

THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL

SAINT LUCIA

SLUHCVP2022/0008

BETWEEN:

GUY EARDLEY JOSEPH

Appellant

and

MCDOWALL BROADCASTING CORPORATION (MBC) LIMITED

Respondent

Before:

The Hon. Mr. Mario Michel

Justice of Appeal

The Hon. Mde. Margaret Price-Findlay

Justice of Appeal

The Hon. Mde. Esco Henry

Justice of Appeal [Ag.]

Appearances:

Ms. Candace Fletcher and Mr. Mark D. Maragh for the Appellant

Mr. Horace Fraser holding papers for Mr. Thaddeus Antoine and Mr. Kenroy

Denver Justin for the Respondent

2022: December 7;

2023 May 22.

Interlocutory appeal – Service – Rule 5.7 of the Civil Procedure Rules – Service of originating documents on a company – Whether service of the claim form on the receptionist of the respondent at its usual place of business constituted proper service – Rule 26.9 of the Civil Procedure Rules – Whether the court has the jurisdiction under CPR 26.9 to cure procedural irregularities in service - Whether the learned master erred in finding that the decision of Barton v Wright Hassall LLP was applicable to the instant case - Prescription – Whether the appellant’s purported service on the respondent was sufficient to interrupt prescription – Interpretation Act – Whether the learned master erred in considering section 23 of the Interpretation Act on the matter of who may be served since the provision is only of relevance where an Act is silent on the manner of service

On 25th August 2020, the appellant filed a claim against the respondent for defamation arising out of statements allegedly aired by the respondent during its nightly news segment on 16th June 2020. The claim and the accompanying documents were served on the receptionist of the respondent at its place of business on 26th August 2020. No acknowledgment of service or defence having been filed, the appellant applied for default judgment on 7th October 2020. On the same date, within hours of the request for default judgment, the respondent filed an acknowledgement of service and thereafter, on 14th October 2020, the respondent filed a defence on the merits of the claim. The request for judgment in default was denied by the registrar and the matter proceeded in accordance with the rules of court. The matter was sent to mediation which was attended by both parties, but was not settled. Further case management took place with the respondent fully engaging in the process both at mediation and at case management.

On 1st July 2021, the respondent made an application pursuant to rule 5.7 of the Civil Procedure Rules 2000 (the “CPR”) and under Part 26 seeking to strike out the appellant’s claim or in the alternative, seeking summary judgment. In this application, the respondent raised the issue of prescription and challenged the validity of the service of the claim. The learned master directed both parties to file submissions on the application and after considering the matter on paper, he delivered a written decision on 11th May 2022 in which he found that the claim had not been validly served and he accordingly struck out the appellant’s claim on the basis of prescription.

Being dissatisfied with the decision of the learned master, the appellant filed a notice of appeal citing three grounds of appeal, however, four issues fell for determination by this Court: (i) whether the learned master erroneously held that the service of the claim form and supporting documents on the receptionist of the respondent at its place of business could not constitute proper service, and as such, was not an appropriate basis for the exercise of the Court’s discretion to correct procedural irregularities pursuant to CPR 26.9; (ii) whether the learned master erred and misdirected himself when he considered and agreed to the applicability of the principle in the decision of *Barton v Wright Hassall LLP* to the instant matter; (iii) whether the learned master erred in law when he posited that the basis for service on a limited liability company is grounded solely in the Companies Act; and (iv) whether the learned master erred in law and misdirected himself when he considered section 23 of the Interpretation Act on the matter of who may be served, since the said provision is only of relevance where an Act is silent on the manner of service.

Held: allowing the appeal and making the orders set out at paragraph 85, that:

1. In ascertaining whether service of process has been validly effected, the court must examine CPR 5.7 and the Companies Act carefully with regard to service of documents, and not nit-pick in order to find technicalities which put litigants out of the doors of court. It is clear that for true justice to be done, the substantive matter must be allowed to come to the court. Courts are interested in hearing substantive matters and unless procedural breaches prove fatal to a claim, the court will use its powers to have matters heard. In this case, the appellant conducted a search at the

Corporate Registry and found the respondent's registered address to be 'John Compton Highway, Castries, St. Lucia'. This address was ambiguous and without a more specific address, service of the claim on the registered office of the respondent proved difficult, if not impossible. The appellant therefore served the receptionist of the respondent at its place of business. Even though the service in this matter might have been considered procedurally irregular, it satisfied the purposes of service as it engaged the attention of the respondent who actively participated in the proceedings thereafter.

Hoddinott v Persimmon Homes (Wessex) Ltd [2007] EWCA Civ 1203 applied; Section 521 of the **Companies Act** Cap. 13.01, Revised Laws of Saint Lucia 2013 considered; Rule 5.7 of the **Civil Procedure Rules 2000** considered.

2. Service of documents in civil proceedings is a procedural matter and as such if an error of procedure occurs, the court has the authority under CPR 26.9 to address and correct what may be considered procedural errors. The court has the jurisdiction and the discretion to cure defects and irregularities depending on the circumstances of the particular case, and procedural irregularities are within the discretionary powers of the court to rectify, if the justice of the case requires that it be done to give effect to the overriding objective of the CPR. Service on the receptionist, and not an officer of the respondent, as contemplated by CPR 5.7(c) and section 521 of the Companies Act, did not render service of the claim a nullity. The words of both section 521 and CPR 5.7 are not mandatory. The court is entitled to treat the service as an irregularity especially when bearing in mind the purpose of service, which is to bring the documents to the attention of the respondent. The learned master therefore erred in finding that the provisions of the Companies Act did not allow him to invoke the inherent powers of CPR 26.9 to correct what was in effect an irregularity. Accordingly, he erred in finding that the claim had not been properly served and that the matter was prescribed.

Barbara Angela Reid v Melroc Investments Ltd T/A Access Cambio [2019] JMSC Civ 244 applied; **Bupa Insurance Limited (Trading as Bupa Global) v Roger Hunter** [2017] JMCA Civ 3 applied; Singh (Santosh Kumari) v Atombrook Ltd. (trading as Sterling Travel) [1989] 1 All ER 385 applied; Rule 26.9 of the **Civil Procedure Rules 2000** applied; Section 521 of the **Companies Act** Cap. 13.01, Revised Laws of Saint Lucia 2013 considered; Rule 5.7 of the **Civil Procedure Rules 2000** considered.

3. In *Barton v Wright Hassall LLP*, the court was being asked whether it ought to exercise its discretion to retrospectively validate service of a claim on the defendants, the appellant having served the claim by an alternate method, via email, without prior confirmation that the respondent's solicitors were willing to accept service by that method. In the instant case, there was a failure to adhere to the

procedures set out in CPR 5.7 by the appellant. The appellant took all reasonable steps to locate the registered office of the respondent but was forced to utilize alternative methods of service when this proved impossible. Being unable to locate the registered office of the respondent, the appellant used the next best option, a place with a close connection, i.e, the respondent's place of business. Accordingly, the principles pronounced in Barton have little or no applicability to the issues in the instant case and the learned master erred in relying on them.

Barton v Wright Hassall LLP [2018] 3 All ER 487 distinguished.

4. The Interpretation Act is a statute of general application in the interpretation of other statutes. It provides that when an Act is silent as to how service is to be effected, such service may be effected by one of the various means set out in the Interpretation Act. As both the CPR and the Companies Act set out very clearly the parties on whom documents ought to be served on behalf of a company, there ought to have been no recourse to the Interpretation Act in these particular circumstances and the learned master erred in so doing.

Section 23 of the **Interpretation Act** Cap. 1.06, Laws of Saint Lucia applied; Section 521 of the **Companies Act** Cap. 13.01, Revised Laws of Saint Lucia 2013 considered; Rule 5.7 of the **Civil Procedure Rules 2000** considered.

JUDGMENT

- [1] **PRICE-FINDLAY JA:** This matter comes on for appeal by the appellant from a decision of the learned master.
- [2] An application to strike out the appellant's claim below on the basis that it was prescribed was brought by the respondent challenging the validity of service on the respondent and raising issues on the life of the claim.
- [3] The learned master found that there had not been proper service on the respondent, finding that service had not been executed on the company in the manner prescribed, and further that the prescribed time for instituting the claim having expired, the matter was at an end and the court could grant no relief.

Brief Facts

- [4] A claim was filed at the court on 25th August 2020 by the appellant against the respondent for defamation arising out of statements allegedly aired by the respondent during its nightly news segment on 16th June 2020.

- [5] The claim and the accompanying documents were served on the respondent at its place of business on the receptionist on 26th August 2020.

- [6] There having been no acknowledgment of service nor defence filed within the prescribed time, the appellant on 7th October 2020 applied to the court with a request for judgment in default.

- [7] On the same date, within hours of the default judgment request, the respondent filed an acknowledgement of service and thereafter on 14th October 2020 the respondent filed a defence on the merits of the claim.

- [8] The request for judgment in default was denied by the registrar. Arguments were placed before the registrar by the appellant who was dissatisfied with the decision not to enter judgment. The registrar held his position and the matter proceeded in accordance with the rules of court.

- [9] The matter was sent to mediation, attended by both parties, where the matter was not settled. Further case management took place with the respondent fully engaging in the process both at mediation and at case management.

- [10] The respondent on 1st July 2021 made its initial application pursuant to rule 5.7 of the **Civil Procedure Rules 2000** (the “CPR”) and under Part 26 seeking to strike out the appellant’s claim or in the alternative, seeking summary judgment.

- [11] It was at this time within these applications that the respondent raised the issue of prescription and the issue of the validity of the service of the claim.

[12] The appellant on 31st August 2021 filed an affidavit in opposition to the application of the respondent and the court directed both parties to file submissions in support of their arguments. The learned master considered the arguments on paper and delivered a written decision on 11th May 2022. It is from this decision that the appellant appeals.

Grounds of Appeal

[13] The appellant has appealed on 3 grounds of appeal, but 4 issues fell for determination by this Court:

- (i) The learned master erroneously held that the service of the claim form and supporting documents on the receptionist of the respondent at its place of business could not constitute proper service, and as such, was not an appropriate basis for the exercise of the Court's discretion to correct procedural irregularities pursuant to CPR 26.9.
- (ii) The learned master erred and misdirected himself when he considered and agreed to the applicability of the principle in the decision of **Barton v Wright Hassall LLP**¹ to the instant matter.
- (iii) The learned master erred in law when he posited that the basis for service on a limited liability company is grounded solely in the **Companies Act**.²
- (iv) The learned master erred in law and misdirected himself when he considered section 23 of the **Interpretation Act**³ on the matter of who may be served, since the said provision is only of relevance where an Act is silent on the manner of service.

¹ [2018] 3 All ER 487.

² Cap. 13.01, Revised Laws of Saint Lucia 2013.

³ Cap. 1.06, Laws of Saint Lucia.

Ground 1/Ground 3

- [14] CPR 5.7 states:
- “Service on a limited company may be effected -
 - (a) by leaving the claim form at the registered office of the company;
 - (b) by sending the claim form by telex, FAX or prepaid post or cable addressed to the registered office of the company;
 - (c) by serving the claim form personally on an officer or manager of the company at any place of business of the company which has a real connection with the claim;
 - (d) by serving the claim form personally on any director, officer, receiver, receiver-manager or liquidator of the company; or
 - (e) in any other way allowed by any enactment.”
- [15] The appellant served the claim form and the accompanying documents at the respondent’s place of business following difficulties in locating its registered offices on the John Compton Highway.
- [16] The appellant, having conducted a search at the Corporate Registry found that there was no specified address listed for the respondent.
- [17] The respondent, having acknowledged service and having filed a defence, sought after some 11 months to challenge the service of the document and raised the issue of prescription.
- [18] The respondent disputed service of the claim on the following grounds:
- (a) in order to effect proper service, the appellant had to comply with CPR 5.7;
 - (b) the claim was not served at the respondent’s registered office;
 - (c) the person receiving the documents was not a director, officer or manager of the respondent.

- [19] The appellant submitted to the Court that the formal acknowledgement of service filed by the respondent was tantamount to proof of the fact of service and the purpose of service was thus achieved.
- [20] The appellant further posited that by filing a defence on the merits and actively participating in the court process including court-connected mediation, the respondent effectively submitted itself to the jurisdiction of the court and by so doing waived any perceived right to challenge the court's jurisdiction or the manner of service.
- [21] The respondent submits on the issue of service, that:
- (a) it was feasible for the appellant to serve the claim form on an officer or manager of the company at the place of business of the company, and the appellant failed to do so;
 - (b) it was practical for the appellant to serve the claim form personally on any director, officer, receiver-manager, or liquidator of the company, but the appellant failed to do so.
 - (c) the **Companies Act** allowed for the appellant to serve any director or officer of the company with the relevant documents, however the appellant failed to do so;
 - (d) the appellant had failed to meet the standards set by the legal framework of both the CPR and the **Companies Act** and service was not properly executed on the respondent.

Discussion Service

- [22] CPR 5.7, which has been recited in paragraph [14] of this judgment, makes specific provision for the service of a claim form on a party to an action where that party is

a limited liability company. The rule provides various methods whereby a company might be served with a document.

[23] The appellant, having filed the claim, conducted a search of the Corporate Registry of Saint Lucia in order to ascertain the address of the respondent's registered office.

[24] What they found was an address that read, 'John Compton Highway, Castries, St. Lucia'. The address was ambiguous and there was evidence before the learned master that the said highway ran for many miles and without a more specific address, service of the claim on the registered office of the respondent proved difficult, if not impossible.

[25] The appellant therefore served the relevant forms on the place of business of the respondent in accordance with paragraph (c) of CPR 5.7.

[26] The learned master found that such service at the place of business and on the receptionist at that place of business was defective and did not comply with the CPR or the **Companies Act** of Saint Lucia.

[27] Section 521 of the **Companies Act** states:

"521. Service on Company

A notice or document may be served on a company—

- (a) by leaving it at, or sending it by telex or telefax or by prepaid post or cable addressed to, the registered office of the company; or
- (b) by personally serving any director, officer, receiver, receiver-manager or liquidator of the company."

[28] According to Dyson LJ in **Hoddinott v Persimmon Homes (Wessex) Ltd**:⁴

"... service of the claim form serves three purposes. The first is to notify the defendant that the claimant has embarked on the formal process of litigation and to inform him of the nature of the claim. The second is to enable the defendant to participate in the process and have some say in the way in which the claim is prosecuted: until he has been served, the defendant may know that proceedings are likely to be issued, but he does

⁴ [2007] EWCA Civ 1203 at paragraph 54.

not know for certain and he can do nothing to move things along. The third is to enable the court to control the litigation process.”

- [29] Consequent upon the documents being served on the respondent, the respondent entered an acknowledgement of service and filed a defence, thus engaging in the process of the court.
- [30] The learned master found that there was a failure, to serve the claim form and the accompanying documents in accordance either with CPR 5.7 or in accordance with section 521 of the **Companies Act**. The learned master further found that due to the fact that a year had passed since the cause of action arose, there being improper service, the claim had been prescribed and the appellant was unable to proceed any further with the matter.
- [31] Under the **Civil Code of Saint Lucia** (“the Code”),⁵ a matter where defamation is pleaded becomes prescribed within one year of the date of the accrual of the cause of action.
- [32] The relevant part of Article 2123 of the Code states:
“2123. The following actions are prescribed by one year:
1. For slander or libel, reckoning from the day that it came to the knowledge of the party aggrieved; ...”
- [33] It is well settled under the Code that prescription can only be interrupted by filing and serving a claim with the accompanying documents within the time limited to do so.
- [34] Gordon JA in **Dorina Joseph et al v Nora St. Louis et al**⁶ stated at paragraph 16:
“interruption of the period of prescription only takes place if both requirements are met, namely the filing of a judicial demand in a court of competent jurisdiction and the service of such demand on the person whose prescription it is sought to hinder. If service of process takes place

⁵ Cap. 4.01 Revised Laws of Saint Lucia 2013.

⁶ Saint Lucia HCVAP2008/025 (delivered 6th July 2009, unreported).

after the relevant period of prescription has elapsed, it matters not at all when the suit was filed.”

[35] It is my view that the appellant effectively interrupted prescription by filing and serving the claim form and accompanying documents on the respondent before the prescriptive period had expired.

[36] Even though the service in this matter might have been considered procedurally irregular, it satisfied the purposes of service as set out in **Hoddinott**, and engaged the attention of the respondent who actively participated in the proceedings by filing and serving an acknowledgement and a defence, and engaging in case management and mediation.

[37] The court must examine CPR 5.7 and the **Companies Act** carefully with regard to service of documents, and not nit-pick in order to find technicalities which put litigants out of the doors of court. It is clear that for true justice to be done the substantive matter must be allowed to come to the court. Courts are interested in hearing substantive matters and unless procedural breaches prove fatal to a claim, the court will use its powers to have matters heard. True justice can only be achieved if the substance of the matter is heard and decided by the court.

[38] In the Jamaican case of **Barbara Angela Reid v Melroc Investments Ltd T/A Access Cambio** –⁷ the court opined:

“I am to point out to counsel for the Defendant that the options set out in CPR Part 5.7 are options only. The word ‘may’ as opposed to ‘must’ is used and this suggests that the Claimant who wishes to serve the Defendant is able to use any method which would get the documents to the attention of the Defendant. The list set out in CPR Part 5.7, in my opinion, is a list of options that can be used to serve a registered company. The purpose of service is to get the documents that are being served to the attention of the Defendant.... Given the purpose of service and the place of service, I am of the view that the claim form and particulars of claim were properly served on the Defendant when they were left at Access Cambio... Having left the documents at the principal place of business of Access Cambio, it is very

⁷ [2019] JMSC Civ 244.

likely (on a balance of probabilities) that the documents would come to the attention of the principals of the Defendant.”

[39] I fully agree with the sentiments stated in the above-quoted case. Moreover, in this case, the documents did come to the attention of the principals. The respondent acknowledged service and filed a defence on the merits. It could only have done so if the documents so served came to its attention.

[40] Service of documents in civil proceedings is a procedural matter and as such if an error of procedure occurs the court has the authority under CPR 26.9 to address and correct what may be considered procedural errors.

[41] CPR 26.9 states:

“26.9 (1) This rule applies only where the consequence of failure to comply with a rule, practice direction, court order or direction has not been specified by any rule, practice direction or court order.

(2) An error of procedure or failure to comply with a rule, practice direction, court order or direction does not invalidate any step taken in the proceedings, unless the court so orders.

(3) If there has been an error of procedure or failure to comply with a rule, practice direction, court order or direction, the court may make an order to put matters right.

(4) The court may make such an order on or without an application by a party.”

[42] Moreso, in the circumstances of the matter subject of this appeal, where the defendants engaged in the processes of the court and having so engaged, almost a year on, took the procedural point that service was null and void, and the matter was now prescribed.

[43] Justice must not only be done, it must appear to be done and in the circumstances of this matter, it would be unjust and inequitable to allow the respondent to step away from the proceedings at this stage and take advantage of what would at best be described as a procedural irregularity.

[44] Morrison JA in **Hon. Gordon Stewart OJ v Sen. Noel Sloley Sr. and others**⁸ states:

“... rule 26.9(3) provides that the court may ‘put matters right’, where there has been any error of procedure or failure to comply with a rule, practice direction or even a court order. I naturally accept, as the rules themselves state and as the authorities relied on by the appellant confirm, that it is the duty of the court to seek to give effect to the overriding objective when interpreting the rules or exercising any powers under the rules.”

[45] Further, McDonald Bishop JA in **Bupa Insurance Limited (Trading as Bupa Global) v Roger Hunter**⁹ said of the same CPR 26.9:

“... that rule gives the court an unfettered discretion to determine how a breach of a rule of procedure (which was involved in the case before him) should affect the proceedings, having regard to all the circumstances and the clear dictates of the overriding objective in the interpretation and operation of the rules.”

[46] The respondent contends that the failure to comply with the terms of either CPR 5.7 or section 521 of the **Companies Act** rendered the matter a nullity. They posited to the Court that CPR 5.7 speaks to service on a person and not service at a place. The respondent submitted that the appellant was not allowed to serve employees of the respondent but officers of the company.

[47] Further the respondent submitted that section 521 of the **Companies Act** provided specific methods of service to a company, and that the court cannot, by applying CPR 26.9, correct the failure to comply with the statutory provisions. Where service was defective, the entire proceedings thereafter were a nullity, and incapable of being rectified.

[48] The Court has to make a distinction between what amounts to a nullity and what amounts to an irregularity.

⁸ [2011] (JMCA) Civ 28.

⁹ [2017] JMCA Civ 3.

- [49] Clearly, the failure to comply with the rules contained in the CPR can amount to an irregularity which the Court under its powers under the CPR can correct.
- [50] McDonald Bishop JA in **Bupa Insurance Ltd** opined:
- “... the framers of the CPR did not intend for every breach of the rules to be taken as invalidating the proceedings and that would be so whether or not the particular rule that is engaged is stated in mandatory terms. Once the consequence for breach of the rule is not provided for by the CPR or otherwise, then consideration must be given to the provisions of rule 26.9 in determining the way forward in the proceedings.”
- [51] The learned justice found that the court had a discretion to correct an irregularity in service in accordance with CPR 26.9 and directed his mind by having regard to the factors which were to be considered when the court formulates its own criteria for determining procedural rules in the absence of rules and regulations governing a particular enactment.
- [52] The judge set out the following guidelines:
- (1) the significance of the enactment as a protection of individual rights;
 - (2) the relative value that is attached to the rights that may be adversely effected by the decision;
 - (3) the importance of the procedural requirement in the overall administrative scheme established by the statute;
 - (4) the particular circumstances of the case in hand; and
 - (5) whether the breach of the terms of the Act is trivial in nature, or if no substantial prejudice has been suffered by those for whose benefit the requirements were introduced, or if serious public inconvenience would be caused by holding them to be mandatory, or if the court is for any reason disinclined to interfere with the act or decision that is impugned.

[53] Further I am guided by the dicta of Sir John Megaw in **Singh (Santosh Kumari) v Atombrook Ltd. (trading as Sterling Travel)**,¹⁰ where he opined:

“With regard to the second of the alleged nullities or invalidities, the failure to comply with the statutory requirement, as Kerr LJ has pointed out, the statutory requirement which is asserted here is s 725 of the Companies Act 1985. Subsection (1) says that a document may be served on a company by leaving it at, or sending it by post to, the company’s registered office. This document, for reasons which are apparent and which really cannot be put as being in any serious way the fault of the plaintiff, was not addressed to Atombrook Ltd’s registered office, but in my view that does not, in the circumstances, by itself result in invalidity: it is merely an irregularity. How serious an irregularity a failure to state a company’s address accurately may be will of course depend on the circumstances. It may well be that it would in some cases be an irregularity that would justify the court, without more, in setting aside unconditionally any judgment that had been entered. But it would be absurd to suggest that any failure to send the writ to the correct address, as for example some minor error in the address which caused no conceivable prejudice to the defendant, could result in the whole of the proceedings being invalid; and in this case I see no basis whatever for suggesting that there was a failure to comply with the statutory requirement such as to invalidate the proceedings.

The judge thought it right to set aside the judgment on the basis that there was at least a possibility that the defendant had not had the opportunity to appear in court and put its case before judgment was entered, because it may not have had notice of the writ and of the proceedings by that time. If that is a possibility, then it could be an injustice that it should not have the judgment set aside and the opportunity to be heard and to put its defence. But in the present case, having regard to all the relevant circumstances, I see no basis for saying that the judge, in setting aside the judgment, was wrong in making that order conditional on the payment into court, having regard to the basis on which he reached that decision, namely that the defence, as put forward in the documents that were before him (and here of course I am not speaking about what may be the defence in the ultimate trial but the defence as it appeared in the documents before the judge) was indeed shadowy.”

[54] I would not suggest that service on a receptionist, an employee of the respondent and not an officer, would render service of the claim and the accompanying documents a nullity. It is an irregularity.

¹⁰ [1989] 1 All ER 385.

- [55] The words of both section 521 and CPR 5.7 are not mandatory, the word used in both the **Companies Act** and the CPR is 'may'. The court is entitled to treat the service as an irregularity especially when bearing in mind the purpose of service of documents.
- [56] All of this has to be regarded in light of the facts and circumstances of the case, where the documents came to the attention of the respondent and the actions of the respondent in the subsequent proceedings.
- [57] The learned master fell into error in viewing the terms of the **Companies Act** as mandatory and in finding that the express provisions of the statute were such that he could not invoke the inherent powers of CPR 26.9 to correct what was in effect an irregularity.
- [58] The failure to serve the documents in the manner prescribed by both the **Companies Act** and the rules amounted to an irregularity which the Court could cure by the exercise of its discretion.
- [59] No prejudice was visited upon the respondent as they were able to and did participate in the proceedings, by filing an acknowledgement of service and a defence on the merits as well as subjecting themselves to a court-appointed mediation process.
- [60] The court has the jurisdiction and the discretion to cure defects and irregularities depending on the circumstances of the particular case, and procedural irregularities are within the discretionary powers of the court to rectify, if the justice of the case requires that it be done to give effect to the overriding objective of the CPR. The learned master erred by finding that the express provisions of the **Companies Act** did not allow him to invoke the inherent powers of CPR 26.9 to correct what was in effect an irregularity and, accordingly, I would allow this ground of appeal.

Ground 2

- [61] I turn now to examine whether the learned master erred and misdirected himself when he considered and agreed to the applicability of the principle in the decision of **Barton**.
- [62] The appellants argued that the **Barton** case does not pronounce any general principle capable of wide application. Further they agreed that the principles concerning service which the case dealt with were peculiar to rule 6.15 of the UK Civil Procedure Rules.
- [63] The UK rule deals specifically with the use of alternate methods of service as opposed to the normal method of service as provided for in the Eastern Caribbean CPR.
- [64] They further posit that different considerations are at play when the court is required to assess whether to exercise its discretion to grant permission to allow service by an alternate method as opposed to determining whether service was in accordance with the rules.
- [65] The respondent argues that the learned master did not err in considering and applying the rationale in **Barton** because service in this case was defective and the respondent was never brought under the jurisdiction of the court as a result.
- [66] They further argue that not having been brought under the court's jurisdiction within the time prescribed, the claim was 'absolutely extinguished' as provided by Article 2129 of the Code. The court could not retrospectively validate what was not served on the respondent.
- [67] In **Barton** the question before the court was to my mind rather different to the question which faced the learned master in these proceedings.

- [68] In **Barton** the court was being asked whether it ought to exercise its discretion to retrospectively validate service of a claim on the defendants, the appellant having served the claim by an alternate method, to wit, via email without having the prior confirmation of the respondent's solicitors that they were willing to accept service by that method.
- [69] In this matter before the court, it is the appellant's contention that the service of the claim complied with the CPR and that the respondents were properly before the court.
- [70] In **Barton**, Lord Sumption referencing CPR 6.15 (UK) states:
 "[8] CPR r 6.15 is rather different. It is directed specifically to the rules governing service of a claim form. They give rise to special considerations which do not necessarily apply to other formal documents or to other rules or orders of the court. The main difference is that the disciplinary factor is less important. The rules governing service of a claim form do not impose duties, in the sense in which, say, the rules governing the time for the service of evidence, impose a duty. They are simply conditions on which the court will take cognizance of the matter at all."
- [71] It is clear that this rule deals specifically with service of process by alternative means, and clearly, different considerations come into play as the court decides whether or not to exercise its discretion in favour of the applicant.
- [72] Unlike **Barton**, in this matter, the appellant was not seeking validation of the method of service on the respondent. This was an application by the respondent, after having engaged in the court's process for a considerable period of time, from filing an acknowledgement of service, filing a defence, through case management and through mediation and bringing an application seeking a declaration that the court had no jurisdiction to hear the claim, which sought orders striking out the claim or for summary judgment.

- [73] Having already discussed and analysed the issue of service in ground 1, I will not repeat those reasons again.
- [74] Service has a number of purposes but its most important is to ensure that the contents of the claim are brought to the attention of the party who has been served.
- [75] In this matter, there was a failure to adhere to the procedures set out in CPR 5.7 by the appellant. The appellant took all reasonable steps to locate the registered office of the respondent but was forced to utilize alternative methods of service when this proved impossible. Being unable to locate the registered office of the respondent, the appellant, rightly in my view, used the next best option, a place with a really close connection, i.e, the place of business of the respondent.
- [76] This is a clear departure from the factual matrix and legal issues arising out of **Barton**, and I find that the principles pronounced in **Barton** have little or no applicability to the issues before this Court in this appeal.
- [77] The principles regarding appellate interference with the exercise of a judge's discretion are so well-known as to be trite. In **Dufour v Helenair Corporation Limited**¹¹ this Court stated that an appellate court is only allowed to interfere with a judge's exercise of his or her discretion in circumstances where the judge has erred in principle by failing to take into account or giving too little weight to relevant factors or by taking into account or being influenced by irrelevant factors, and that, as a result, the judge's decision may be said to be clearly or blatantly wrong. Adopting the approach in **Dufour**, I find that the learned master erred in applying the principles set out in **Barton** and, in deciding that there had not been proper service on the respondent, made a decision which was blatantly wrong.

¹¹ (1996) 52 WIR 188.

Ground 4

The learned master erred when he considered the provisions, more particularly, section 23 of the Interpretation Act in deciding whether service as effected in this matter was valid

[78] The learned master while agreeing that the objective of service was to ensure that the respondent had notice of the claim and the nature of the appellant's case, was of the view that the purpose of service must be taken in the context of the specific provisions regarding service on a limited company and in particular the specific provisions set out in section 23 of the **Interpretation Act**.

[79] Section 23 of the **Interpretation Act** states:

"SERVICE OF DOCUMENTS

(1) Where an enactment authorises or requires a document to be served by post, whether the word "serve" or any of the words "give", "deliver", or "send" or any other word is used, the service of the document may be effected by prepaying, registering and posting an envelope addressed to the person on whom the document is to be served at his or her usual or last known place of abode or business and containing such document; and unless the contrary is proved, the document shall be deemed to have been served at the time at which such envelope would have been delivered in the ordinary course of post.

(2) Where an enactment authorises or requires a document to be served on any person without directing it to be served in a particular manner the service of that document may be effected—

(a) by personal service;

(b) by post in accordance with subsection (1);

(c) by leaving it for him or her with some adult person at his or her usual or last known place of abode or business;

(d) in the case of a corporate body or of any association of persons (whether incorporated or not) by delivering it to the secretary or clerk of the body or association or serving it by post on such secretary or clerk at such office; or

(e) if it is not practicable after reasonable enquiry to ascertain the name or address of an owner, lessee, or occupier of premises on whom the document ought to be served, by addressing the document to him or her by the description of "owner" or "lessee" or "occupier" of the premises (naming them) to which the document relates, and by delivering it to some person on the premises to whom it can be delivered, or by affixing it, or a copy of it to some conspicuous part of the premises."

- [80] The **Interpretation Act** is a statute of general application in the interpretation of other statutes. It provides that when an Act is silent as to how service is to be effected, such service may be effected by one of the various means set out in the **Interpretation Act**.
- [81] In the present case, the CPR in Part 5 sets out how service can be and ought to be effected on a company, requiring service on specific officers. Neither the CPR nor the **Companies Act** is silent as to the persons who ought to be served on behalf of a company.
- [82] Since both the CPR and the **Companies Act** set out very clearly the parties on whom documents ought to be served on behalf of a company, there ought to have been no recourse to the **Interpretation Act** in these particular circumstances. The **Interpretation Act** did not apply, as its relevance will only arise absent any terms with respect to service of documents. Clearly, that is not the case here and the provisions of the **Interpretation Act** can offer no assistance in this case.
- [83] Having already decided that this issue of service was a procedural matter which the court could in the exercise of its discretion, in achieving the overriding objective, use its powers to correct any irregularity, I find that the learned master was plainly wrong in that he took account of irrelevant matters or disregarded relevant matters in the exercise of his discretion and ought to have dismissed the application to strike out the claim and deem the claim form and any accompanying documents properly served on the respondent for the reasons outlined in this judgment.
- [84] Given all that I foreshadowed, I would exercise the Court's discretion afresh to deem the claim form and accompanying documents properly served on the respondent.

Conclusion

[85] In the circumstances, the appeal is allowed and the claim form and accompanying documents are deemed properly served on the respondent. The matter is returned to the High Court and will proceed in accordance with the CPR. The appellant is to be awarded costs on the appeal, such costs to be assessed by a judge or master of the court below, if not agreed within 21 days of this order.

I concur.

Mario Michel

Justice of Appeal

I concur.

Esco Henry

Justice of Appeal [Ag.]

By the Court

Chief Registrar