

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

Claim No. CV2016-00287

BETWEEN

**NADINE BAYNE**

Claimant

AND

**PERSONAL PROTECTION SERVICES LTD**

First Defendant

**DANIEL CHAITAN**

Second Defendant

**RAEDRELLE NOEL**

Third Defendant

**SAMUEL DAVID NOEL**

Fourth Defendant

**BANKERS INSURANCE COMPANY  
OF TRINIDAD AND TOBAGO LIMITED**

Fifth Defendant

**GUARDIAN GENERAL INSURANCE LIMITED**

Sixth Defendant

**BEFORE THE HONOURABLE MADAME JUSTICE MIRA DEAN-ARMORER**

**APPEARANCES:**

Mrs. Natasha Baiju-Patrick, attorney-at-law for the Claimant

Mr. Prakash Maharaj, attorney-at-law for the 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> Defendants

Ms. K. Wilson, attorney-at-law for the 6<sup>th</sup> Defendant.

**REASONS**

1. On the 3<sup>rd</sup> February, 2016, the Claimant instituted these proceedings against six (6) Defendants, in respect of a motor vehicular accident which allegedly occurred on the 13<sup>th</sup>

March, 2012. Accordingly, these proceedings were filed within the four (4) years prescribed by the *Limitation of Certain Actions Act*<sup>1</sup>.

2. The Claimant effected service on the First, Second, Fifth and Sixth Defendants, who filed appearances and defences.
3. However, the Claimant, unable to serve the Third and Fourth Defendants, filed a Notice of Application on the 12th August, 2016, seeking an extension of time within which the Claim Form could be served.
4. On the 8<sup>th</sup> December, 2017, I dismissed the application to extend time for the service of the Claim Form. My reasons for so doing are out below.

### ***Facts***

5. By her Claim Form and Statement of Case, the Claimant, Nadine Bayne, contended that she suffered personal injuries and consequential loss as a result of a motor vehicular accident which occurred on the 13<sup>th</sup> March, 2012 between three vehicles: TCT 7206, PBX 1863 and PCN 8508.
6. The Claimant averred that the first Defendant, Personal Protection Services Limited, was the owner of TCT 7206 and the second Defendant, Daniel Chaitan, was the driver of that vehicle at the material time. The fifth Defendant, Bankers Insurance Company, was joined as the insurer of TCT 7206.
7. The Claimant contended that the third Defendant, Raedrelle Noel, was the owner of motor vehicle registration number PBX 1863, and that on the day in question, it was being driven by the fourth Defendant, Samuel David Noel.

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<sup>1</sup> Limitation of Certain Actions Act Ch 7:09

8. The sixth Defendant, Guardian General Insurance Limited was joined in the proceedings as the insurer of the vehicle PBX 1863, owned by the third Defendant and driven by fourth Defendant on the day in question.
9. Following the filing of the Claim Form and Statement of Case, these documents were entrusted to a process server for the purpose of effecting service on the Defendants<sup>2</sup>.
10. On the 2<sup>nd</sup> March, 2016, appearances were filed on behalf of the first, second, and fifth Defendants. The Appearance of the 5<sup>th</sup> Defendant indicated that the proceedings had been served on the 15<sup>th</sup> February, 2016. The Appearances of the first and second Defendants indicated that service had been waived.
11. An Appearance was filed on behalf of the 6<sup>th</sup> Defendant on the 19<sup>th</sup> February, 2016. The Appearance indicated that the documents were received on the 17<sup>th</sup> February, 2016.
12. It was, however, the evidence of Mrs. Baiju-Patrick that efforts were made to effect service on the third and fourth Defendants from the 21<sup>st</sup> March, 2016, but that the efforts had been unsuccessful<sup>3</sup>.
13. The evidence of Mrs. Baiju- Patrick was corroborated by the testimony of process server, Andre Lord. Mr. Lord deposed that on the 21<sup>st</sup> March, 2016, he attended the given address of the third Defendant and fourth Defendants at No. 99 Rose Drive, Elizabeth Gardens, St. Joseph, but did not find the third and fourth Defendants there.
14. Mr. Lord stated that he checked with residents, in and around the area, and was informed that neither the third Defendant nor the fourth Defendant, nor their vehicle was known in the area

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<sup>2</sup> See the affidavit of Natasha Baiju-Patrick at paragraph 4.

<sup>3</sup> See the affidavit of Natasha Baiju-Patrick at paragraph 5

15. On the 14<sup>th</sup> April, 2016, Mr. Lord consulted the telephone directory and made further enquiries, but was unsuccessful in obtaining further information.
16. Mr. Lord testified that he visited the St. Joseph's Police Station in order to confirm the address of the third and fourth defendants. He omitted however, to specify the date on which he visited the Police Station.
17. It was following these failed attempts at service, that the Claimant applied , on 12<sup>th</sup> August,2016, for this order:

*“...that the Claim Form and Statement of Case filed herein on the 3<sup>rd</sup> February, 2016 be renewed for a period of four (4) months from the 3<sup>rd</sup> June, 2016<sup>4</sup>”*

18. The date of the Notice of Application, 12<sup>th</sup> August, 2016 was significant since it was approximately two months past the four month limit prescribed by the *CPR* for the service of the Claim Form. It was also approximately six months beyond the date on which the proceedings would have been statute-barred under the *Limitation of Certain Actions Act*<sup>5</sup>.

### ***Issues***

19. Two issues arose for my consideration. The first was whether the action against the third and fourth Defendants was statute-barred under the *Limitation of Certain Actions Act*, because service had not been effected within four (4) years of the cause of action.
20. In respect of the first issue, I agreed with the submission of learned Counsel, Mrs. Natasha Baiju-Patrick that the sixth Defendant lacked the requisite *locus standi* to raise the limitation point on behalf of the third and fourth Defendants.

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<sup>4</sup> See the Notice of Application filed on the 12<sup>th</sup> August, 2016

<sup>5</sup> Limitation of Certain Actions Act Ch 7:09

21. The second issue concerned the operation of Part 8.13(4) **CPR**<sup>6</sup> and required the Court to consider whether Part 8.13(4) effectively allowed the Claimant ten (10) months within which to serve the Claim Form and Statement of Case.
22. As a result of the second issue, it became necessary to consider whether the inclusion of Part 8.13(4) **CPR** dispensed with the obligation of a claimant, to comply with Part 8.14(3), where there was an application to extend time for the service of the claim form, after the lapse of four (4) months from the date of filing,

### ***Law***

23. Part 8.13(1) **CPR**<sup>7</sup>, which governs the time within which a Claim Form ought to be served, provides as follows:

*“8.13 (1) The general rule is that a claim form may only be served within four months after the date when the claim was issued.”*

24. The **CPR**<sup>8</sup> provides, at Part 8.14, for applications for extensions of time for the service of the Claim Form:

*“8.14 (1) The claimant may apply for an order extending the period within which the claim form may be served.*

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<sup>6</sup> Civil Proceedings Rules 1998

<sup>7</sup> Civil Proceedings Rules 1998

<sup>8</sup> Ibid

(2) *The general rule is that an application to extend the time for service must be made within the period for serving the claim form specified by rule 8.13.*

(3) *If the claimant applies for such an order after the end of the period specified by rule 8.13, the court may make such an order only if it is satisfied that the claimant has taken all reasonable steps—*

*(i) to trace the defendant; and*

*(ii) to serve the claim, but has been unable to do so; and*

*when the claimant has acted promptly in making the application.”*

25. By Legal Notice No. 126 of 2011, Part 8.13 *CPR*<sup>9</sup> was amended to include 8.13(4), which provides:

*“8.13 (4) A claim (including a counter-claim, ancillary claim and other similar claims) shall be automatically struck out if a claim form is not served within six months of the time fixed by paragraph (1), or extended for service.”*

26. Mrs. Baiju-Patrick , learned Counsel for the Claimant, juxtaposed Part 8.13(4) and 8.14(3), and contended that the phrase, *“the period within which the Claim Form may be served”* ( Part 8.14(1)) , was expanded from four (4) to ten (10) months, as a result of the inclusion of Part 8.13(4) by amendment. See L.N.126 of 2011. This amendment received judicial consideration in the two cases cited below.

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<sup>9</sup> Civil Proceedings Rules 1998

27. In *Erma Hector-La Borde v. Hosein Construction Company Limited*<sup>10</sup>, the Honourable Justice Kokaram considered the application of a Claimant who had allowed seven (7) months to elapse, before approaching the Court for an extension of time. In that context, Kokaram, J, considered the effect of *CPR*<sup>11</sup> 18.14(4) and had this to say:

*“The effect of the rule is that where a claimant has failed to serve a claim within ten months from the filing of the claim, the sanction is that it is automatically struck out. It is a draconian remedy...The “ten month period” then is a maximum window to effect a physical act of service by any means prescribed by Part 5 CPR...”*

28. These words of Kokaram, J, were quoted and relied upon by Mme. Mohammed, J in *Riad Marketing Limited. v. Eckler Chemicals Limited*.<sup>12</sup> In that case, the Honourable Mme. Mohammed was concerned with the effect of a Court order which omitted the extended deadline by which the Claim Form ought to have been served. At paragraph 9, Mohammed, J has this to say:

*“In the instant action, the Claimant applied in the August 2015 application to extend time to serve the Claim Form which was beyond the 4 month period as prescribed by 8.13(1) CPR, but within the 10month period permitted under 8.13(4). Therefore the Defendant’s ground that the Claimant failed to apply for an order to extend time to serve the Claim Form has fallen by the wayside.”*

29. It was my view that Mohammed, J did not hold that the time within which a claim form may be served was expanded to ten (10) months for the purpose of Part 8.14.

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<sup>10</sup> Erma Hector-La Borde v. Hosein Construction Company Limited CV2013-04825

<sup>11</sup> Civil Proceedings Rules 1998

<sup>12</sup> Riad Marketing Limited. v. Eckler Chemicals Limited. CV2015-00670

30. It was however my observation , that the words of part 8.14(1) , “*the period within which the Claim Form may be served*”, echoed the words of Part 8.13(1) that is to say , which provided that ,as a general rule, “... *a claim form may only be served within four months ...*”. It was therefore my view that Part 8.14 fell to be construed in the light of 8.13(1) , which remained, untouched by the amendment .
31. It was also my observation that , the contention of Mrs. Baiju-Patrick, if applied to Part 8, would yield the inescapable consequence that the general rule would be transformed into a time limit of ten (10) instead of four (4) and Pt.8.13(1) would be rendered meaningless. Such an interpretation would be contrary to the rule of interpretation which requires the Court to give meaning to every word of the rule. See *Maxwell on the Interpretation of Statutes (12<sup>th</sup> Langan ed. )* at page 36.
32. It was my view that a time-line is drawn by Parts 8.13 and 8.14. The first segment of the time-line is demarcated at the end of four months from the time of filing of the Claim. As general rule, the Claimant must serve within these four months.
33. The second segment of the time-line proceeds from the expiration of four months from the date of filing the Claim and ends, six months thereafter when the draconian sanction is imposed by the rules, and the Claim is automatically struck out.
34. Along the time-line, which extends over a period of ten months, the Claimant has two options. The first is to seek an extension of time, before having met the first time-post of four (4) months. This application is made pursuant to Part 8.14(1), which attaches no conditionalities to the application for an extension of time.
35. Even where the hypothetical Claimant finds himself beyond the four month time-post, he may yet apply for an extension of time, under Part 8.14(3). In this situation however, the



Claimant is required to satisfy the Court in respect of two factors: that he had taken all reasonable steps to trace the Defendant; and to serve the Claim but has been unable to do so.

The Claimant must also satisfy the Court that he acted promptly in making the application.

36. Should an extension be granted, a new time-line is drawn, from the date of the extended deadline to the end of six months, thereafter. Once the following period of six months has elapsed, the sanction is applied automatically and the Claim is struck out.
37. In the application before me, the Claimant failed to seek an extension of time within the four month period. She fell therefore, under the regime of Part 8.14(3).
38. This rule [Part 8.14(3)] empowers the Court to grant an extension in limited circumstances. The Court may grant an extension only if satisfied of the listed factors. The Claimant is required to satisfy the Court of all three limbs. See *Erma Hector-La Borde v. Hosein Construction Company Limited*<sup>13</sup> per Kokaram, J at paragraph 22.
39. I therefore proceeded to consider whether the Claim in these proceedings, satisfied the Court of all three limbs.
40. In my view, the Claimant satisfied the Court that all reasonable steps were taken to trace and serve the third and fourth Defendants. The Claim Form and Statement of Case were committed to the care of the process server, Mr. Lord, who visited the premises, checked the police records and checked the telephone directory.
41. It was my view however, that the Claimant failed to satisfy the Court that she acted promptly in making the application for an extension of time. Mr. Lord made a failed attempt serve at the given address in March, 2016. Some three weeks later, in April, 2016, he consulted the telephone directory. Then at an unspecified date, he visited the police station.

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<sup>13</sup> Erma Hector-La Borde v. Hosein Construction Company Limited CV2013-04825

42. Accordingly, the Claimant had failed to account for almost four months between the 14<sup>th</sup> April, 2016 and 12<sup>th</sup> August, 2016 when the application was eventually filed. Far from acting promptly in making the application, it was my view that the Claimant acted with remarkable lethargy.
43. Rule 8.14 (3) confers on the Court, the power to extend time for the service of the Claim Form in strict terms. Where the Court is not satisfied, the extension may not be granted.
44. There must be strict compliance with Rule 8.14(3) *CPR*<sup>14</sup>. Should the Claimant approach the Court for an extension of time after the period of four months but within ten months, the Court must be satisfied as required by Rule 8.14(3). Where ten months have passed, the Claim receives the kiss of death and there could be no further extension.
45. In this Application, not being satisfied that the Claimant acted promptly, I dismissed the Application .

Dated this 15<sup>th</sup> day of February, 2018.

M. Dean-Armorer

Judge

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<sup>14</sup> Civil Proceedings Rules 1998