule goes on to outline the steps the court must consider if an application is made in a timely manner which is not the case in the instant matter.

Rule 8.15(4) of the CPR states as follows:

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.

- [14]** Based on the Affidavit evidence of the Process Server Mr. Norman Brown filed on February 10, 2017 he visited Lot No. 1664 Seaview Gardens, Phase 2 on October 9, 2014 where he made enquiries about Sophia Williams the second named defendant. He was told that neither the second named defendant nor her sister was at home.

- [15]** The Process Server returned to the said address on the following day October 10, 2014 where he spoke to a lady who identified herself as the second named defendant's sister. He was told that the second named defendant had returned to Brooklyn New York. The sister refused to give him the address in New York, but stated that the second named defendant stays at that address whenever she is in Jamaica.

- [16]** I am not convinced that the Process Server has taken all reasonable steps to serve the documents by merely making two (2) visits to the address of the second named defendant. To my mind, all reasonable steps would require more

effort on the part of the Claimant. The information concerning the whereabouts of the second named defendant is inadequate and unconvincing for the most part.

- [17] The affidavit evidence of Mr. Norman Brown is lacking in substance. Furthermore, there is no fresh affidavit evidence to support the application filed on March 29, 2017. The same Affidavit evidence used in the earlier Ex Parte application filed on February 10, 2017 was relied on by the Claimant in the second Ex Parte application. It is clear that insufficient material has been presented to the court regarding efforts made to trace the whereabouts of the second named defendant with a view to having her served with the documents. I conclude that on this ground the Claimant has failed to show good cause as to the reason for the delay in serving the Amended Claim Form on the second named defendant.

**Issue Two:-** Should the Amended Claim Form and Amended Particulars of Claim be served on the second named defendant by substituted means out of the jurisdiction despite its expiration?

- [18] In perusing the Ex Parte Notice of Application for Court Orders filed on March 29, 2017 it is noted that paragraph 2 is asking for service of a sealed copy of the Claim Form and Amended Particulars of Claim in these proceedings to be effected on the second named defendant Miss Sophia Williams of Brooklyn New York, in the United States of America by way of two applications of a Notice of Proceedings in the overseas edition of the "Daily Gleaner Newspaper" seven (7) days apart.

- [19] Paragraph 3 is asking that service of a sealed copy of the Amended Claim Form and a sealed copy of the Amended Particulars of Claim be served on the second named defendant Miss Sophia Williams by sending a sealed copy of the Amended Claim Form and Amended Particulars of Claim to her by registered post at Lot No. 1664 Seaview Gardens, Phase 2, Kingston 11, St. Andrew Jamaica.

- [20] The Claim is invalid and merely making an application to the court to serve an Amended Claim Form and Amended Particulars of Claim by substituted means does not in any way resurrect the Claim. Therefore, the answer to issue two above must be in the negative.
- [21] It must be emphasised that an application for renewal must be made in a timely manner. It must be shown to the court that exceptional circumstances exists that caused the delay in serving the documents and that reasonable steps were taken to trace the second named defendant so that service could be effected. This was not the case in this matter and accordingly the Claimant has failed to show good cause or reason for the delay in serving the Claim Form on the second named defendant.
- [22] I turn to the case relied upon by the Claimant to show good reason for extending the original Claim Form: **Jones v. Jones & Anor.** [1970] 3 ALL AER 47. I am of the view that this case is of persuasive value only. The decision is not binding in our courts and as such, ought not to be considered in this matter.
- [23] Mr. Rudolph Francis also mentioned that he was unable to source any relevant cases from this jurisdiction to substantiate his application, which to my mind is irrelevant since the claim is invalid.
- [24] It is for the reasons set out above that the Claimant's application to extend time for service of the Amended Claim Form and for substituted service out of the jurisdiction on the second named defendant is refused.