



[2020] JMSC Civ 257

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. SU2019CV01609

BETWEEN	YVONNE VIRGO	CLAIMANT
AND	GRANVIN GRAHAM	1ST DEFENDANT
AND	UTON PAGE	2ND DEFENDANT

IN CHAMBERS

Mr Oraine Nelson instructed by Oraine Nelson & Co. for the Applicant/Claimant

Heard: October 28, 2020

Civil Procedure – Application to extend the validity of the claim form – Application heard after the validity of the claim form – Application for Substituted Service – Civil Procedure Rules, 2002, (CPR) – rules 8.14(1), 8.15(2), 8.15(3)(a)(i and ii)

MASTER P MASON

Background

[1] The Claimant, Yvonne Virgo, filed an Ex Parte Application for Court Orders on October 11, 2019, by which she seeks an extension of the validity of a Claim Form and Particulars of Claim, each filed on April 12, 2019. Miss Virgo alleges that on April 13, 2013 she was injured in a motor vehicle accident in the vicinity of the intersection of Scotts Pass Main Road and Park Village Main Road in the parish of Clarendon. Miss Virgo was a passenger in motor vehicle registered PF 7531 and driven by the 2nd Defendant, Mr Uton Page and owned by the 1st

Defendant, Mr. Gravin Graham. Miss Virgo further alleges that Mr Page drove the motor car so negligently that it collided with an oncoming vehicle. As a consequence, she claims damages and costs for the injuries she sustained in the motor vehicle accident. Miss Virgo seeks the following orders:

- i. That the Claim Form be extended for a period of six months from the date of the Order.
- ii. That personal service of the Claim Form on the Defendants be dispensed with.
- iii. That service of the Claim Form and all subsequent documents on the Defendants be effected by insertion of a Notice of Proceedings in the Gleaner Newspaper or other newspaper of general circulation in the Island of Jamaica.
- iv. That the Defendants file an Acknowledgment of Service within fourteen (14) days of the second publication.
- v. That the Defendants file a Defence within forty-two (42) days of the second publication.
- vi. That the cost of this application be costs in the claim.

Issue

[2] The following issue arises on the application:

- i. Whether the Claim Form can be extended after it has expired.

Analysis and Findings

[3] It is important to note that the limitation period in relation to the cause of action in the case at bar expired on April 13, 2019, one day after the Claim Form was filed on April 12, 2019. At the time of the hearing of the Ex Parte Application on

October 28, 2020 the Claim Form would have expired on October 12, 2019. Significantly, this Ex Parte application was filed on October 11, 2019. In fact, from the date of the filing of the Ex Parte Application, the first possible renewal of the Claim Form would have been from October 12, 2019 to April 12, 2020 and then again from April 12, 2020 to October 12, 2020. This would have allowed for two six months extensions as permitted by rule 8.15 (6) of the Civil Procedure Rules, 2002 (CPR) which states:

“No more than two extensions may be allowed unless the court is satisfied that:

(a) the Defendant is deliberately avoiding service, or

(b) there is some other compelling reason for so doing”

- [4]** However, it is noteworthy that the two extensions are to be made on separate applications – rule 8.15 (2). Such an application must be made within the period that the Claim Form is valid rule 8.15(3) (a) (i) (ii).

Rule 8.15(3) (a) (i) (ii) states:

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

- [5]** The circumstance in the instant matter is that the Applicant/Claimant has filed only one application for the renewal of the Claim Form, and at the time when the Application was heard on October 28, 2020, the Claim Form had already expired twice. There was no second application filed for a further extension of six months during the life of the Claim Form.

- [6]** The application to renew the Claim Form must be brought before the Court in a timely manner, in order to succeed in the grant of an extension. It is important for

the Court to evaluate and determine the reasons why the Applicant/Claimant was unable to serve the Claim Form within the specific period as set out in Rule 8.14(1) of the CPR which states:

“The general rule is that a Claim Form must be served within six (6) months after the date when the claim was issued.”

The threshold requirement is that the Claimant must show good reasons for non-service.

[7] The Affidavit in Support of the application filed on August 19, 2020 reveals that the process server visited Toll Gate and Gimme-Me-Bit in Clarendon to serve the Defendants. It was noted from the evidence that the streets were without numbers. The Affidavit also revealed that the Process Server made two visits to Toll Gate on the 19th and 20th September 2019 in search of the 1st Defendant and on September 17 and 18, 2019 he visited Gimme-Me-Bit in search of the 2nd Defendant. In both instances he outlined that he spoke to fellow taxi drivers and persons in the district but no one knew the Defendants. Mr Nesbeth the Process Server failed to indicate the number of persons or taxi men that he spoke with regarding the whereabouts of the Defendants. There was no evidence as to the time he visited, nor had he supplied the date on which he received the documents for service. The details of the attempts of service were routine and casual in nature. I find that the information provided is insufficient as I have often seen in affidavits in these matters. The Applicant/Claimant has failed to establish that he took all reasonable steps to locate the Defendants. There was no evidence provided to indicate that the Defendants were avoiding service or that there were other compelling reasons for not having served the Defendants.

[8] The Applicant/Claimant has relied on the premise that the application for the renewal of the Claim Form was filed when the Claim was valid. The important consideration is that at the time of the hearing of the application the Claim Form and the limitation period had long expired. An expired Claim cannot be resuscitated, neither can the extension of a claim be revived retrospectively.

[9] The overriding objective of enabling the Court to deal with cases justly does not assist the Claimant with an application for an extension of time where the Claimant does not serve the Claim Form in a timely manner. I observe that the Applicant/Claimant has waited for the last moment to file the pleadings, I am of the view that he has not acted promptly in making his application. As such, I am of the view that the Claimant cannot now benefit from an extension of the validity of the claim form which has expired, to the detriment of the Defendants who are not aware that a claim has been filed against them.

[10] The decision of Mrs Justice Cox DBE in **Foran v Secret Surgery Ltd** [2016] & WHC 1029 (QB) exemplifies the dangers of a Claimant not serving promptly.

“The time limits within the CPR, having the legitimate aim of the good administration of justice should always be adhered to unless there is good cause.”

Service of the Claim Form is an important step in litigation, in particular cases where there is a potential limitation defence.

[11] It is recognised in case law that if the Plaintiff delays until the very last minute, he has only himself to blame. In the case of **Baker v Bowkett's Cakes Ltd** [1966] 1WLR 861 a Writ was issued in May 28, 1964, the Writ was not served in the 12 months of its issue. It was sent by registered post but was returned. Brown J in an Ex Parte application on August 16, 1965 granted an extension of the Writ which was served on the Defendants. They applied to set it aside. Brown J reversed his previous decision and held that the Writ had expired on May 28, 1965. On appeal by the Plaintiff it was held that in view of the delay in issuing and serving the Writ in personal injury cases where the Statute of Limitations had run in favour of the Defendants, there was not sufficient reason for exercising the Court's discretion to extend time for service of the Writ under RSC order 6 r 8(2) in favour of the Plaintiff. The appeal was dismissed.

[12] Lord Denning M. R in that case said “leaving a Writ for the last moment to be served it behoves them to make absolutely sure that they do get it properly

served.” Lord Harmon in the same case opined that, “the nearer you get to the last moment, the stricter ought to be the attitude of the Court.”

- [13] The test remains as to whether or not the Court or Judge is satisfied that reasonable efforts have been made to serve the Defendants with the Writ or that there is evidence to suggest that the Defendants are deliberately avoiding service.
- [14] Regard must be given to the Defendants who at this stage are unaware of the fact that there is a Claim filed against them. They would be greatly prejudiced as they cannot file a Defence at this stage of the proceedings. The issue of costs would not be adequate compensation.
- [15] The Applicant/Claimant through his attorney-at-law cannot at this late stage seek the discretion of the Court to extend the life of a Claim Form that is already dead. The rules and time limits are to be followed. An extension must be effected when the Claim Form is still valid and the relevant limitation period is alive. In the circumstances, there is no need for the court to consider the issues of substituted service of the pleadings on the Defendants.

Orders:

- [16] The application to extend the validity of the Claim Form filed on October 11, 2019 is refused.
- [17] Leave to appeal granted.