[2020] JMSC Civ 11

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. SU2019CV00169

BETWEEN	**SEAN SCOTT**	**CLAIMANT**
AND	**MEVA BROWN**	**1ST DEFENDANT**
	WAYNETTE BROWN	**2ND DEFENDANT**
	DANIEL ALLEN	**3RD DEFENDANT**

Mr. Vaughn Bignall and Ms. Monique Thomas instructed by Bignall Law for the Applicant/Claimant.

Heard January 22, 24 and 31, 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] On January 22, 2019 I heard an application to extend the validity of the claim form, pursuant to rule 8.15 of the Civil Procedure Rules (hereinafter "CPR") and an application to permit service by a specified method, pursuant to rule 5.14 of the CPR. Counsel Ms. Thomas requested time to prepare written submissions and the hearing was adjourned to January 24, 2019. Written submissions were not filed but counsel made further oral submissions on January 24, 2019 and judgment was reserved until January 31, 2019.

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

BACKGROUND

[3] By Without Notice Application (hereinafter "the application") filed on May 9, 2019, the Applicant 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 on the 2nd and 3rd Defendants and permitting service via publication of a Notice of Proceedings in a newspaper, or service on Advantage General Insurance Company Limited ("AGIC"), which insured the 1st and 2nd Defendant's vehicle.

[4] The claim arises from a motor accident which occurred on June 8, 2013, along Burlington Avenue, Kingston in the parish of Saint Andrew. It is alleged by the Applicant that he was injured when a vehicle licensed PD4298 was so negligently operated by the 3rd Defendant that he caused a collision with vehicle licensed CJ3316. The Applicant was a passenger in the vehicle owned by the 1st and 2nd Defendants and operated by the 3rd Defendant.

[5] The claim form and the particulars of claim were filed on January 18, 2019, approximately six weeks before the expiration of the limitation period in respect of the personal injury claim. Several medical reports were attached to the particulars of claim. The medical report dated October 8, 2014, prepared by Dr. Ravi Prakash Sangappa, and the medical report dated June 25, 2014 prepared by Dr. Andrew Ameerally are addressed to the Supreme Court of Jamaica. In addition, the Claimant relies on an X-ray Report dated June 13, 2013 prepared by Dr. Karlene Neita, Consultant Radiologist, and a Physiotherapy report dated January 6, 2014.

[6] On May 9, 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 Howard Wilks attempted to effect service on the Defendant without any success.
2. The whereabouts of the 2nd Defendant (the other owner of the vehicle) and the 3rd Defendant (the driver) is unknown.
3. The 1st and 2nd Defendants were insured by AGIC 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 May 9, 2019 stated that in the course of his employment as Process Server employed to Bignall Law, he received instructions on January 21, 2019 to serve the claim form, the particulars of claim and other accompanying documents on the 2nd Defendant. As a result of instructions received, on February 11, 2018 between 10 a.m. and 11 a.m. and on February 22, 2019 between 5 p.m. and 6 p.m. he proceeded to 25 Mandala Avenue, Kingston 19 in St. Andrew, to locate the 2nd Defendant. However, Mr. Wilks said his attempts to locate the 2nd Defendant were unsuccessful as he was not at home, though his wife was seen at the address. Presumably this person is Meva Brown, the 1st Defendant, who was served on February 11, 2019 at the same address. Efforts were also made by Mr. Wilks to locate the 3rd Defendant, who operated of the motor vehicle at the time of the accident, but he was not located.

[8] The affidavit of Vaughn Bignall filed on May 9, 2019 indicated that he received instructions from the claimant and as a result, he commenced the action against the Defendants. Mr. Bignall averred that the 1st and 2nd Defendant's motor vehicle registered PD4298 was insured at the time of the accident by AGIC and that

Notice of Proceedings were served on AGIC on January 21, 2019 and it accepted same. As such, Mr. Bignall alleged that there was a contractual relationship with between AGIC and the 1st and 2nd Defendant and that service on AGIC would cause the claim form to come to the knowledge of the 2nd and 3rd Defendants.

[9] On June 8, 2019, the claim became statute barred. The claim form expired on July 18, 2019. The application was fixed for hearing on January 22, 2020, seven (7) months after the claim became time-barred.

[10] A review of the file reveals that one of the owners of the vehicle, the 1st Defendant, filed an acknowledgement of service and defence on March 12, 2019. The acknowledgement of service indicated that service was effected on the 1st Defendant on February 11, 2019 and that the address of the 1st Defendant is 25 Mandala Avenue, Kingston 19. This is also the address of the 2nd Defendant. The service of the Notice of Proceedings on AGIC within the time period specified in section 18(2)(b) of the Motor Vehicle Insurers (Third Party Risks) Act ("MVIA") serves to guarantee indemnification in respect of liability which is covered by the terms of the policy (up to the policy limit), should a judgment be obtained against AGIC's insured and/or an authorised driver covered by the insurance policy. Consequently, even if the 2nd and 3rd Defendants are not served with the claim form, the Claimant may be entitled to indemnification if judgment is entered against the 1st Defendant, an insured.

THE HEARINGS AND SUBMISSIONS

[11] During the hearing on January 22, 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. That issue has been identified at paragraph 2 above. 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, to which the Court had previously directed

counsel's attention in February 2019, when a similar application was heard in another matter. Counsel Ms. Thomas requested time to read the decision and to make written submissions and the hearing was adjourned to January 24, 2020.

[12] Counsel Mr. Bignall and Ms. Thomas attended the hearing on January 24, 2019. It was submitted that the Applicant had satisfied the requirements of CPR rule 8.15(4)(a) in that all reasonable steps had been taken to trace the Defendant and to serve the claim form, and 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.

[13] Ms. Thomas submitted that the ***Bayat*** case is merely persuasive and that it would be erroneous for a Court in this jurisdiction to consider the limitation period when considering an application pursuant to CPR rule 8.15. Ms. Thomas submitted that the application for an extension of the validity of the claim form should not be treated as if the Claimant is filing a new claim. It was submitted that the court has jurisdiction to grant the extension sought and that the Court's discretion in rule 8.15 is not unfettered.

[14] Ms. Thomas further submitted that a limitation defence was not a consideration for this Court. In support of this contention, Ms. Thomas sought to rely on paragraphs 49 and 50 of the decision in ***Glasford Perrin v Donald Cover*** [2019] JMCA Civ 28. Ms. Thomas stated that the Court of Appeal was not persuaded that the appellant would be deprived of a limitation defence if the judge's initial order was corrected to reinstate the claim against the appellant. Ms. Thomas submitted that this meant that a limitation defence was not a consideration.

THE ISSUES

[15] The issues identified were as follows:

1. Whether the Applicant had demonstrated that he had taken all reasonable steps to trace the 2nd and 3rd Defendants and to serve the claim form on them.

2. Whether it was appropriate 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 June 8, 2019, and such an order would deprive the 2nd and 3rd Defendants of a limitation defence.

THE LAW

[16] 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)*

[17] 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 trace the 2nd and 3rd Defendants and to serve the claim form on them, 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.

[18] 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).

[19] 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."*

[20] 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."*

[21] 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.

[22] 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.

[23] 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."*

[24] 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.

[25] 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*".

[26] 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.

[27] 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.*

[28] 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 2nd and 3rd Defendants?

[29] 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)*

[30] The reason proffered by the Claimant/Applicant for the failure to serve the claim form, is that the 2nd Defendant was not found at home. Two attempts were made to locate the 2nd Defendant. However, it is noted that the 1st Defendant was found and served. It would have been prudent for the process server to simply revisit the address of the 1st and 2nd Defendant at times at which the 2nd Defendant would be likely to be found at home. In the circumstances, I am not satisfied that the Claimant had taken all reasonable steps to serve the 2nd and 3rd Defendants, 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?

[31] 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 2nd and 3rd Defendants' right to rely on a limitation defence.

[32] 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)*

[33] 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 2nd and 3rd Defendants at a disadvantage.

[34] 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.

[35] 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 Defendants were not present at the hearing of the application, the Court must consider their 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."*

[36] 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.

[37] Contrary to Ms. Thomas' submission, this Court is not treating the application for an extension of the validity of the claim form as if the Claimant is filing a new claim. The claim and application were filed in time. However, the extension sought would deprive the 2nd and 3rd Defendants of their 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 Defendants' 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

[38] I have assessed the balance of prejudice or hardship between the parties. One prejudice to the 2nd and 3rd Defendants 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 2nd and 3rd Defendants in respect of any injury sustained during the accident. Pursuant to the MVIA, the Claimant is nonetheless guaranteed indemnification in respect of liability which is covered by the terms of the policy, should judgment be obtained against the 1st Defendant. 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 18, 2020. The balance of prejudice tilts in favour of the 2nd and 3rd Defendants. 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 thirteen (13) months after the expiration of the limitation period.

Other observations

[39] 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 February 18, 2019. Having regard to the fact that the medical reports were prepared in 2014, I would expect that some explanation would be offered for any delay in filing a claim immediately thereafter. 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 and one

month to file and serve the claim, as the claim form filed on January 18, 2019 was valid for six months. This is ample time to file and serve the claim form.

[40] Once it became apparent by February 23, 2019 that the process server could not find the 2nd and 3rd Defendants, it was open to the Claimant to seek an order pursuant to rule 5.14 to permit service on these Defendants via the 1st Defendant (who was found and served on February 11, 2019), or, alternatively via the 1st Defendant's insurance company. The latter option was chosen, but there is no evidence before this Court that the Applicant pursued the Supreme Court Civil Registry for a hearing date between May and July 18, 2019, before the expiration of the validity of the claim form. Had the application pursuant to rule 5.14 been heard before July 18, 2019, it might have been granted and service could have been effected on AGIC.

[41] 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.

CONCLUSION

[42] I am not satisfied that the Claimant took all reasonable steps to locate the 2nd and 3rd Defendants 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. In order for the claim form to be served, there would have to be two extensions of its validity, one from July 18, 2019 to January 18, 2020, and another from January 18 to July 18, 2020. I am not persuaded to exercise my discretion to extend the validity of the claim form to July 18, 2020, as this would deprive the 2nd and 3rd Defendants of their right to a limitation defence, which accrued on June 8, 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.