

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

Civil Division

SAINT LUCIA

Claim No. SLUHCV2020/0363

BETWEEN

GUY EARDLEY JOSEPH

Claimant

-and-

[1] MIGUEL FEVRIERE

**[2] MCDOWALL BROADCASTING CORPORATION
(MBC) LIMITED**

Defendants

Appearances:

Mark D. Maragh for the Claimant; and
Thaddeus M. Antoine for the Second Defendant

2022: May 11 – via email

DECISION

Second Defendant's application filed on July 01, 2021.

[1] **PARIAGSINGH, M.:-** Before the Court is the Second Defendant's application filed on July 01, 2021 seeking a declaration that this Court has no jurisdiction to hear this claim. In the alternative, the second defendant seeks an order striking out this claim or for summary judgment.

[2] This application raises the same issues as an application decided by this Court in, **Edmund Estephane –v- Richard Frederick et al SLUHCV2021/0272** on November 29, 2021, in respect of which leave to appeal has been granted.

[3] At the hearing of this application, Counsel for the Claimant sought to persuade me that the facts of this claim are different from the facts of the **Estephane** decision and relied

on an additional authority of **Texan Management Limited & Ors –v- Pacific Electric & Wire Cable Company Limited & Ors [2009] UKPC 46**. Having considered this additional authority, I disagree.

[4] I adopt the reasoning and conclusions as I did in the **Estephane** decision without reproducing them. The findings made in **Estephane** are applicable and the same in this application. In particular:

- (a) The claim was not served on an authorized officer of the Second Defendant. I am not satisfied that Ms. Renata Jaganath is an officer or manager of the company or any director, officer, receiver – manager or liquidator for the purpose of Rule 5.7 (c) and (d) CPR when read in light with the Companies Act or Section 32 (2) (a) and (d) of the Interpretation Act, Chap 3:01;
- (b) The claim could have been and was properly served at the Second Defendant's place of business;
- (c) There was no proper judicial demand before time was prescribed so as to stop time for the purpose of prescription.
- (d) Time having been prescribed; the Court has no jurisdiction to hear this claim.

[5] In my respectful view, the additional authority of **Texan Management** does not assist the Claimant. I associate myself with the reasoning set out in the case of **Barton v Wright Hassall LLP [2018] UKSC 12**.

[6] In **Texan Management** the Court restated the long-standing position that the Court is not a slave to the rules and that the ends of justice favor that approach. This Court is alive to that principle but is of the respectful view that the issue of service on a limited liability company goes deeper than the rules. Service on a company is grounded in

statute. It is provided for in **Section 521 of the Companies Act, Chap 13:01** which states that:

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

[7] In my view, **Texan Management** is clearly distinguishable from the facts of this case.

Texan Management involved the exercise of a discretion for the non-compliance with the rules. In particular, the time and procedure to make an application to dispute jurisdiction and whether an affidavit in support was required. That is very different from the case at bar which involved non-compliance with the express provisions of statute.

[8] I also disagree with the submission of the Claimant that, because the claim was served with the prescribed forms attached, the position is different from what is set out in **Barton**.

[9] In **Estephane** I ruled that **Section 32 of the Interpretation Act** is applicable to determine that an “officer” of the company is not a receptionist or secretary. I maintain that reasoning.

[10] Whilst the provisions of the **Companies Act** are similar to the provisions of **Part 5 Rule 5.7 CPR**, the rules cannot trump the express provisions of the statute. In my view, the express provisions of the statute must take precedence over anything stated in the rules.

[11] Service on a receptionist of the company cannot in my view be remedied by an order that proceedings that procedural matters be put right. It is not a procedural matter. In my view taking such an approach will be contrary to the mischief the **Companies Act** made specific provisions for. The mechanism in the Act is that the service be effected on a person of a certain status in the company to ensure that those persons have such

a position in the company that they are expected to act on such service without dispatch. The same cannot be expected if the Court were to permit service on any employee a company.

[12] In respect of the Claimant's submission that the Second Defendant has submitted to the jurisdiction of the Court, this only be stated to be dismissed. The Second Defendant cannot submit to the jurisdiction of the Court if the Court has no jurisdiction. There being no proper judicial demand, time did not stop running for the purpose of prescription and has since become prescribed.

DEFAULT JUDGMENT:

[13] This Court has made it abundantly clear at the case management conference that there is no pending application for default judgment against the Second Defendant. I have noted that in his submissions, Counsel for the Claimant still refers to a pending application. I believe it is necessary to address this issue again.

[14] The Court's record as I read out during the proceedings indicates that the application for default judgment against the Second Defendant filed on October 06, 2020, was refused on October 09, 2020, by the Deputy Registrar. The issued by the Deputy Registrar indicates that default judgment against the Second Defendant is refused for the following reasons:

- (a) The Court cannot grant judgment in default of acknowledgement of service for an amount to be decided by the court. See CPR Rule 12.4
- (b) The Court cannot grant judgment against the second named defendant as his liability is dependent on that of the first named defendant.

[15] What followed after was Counsel for the Claimant attempting to engage the Registrar in an exercise of reviewing her decision through a letter. In my respectful view, that does not change the fact that the application was disposed of.

[16] For these reasons, it is hereby ordered that:

- (a) The Claimant's claim filed on August 25, 2020, is struck out and stands dismissed against the Second Defendant as the Court has no jurisdiction to hear this claim, time being prescribed and both the Claimant's right and remedy being extinguished;
- (b) The Claimant shall pay the Second Defendant's costs of this claim quantified at 55% of the prescribed costs of a claim with a value of \$50,000.00 calculated in the sum of \$4,125.00; and
- (c) Leave is granted to either party to appeal this decision.

**Alvin Shiva Pariagsingh
High Court Master**

By the Court,

Registrar