

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE  
SUB-REGISTRY SAN-FERNANDO**

**CLAIM NO: CV2018-01287**

**BETWEEN**

**CATHY-MAE MARGUERITE SITARAM**

(as the executrix of Mavis St. George by will dated 16<sup>th</sup> September 2013)

**CLAIMANT**

**AND**

**MERVYN ST. GEORGE**

**FIRST DEFENDANT**

**AND**

**THE ESTATE OF HAMILTON ST. GEORGE**

**SECOND DEFENDANT**

**AND**

**THE ESTATE OF MACDONALD ST. GEORGE**

**THIRD DEFENDANT**

**Before the Honourable Madame Justice Avason Quinlan-Williams**

Appearances: Ms. Nabilah Khan for the Claimant.

Ms. Carol-Anne Foderingham for the First and Second Defendants.

Date of Delivery: April 16<sup>th</sup>, 2019

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**DECISION ON THE SECOND DEFENDANT'S NOTICE OF APPLICATION DATED 30<sup>TH</sup> AUGUST  
2018 AND THE CLAIMANT'S NOTICE OF APPLICATION DATED 13<sup>TH</sup> FEBRUARY 2019**

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1. The claim was commenced by the filing of a Fixed Date Claim Form on the 16<sup>th</sup> April 2018 against the three Defendants. The claim sought the court's Declaration, among other orders, that the Will of Mavis St. George (hereinafter called "the testator"),

dated the 6<sup>th</sup> September 2013, is in fact the last Will of the testator and should be so declared in solemn form according to law. The Claimant was named executrix by the testator. The Defendants are the surviving siblings of the testator.

2. The preliminary issue for the court's determination revolves around the service of the Fixed Date Claim Form on Grace St. George (hereinafter referred to as "the Second Defendant"). The Second Defendant was served on the 22<sup>nd</sup> August 2018, four months and six days after the claim was filed. The Second Defendant entered an appearance on the 30<sup>th</sup> August 2018. On the same day the Second Defendant entered her appearance, she filed a Notice of Application pursuant to Rule 9.7(1) of the Civil Proceedings Rules 1998 (hereinafter referred to as "the CPR"). That Notice of Application seeks a Declaration that the Court has no jurisdiction or should refuse to exercise any jurisdiction it has.
3. The application is premised on the fact that the Fixed Date Claim Form was served outside of four months from its filing, without an order of the court extending the time to serve same on the Second Defendant.
4. Following the filing and serving of the Second Defendant's application, by Notice of Application filed on the 13<sup>th</sup> February 2019, the Claimant sought an order for "an extension of time be granted to the claimant to serve the claimant's Fixed Date Claim form and Statement of Case filed on the 16<sup>th</sup> day of April 2018 on the 2<sup>nd</sup> and 3<sup>rd</sup> defendant to 22<sup>nd</sup> August 2018 pursuant to Part 8.14 of the Civil Proceeding Rules 1998 (as amended)".
5. The issues for the Court's consideration and determination are whether:
  - i. the court has jurisdiction to hear the claim against the Second Defendant based on service of the Fixed Date Claim Form on the 22<sup>nd</sup> August 2018; and
  - ii. the court can extend the time for service of the Fixed Date Claim on the Second Defendant, outside of four months from the date of the filing of the Fixed Date Claim Form.

## Summary of Court's Findings

6. The court finds that it has no jurisdiction to hear the claim against the Second Defendant. The Claim Form was served outside of the time for service in accordance with Part 8.13 of the CPR and such service was without an order for the extension of time to effect such service.
7. The court, however, could have jurisdiction to hear the claim against the Second Defendant, if the Claimant can, by their Notice of Application remove the illegality in the service of the Fixed Date Claim Form. On that issue the court finds that the Claimant is unable to remove the illegality. The court can exercise its jurisdiction only if the conditions laid out in Rule 8.14(3) have been satisfied. The evidence does not satisfy those conditions. The Second Defendant succeeds on the Notice of Application filed on the 30<sup>th</sup> of August 2018 and the Claimant fails on the Notice of Application filed on the 13<sup>th</sup> February 2019.

## The Law

8. The Second Defendant's application is made pursuant to Rule 9.7(1) of the CPR which states:
  - "A defendant who wishes –
  - (a) To dispute the court's jurisdiction to try the claim; or
  - (b) To argue that the court should not exercise its jurisdiction, may apply to the court for an order declaring that it has no such jurisdiction or should not exercise any jurisdiction which it may have."
9. Rule 9.7 of the CPR also provides that such applications can only be made after the defendant first enters his appearance and the application must be made within the period prescribed by the rules for the filing of the defendant's defence. The Second Defendant has met all the requirements of Rule 9.7(1) and these are not issues for the court's determination.
10. The requirements for service of claim forms are found in Part 8 of the CPR. Rules 8.13 and 8.14 are of particular relevance to the issues here. These rules are copied below:
  - "Time within which a claim form may be served**
  - 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.

(2) The period of service is six months where the claim form is to be served out of the jurisdiction.

(3) The period of service of an admiralty claim form in rem is twelve months.

(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.

(5) Where a claim form is duly served and a defendant either does not enter an appearance or file a defence and the claimant who can, does not apply for judgment pursuant to Part 12 within six months of becoming entitled to do so, the claim (including a counter-claim, ancillary claim and other similar claims) shall be automatically struck out.

(6) The striking out of a claim under this rule shall not prevent a party from filing new proceedings in respect of the same cause or matter within the relevant period of limitation, except that where a claim is twice struck out, the claimant shall obtain the permission of the court to file new proceedings in respect of such cause or matter.

(Part 7 deals with service out of the jurisdiction; Part 74 deals with admiralty proceedings; Part 9 deals with appearance and notice of intention to defend; Part 10 deals with filing of a defence; Part 12 deals with default judgments; Part 18 deals with counter-claims, ancillary claims and other similar claims.)

#### **Extension of time for serving claim form**

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

(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.

(4) An application for an order extending the time for service may be made without notice but it must be supported by evidence.”

11. The Applicant and Respondent referred the court to three cases that considered and interpreted Rules 8.13 and 8.14. In Claim No. CV2013-04825 *Erma Hector-La Borde*

also known as *Erma Hectoer v Hosein Construction Company Limited* (hereinafter referred to as "*Erma Hector-La Borde*") the defendant's application was that the court did not have jurisdiction to try the claimant's claim. The claimant made an application for an extension of time to serve the claim form seven months after the claim was filed and this application was made after the defendant filed their application disputing the court's jurisdiction. The court considered whether service of the claim form can be extended, in retrospect, but within the ten months as prescribed by Rule 8.13. Kokaram J.<sup>1</sup> decided:

"After the period of four months expires (8.13 (1) CPR) there is no bar to serving the claim before the expiration of the "ten month period". However service in that period will certainly be irregular and it is for the Defendant to accept service waving its right to dispute the Court's jurisdiction or to dispute the Court's jurisdiction on the ground that the service was indeed irregular. The "ten month period" then is a maximum window to effect a physical act of service by any means prescribed by Part 5 CPR"

12. It is the Claimant's responsibility to ensure that the service is regular by taking the necessary action and providing sufficient proof to satisfy the requirements of Part 8.14. The onus is on the Claimant to make the application seeking leave of the court to extend the time, albeit in retrospect, where the application is made after service but between the fourth to the tenth month after the claim was filed. In *Erma Hector-La Borde* [supra], Kokaram J. decided that the requirements were not met.

13. *Erma Hector-La Borde* [supra] was followed in the decision of CV2015-00670 *Riad Marketing Limited v Eckler Chemicals Limited* (herein after referred to as "*Riad Marketing Limited*"). There Mohammed J. applied *Erma Hector-La Borde* in deciding that there can be the physical act of service within ten months from the filing of the claim. Such service after the fourth month will be irregular if effected without permission from the court for an extension of time to serve the claim form on the defendant.

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<sup>1</sup> *Erma Hector-La Borde* [surpa]. Page 5, paragraph 13

14. In CV2016-00287 *Nadine Bayne v Personal Protection Services Ltd and ors* (herein after referred to as “*Nadine Bayne*”), Dean-Armorer J. ruled on an application made by a claimant for an extension of time to serve a claim form, after the four-month timeline set in Rule 8.13. Dean-Armorer J<sup>2</sup> decided that the following applies:

“36... 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 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 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.”

15. According to Rules 8.13 and 8.14 along the cases considered, this court is of the view that a claim form can be served from the date of filing up to the expiration of ten months therefrom. Such claim form can be served, without permission, within four-months of its filing. After four-months, the claim form may be physically served on the defendant or defendants. However, the effect of such service on the court’s jurisdiction to hear the claim is determinable.

16. In one instance, the defendant may take no issue with the service. In another instance, the defendant may dispute the court’s jurisdiction. In the latter instance, the service of the claim form would remain irregular unless and until the claimant applies and the court gives its permission for an extension of time to serve the claim form. It matters not whether the court’s permission is sought before or after the claim form is physically served. If no permission is sought and obtained and the court’s jurisdiction is challenged, then the court will have no jurisdiction.

17. If permission is sought, the court is legally bound to consider such application in accordance with the structures laid out in Rule 8.14(3). The requirements in Rule 8.14(3) are conjunctive; all must be met. If anyone, more or all of the requirements

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<sup>2</sup> CV2016-00287 *Nadine Bayne v Personal Protection Services Ltd and ors* at page 9.

of Rule 8.14(3) are not met, then the court will refuse permission it having no jurisdiction to intervene.

### **Evidence and Analysis**

18. In this case, the Fixed Date Claim Form was served outside of the four months specified in Rule 8.13. However, the claim was not automatically struck out as it was served before the expiration of ten months from the date of the filing. Since the Second Defendant has challenged the court's jurisdiction to hear the claim pursuant to Part 9, the court will consider the Claimant's application for an extension of time made pursuant to Rule 8.13(4).
19. The Claimant has to satisfy the court on evidence according to Rule 8.14(3) of three matters. The Claimant must show that all reasonable steps were taken to:
  - i. trace the defendant;
  - ii. serve the claim, but the claimant has been unable to do so; and
  - iii. that the claimant has acted promptly in making the application for an extension of time to serve the claim form.
20. The Claimant's evidence of these matters must be found in the affidavit that supports the application for an extension of time. The affidavit was sworn to by the Claimant and was filed the same day as the Claimant's application for an extension of time to serve the Fixed Date Claim Form.
21. With respect to the first two requirements laid down by Rule 8.14(3), the Claimant makes no mention of either matter. There is no evidence of any steps taken with respect to either tracing or serving the Second Defendant. Therefore, the application must fail since the Claimant is required to prove all three requirements prescribed by Rule 8.14(3).
22. With respect to promptitude, the time must run from when permission is required to serve the Fixed Claim Form, as per *Nadine Bayne* [supra]. The Claimant submits that the calculation of time should commence from the point when she became aware

that the Second Defendant was not prepared to waive service. This submission is flawed for obvious reasons. It is peculiarly within the Claimant's knowledge when she commenced her claim by filing the Fixed Date Claim Form. Similarly, the Claimant would know when four months elapsed thereafter. The running of time is independent of and not triggered by any action taken by the Second Defendant.

23. The Claimant was cognizant when permission was required to be sought. If the Claimant choose to depend or rely on action taken by the Second Defendant to challenge the court's jurisdiction before she applied for permission to serve the Fixed Date Claim Form, then she did so at her own peril. Time continued to run and she risked not being positioned to meet the requirement of promptitude, see *Erma Hector-La Borde* [supra].

24. In this instance, the Fixed Date Claim Form was required to be served, without permission, by the 16<sup>th</sup> of August 2018. Therefore, permission was required to serve the Fixed Date Claim Form from the 17<sup>th</sup> of August 2018. The court must consider the issue of promptitude from that date, the 17<sup>th</sup> of August 2018. The Claimant's application for permission to serve was made on the 13<sup>th</sup> of February 2019, just short of six months from when permission was required. On the face of the delay alone without more, the Claimant cannot prove promptness. However, the evidence in support of the application may provide a cogent explanation.

25. The deponent provides no explanation, reasonable or unreasonable, to account for the delay in making the application. The averments in paragraph 13 of the deponent's affidavit are that "On 25<sup>th</sup> January 2019 at 12:08 the 2<sup>nd</sup> defendant's application filed on 30<sup>th</sup> August 2018 was served on the claimant's attorney at law. It was only then upon perusing the application that the Claimant's attorney at law was made aware of the 2<sup>nd</sup> defendant's objection to being appointed and to being served with the Fixed Date Claim Form and Statement of Case on 22<sup>nd</sup> August 2019 six (6) days after the expiration of the four month period for service permitted by the Rules".



26. As noted earlier, the requirement under Rule 8.14(3) that the Claimant “may apply for an order extending the time during which the claim form may be served” means that he may apply or he may not apply. But his decision to apply is not premised on the Second Defendant’s challenge to the court’s jurisdiction under Part 9 of the CPR. Consequently, the Claimant has provided no evidence or sufficient or cogent evidence to account for the delay in making the application. On this basis the Claimant’s application also fails.

**Disposition**

27. Consequential on the Court’s decision IT IS HEREBY ORDERED AND DECLARED THAT:
- i. The application filed by the Second Defendant on the 30<sup>th</sup> of August 2018 is granted. The court has no jurisdiction to hear the claim filed against the Second Defendant on the 16<sup>th</sup> of April 2018.
  - ii. The application filed by the Claimant on the 13<sup>th</sup> of February 2018 is dismissed. The Fixed Date Claim filed against the Second Defendant is automatically struck out pursuant to Rule 8.13(5).
  - iii. All orders made in the claim filed against the Second Defendant are set aside and are of no effect.
  - iv. The Claimant shall pay the Second Defendant’s costs on the application filed by the Second Defendant on the 30<sup>th</sup> of August 2018.
  - v. The Claimant shall pay the Second Defendant’s costs on the application filed by the Claimant on the 13<sup>th</sup> of February 2019.
  - vi. Costs to be assessed by a Master of the High Court Civil Division, in default of agreement between the parties.
28. The Claim is adjourned to 6<sup>th</sup> June 2019 at 11:30am SF02

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Avason Quinlan-Williams  
JRC: Romela Ramberran