

IN THE EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO: ANUHCV2018/0527

BETWEEN:

CURTIS GORDON
By his lawful Attorney, QUINTA CHARLES

Claimant

and

[1] PETER BRAMBLE
[2] DIOCESE OF NORTH EASTERN CARIBBEAN AND
ARUBA

Defendants

APPEARANCES:

Ms. Kalisia Marks, Counsel for the Claimant
Mr. Peyton Knight, Counsel for the 1st Defendant

2021: October 13th;
Re-issued: December 2nd

DECISION

- [1] **GARDNER-HIPPOLYTE, M.:** This is an application to have the service of the Statement of Case on the first Defendant deemed good service that the first Defendant has been able to ascertain the contents of the Statement of Case, alternatively, that service of the statement of case on the first Defendant be dispensed with.

Background

- [2] On the 1st June, 2017 at about 4:15 p.m. the Claimant was travelling on his motor bike and the first Defendant was driving a motor jeep, and it is pleaded that the first Defendant drove negligently and collided with the Claimant. The first Defendant was employed by the second Defendant at the time of the incident.
- [3] The Claimant is represented by Quinta Charles who has a power of attorney. Service was eventually effected on the second Defendant, and attempts were made to serve the first

Defendant but the information received was that he had left the jurisdiction. The claim was filed on the 18th December, 2019 two and a half years after the incident.

- [4] An application pursuant to CPR 7.3(4) and 7.5 was made on the 3rd June, 2020 to effect service on the first Defendant out of the jurisdiction. The application and affidavit indicate that the information is that the first Defendant resides at Baltimore City County. At paragraph 8 of the affidavit in support it is indicated – “the claimant/applicant has now learned through further investigations that the first defendant is now resident at 1800 Madison Ave, Baltimore...” and a copy of the yellow pages is attached to the application in support. It should be noted that the claim form in the first paragraph also indicates that the Claimant claims damages against Peter Bramble of 1000 Madison Ave, Baltimore. There would appear to be a discrepancy of the numbering but both instances the reference to the street and postal code is the same. Accordingly, it would appear the Claimant was always aware that the first Defendant was out of the jurisdiction.
- [5] The application to support service out of the jurisdiction also exhibits a newspaper article in relation to Mrs. Bramble, the first Defendant’s wife, and again on the face of it supports the address in Baltimore. Further, in the application is another exhibit of the Baltimore Times website which in the “about us” section refers to the first Defendant and his wife and has their address listed as “**1800 Madison Ave...**” (My emphasis). As a result of the application and affidavit in support the application was granted on the 16th September, 2020 and the first paragraph of the order stated as follows:
- “That leave is granted to the claimant to serve the Claim form and Statement of Claim accompanied by the prescribedand such other court processes filed herein out of the jurisdiction **on Peter Bramble at 1800 Madison Avenue, Baltimore MD 21217**, Baltimore City County, United States of America via registered mail.” (My emphasis)
- [6] The case came up for case management hearing on the 1st December, 2020. The Counsel for the Claimant indicated to the Court that the claim had been posted but was not delivered as yet, and that an application would be made to extend the life of the claim which was due to expire on the 17th December, 2020.
- [7] On the 18th December, 2020 an affidavit of service was filed stating that the claim form, statement of claim, notes to defendant, acknowledgement of service, defence and counterclaim, and application to pay by instalments were sent via registered mail and attached an exhibit “KA1” of the certificate of posting issued by the Antigua and Barbuda General Post Office. The affidavit of service also goes on to exhibit another document with the United States Postal Service tracking number where it states the package shipped on the 25th September, 2020 at 10:27 a.m. and was delivered to an individual at 1800 Madison Avenue, Baltimore on the 1st December, 2020 at 6:33 p.m.

[8] On the 1st February, 2021 the matter came up for case management conference and the Order reflected that the documents having been served on the first Defendant, the time to file a defence would be the 19th February, 2021 (pursuant to the time granted in the previous Order of the Court when the service out of the jurisdiction was granted).

[9] On the 19th February, 2021 a defence of the first Defendant was filed and in the defence the first Defendant denies he was in the jurisdiction at the time of the accident and that he was in the USA at the time of the incident. The particulars of negligence are also denied, and that the first Defendant is an attorney at law in Baltimore and a Real Estate Developer. He also denies being employed by the second Defendant. The first defence statement of truth is signed by his Attorney as the first Defendant is out of the jurisdiction. At this point it is important to highlight that the person who answered as the first Defendant is the son of Peter Bramble whose name is also Peter Bramble. In order for there to be clarity I will refer to the Parties as follows:

The son of Peter Bramble – **Peter Bramble Jr. (My emphasis)**

The First Defendant who is actually sued – **Peter Bramble Snr. (My emphasis)**

[10] On the 17th March, 2021 a supplemental affidavit of service on behalf of the Claimant – stating that the maker forgot to list the documents in the affidavit of service filed 18th December, 2020. The 4th paragraph of the affidavit then lists the documents in the package that was mailed on the 25th September, 2020.

[11] An application and an affidavit in support was then filed on the 17th March, 2021 asking the Court to deem the service on Peter Bramble of 1800 Madison Avenue good service and that the first Defendant has been able to ascertain the contents of the claim form and statement of claim. In the affidavit at paragraph 10 it is stated that “the first defendant, Canon Peter Bramble has a son also bearing the name Peter Bramble who maybe resides at the address 1800 Madison Avenue ...” it is also indicated that the first Defendant was served.

[12] At paragraph 12 and 13 reference is made to the fact that the son should have realised the claim pertained to his father, Canon Bramble who was living and working in Antigua for the second Defendant. Reference is also made to correspondence between the Counsel for the Claimant and the initial Counsel for the Defendant. Several documents were exhibited with the affidavit to support it.

[13] On the 9th April, 2021 Peter Bramble Jr. responds to the affidavit of the Claimant for service to be deemed validly filed. The affidavit is 25 paragraphs but for the purpose of brevity at paragraph 4 and 5 Peter Bramble Jr. states that he purchased the property at 1800 Madison Avenue from his parents in 2002 and he attaches a copy of the real property search identifying him as the owner and that he does not receive mail on behalf his father.

- [14] He confirms that he is the son of Reverend Peter Bramble and that the claim has been brought against Peter Bramble not the Reverend. That any mail served at his address is taken to be for either him or his son who is also Peter Bramble. That he is not obliged to inform his father of any documents received by himself. That he reverted to his Attorney to file a defence and not an acknowledgment of service as service was not proper.
- [15] At paragraph 17 he states "...I only filed my defence because I am Peter Bramble and I live at the address at which the documents were delivered although I do not accept service of the same." Peter Bramble Jr. also attaches a copy of the pages in his passport and a copy of the Federal Rules of Civil Procedure for the United States District Court.
- [16] On the 19th May, 2021 a notice of application was filed by the Claimant adding in an additional alternative to the initial application to deem service validly filed. The application further asks the Court in the alternative for the claim form and statement of case on the first Defendant Peter Bramble to be dispensed with. Two affidavits are attached both are made by Attorneys-at-Law attached to the chambers representing the Claimant. The affidavits refer to pre action correspondence and conversations held with the previous attorney for the Peter Bramble Jr. who filed and signed a defence on his behalf. It is indicated at the time the Attorney who filed the defence for Peter Bramble Jr. also previously represented the Canon/Reverend Peter Bramble Snr.
- [17] I will now go on to substance of the application.

Area of Law to be Examined

- [18] Civil Procedure rules 7.8A indicates as follows:

Mode of service – alternative procedure

7.8A (1) Where service under Rule 7.8 is impracticable, the claimant may apply for an order under this Rule that the claim form be served by a method specified by the court.

(2) An order made under this Rule shall specify the date on which service of the claim form shall be deemed to have been affected.

(3) Where an order is made under this Rule, service by the method specified in the court's order shall be deemed to be good service.

(4) An application for an order under this Rule may be made without notice but must be supported by evidence on affidavit –

1. (a) specifying the method of service proposed;
2. (b) providing full details as to why service under Rule 7.8 is impracticable;
3. (c) showing that such method of service is likely to enable the person to be served to ascertain the contents of the claim form and statement of claim; and
4. (d) certifying that the method of service proposed is not contrary to the law of the country in which the claim form is to be served.

(5) Where any method of service specified in an order made under this Rule is subsequently shown to be contrary to the law of the country in which the claim was purportedly served, such service shall be invalid.

Service Under 7.8A

[19] The first affidavit filed on the 17th March, 2021 seeks to support the application under 7.8A. When the application was heard on the 13th and 14th October, 2021 I initially stated that I could not deem it good service under section 7.8A. I was not satisfied with the manner in which service had been effected and there are three reasons for making this determination. These reasons are as follows.

Service on an Individual

[20] Firstly, the postal service tracking information stated it was served on **an individual** and no name was given. (My emphasis) The order¹ for service gave the terms for how service was to be effected on Peter Bramble. The Order stated it had to be served “**on Peter Bramble** at 1800 Madison Avenue, Baltimore MD 21217, Baltimore City County, United States of America via registered mail.” (My emphasis) The Court also went on to set out the period for filing an acknowledgement of service and a defence. Therefore, the service was not in compliance with the Court Order pursuant to CPR 7.8 (c). The service was on an individual and there is nothing suggesting that it was served directly on the first defendant, Peter Bramble Snr.

[21] Further to this point section 7.8 (2) states that “Nothing in this Part..... may authorise.....any person to do anything in the country where the claim form is to be served which is against the law of that country.” It has been argued by Counsel for the first Defendant that service was not in compliance with the Federal Rules of Civil Procedure. Provision is made for service to be made personally or on an individual of suitable age and discretion. Whilst the Court has noted the point it is trite law that if opinion evidence is to be given in relation to law this should be in the compliance with rule 32. This was not done. However, this point in my opinion is otiose, because service according to the affidavit was on an individual and therefore not in strict compliance with the Order of the Court.

¹ Dated 16th September, 2020

Service under 7.8 is Impracticable

- [22] The second reason for not granting the application is that for 7.8A to be engaged the applicant should satisfy the Court that service under 7.8 is impracticable² and this is a matter of fact. The first affidavit in support of the application filed on the 17th March, 2021 by Quinta Charles seeks to suggest to the Court the reasons why 7.8A should now be engaged after the fact. The affidavit indicates that upon service being effected at the address - Peter Bramble Jr. who received it should have realised that it pertained to his father and brought it to his attention. Counsel for the Claimant referred the Court to **Danske Bank A/S (t/a Danske bank) v Meagher**³, and whilst I have noted the arguments that are being suggested as to why the Court should adopt the same approach, in this instant case I must disagree because the facts are distinguishable. In this instant case there is nothing to suggest that the first defendant, Peter Bramble Snr. uses this address as his mailing address as was done in the case provided.
- [23] In the **Danske Bank** case the facts supported that the address was in fact used by the Defendant on the company's registry as his address. This is very different from the instant case where there is evidence to show that the first Defendant sold the property to his son over 18 years ago and there is nothing suggesting that he currently uses it as his address.
- [24] The second and third affidavits submitted on the 19th May, 2021 with the amended application highlight the fact that Counsel representing both Bramble Snr. and Jr. are one and the same. That this is another reason for this section to be engaged. The Court is being asked to connect the dots in relation to pre action letters and negotiations between Counsels to settle the matter before the claim was filed.
- [25] A preliminary review of these affidavits, I noted it prima facie fell within **without prejudice communication**.⁴ (My emphasis) Without evidence confirming that the Parties consented to the use of the same, I did not rely on the evidence in the second and third affidavits as it pertains to the correspondence and conversations with Counsel specifically dealing with settling the matter prior to the claim being filed.
- [26] Therefore, what is left is information already provided to the Court as it relates why the address at 1800 Madison Ave. was used to effect service. Nothing in the affidavits direct the Court to evidence that would suggest why service was impracticable under CPR 7.8, so that the Court can then apply 7.8A.

² Alexander Katunin et al v JSC VTB Bank BVIHCPMAP2015/0004 and BVIHCVVAP 2015/0007 at paragraph 36

³ [2014] IESC 38 and [2013] IEHC

⁴ Blackstone's Civil Practice at page pages 683 and 684 and Commonwealth Caribbean Civil Practice at page 140 - An exception to this principle is the 'without prejudice' communication, the purpose of which is to enable the parties to negotiate in order to settle a dispute without the correspondence relating to the negotiations being used against them should the negotiations fail. In such circumstances, letters marked 'without prejudice', whether litigation was current or not, will be privileged and may not be put in evidence unless both parties consent.

[27] Additionally, CPR 7.8A is a section that should have been engaged by the Applicant/Claimant **prior to the service being effected**. (My emphasis) The statement of claim referred to the first Defendant as being of an address out of the jurisdiction.⁵ But it was stated in the affidavits that the Claimant subsequently learnt that the first Defendant was not resident in the jurisdiction. Therefore, to now say it is impracticable and to engage the Court after the fact, to employ the use of section 7.8A is not substantiated on the evidence in the affidavits provided. This section is referring to service that is **to be effected** not a situation where it already has been effected and a litigant is trying to justify service under this section.⁶ (My emphasis)

Proof of Address Information Incorrect

[28] Finally, the third reason, and most significant is the initial evidence presented to the Court for the application to be granted was later found to be incorrect. Peter Bramble Jr., the son of the first defendant, Peter Bramble Snr., provided evidence that he had purchased the property in 2002, some 18 years prior to this claim.

[29] I therefore find that service under this section has not been satisfied.

[30] I now turn to Civil Procedure Rule 7.8B.

Power of the Court to Dispense with Service of the Claim Form

[31] In Rule 7.8B it states:-

(1) The Court may dispense with service of a claim form in exceptional circumstances.

(2) An application for an order to dispense with service may be made at any time and –

(a) must be supported by evidence on affidavit; and

(b) may be made without notice.

[32] It is trite law that the purpose of service is to give the defendant knowledge of the existence of proceedings against him.⁷ Additionally the law provides that service may be dispensed with in exceptional circumstances.

[33] Blackstone's Civil Practice at page 237 or rubric 15.12 indicates –

⁵ Whilst it is incorrect in the number it refers to the same street and postal code address for the defendant.

⁶ A distinction can be made where in the English CPR section 6.15(2) refers to steps already taken to bring the claim form to the attention of the defendant by alternative method is good service, emphasis on steps already taken – which suggests a retroactive scenario as discussed in *Abela v Baadarani* [2013] UKSC 44. This is very different to our CPR.

⁷ *Barclays Bank Ltd V Hahn* [1989] 2 All ER 398 as per Lord Brightman at 402H

Factors considered in **Lakah Group v Al Jazeera Satellite Channel** [2003] EWHC 1297 (QB), LTL 11/6/ 2003, [2003] EWCA Civ 1781, LTL 9/12/2003, a 'category 2' case for dispensing with service, were (a) the defendant's knowledge of the details of the claim; (b) the defendant's non-residential status; (c) the claimant's attempt to effect service; (d) the claimant's conduct in the claim; € prejudice to the defendant; and (f) prejudice to the claimant. **Olafsson v Gissurarson** (No. 2) [2006] EWHC 3214 (QB), LTL 4/1/2007, is another 'category 2' case in which the court made an order under r. 6.9 dispensing with service on the grounds that there were exceptional circumstances to justify making the order. Here, the defendant had been personally served in **Reykjavik**, but had not signed a written receipt nor acknowledged service and so service was technically invalid under Icelandic law. The court held that the failure to achieve valid service had been for want of the merest of technicalities in circumstances where the fact of service was not contested by the defendant and the evidence was that he had received all the relevant documents in appropriate form at the appropriate time.

- [34] Further Blackstone's Civil Practice at page 236 defines what a category 2 type case is as follows;

Category 2 is where, as in **Infantino v Maclean**, an ineffective attempt to serve within four months has been made, and the defendant does not dispute that he or his legal adviser has in fact received and had his attention drawn to the claim form within the four months. Here, the claimant is in effect seeking to be excused the need to prove service in accordance with the rules. In such cases, the court in Godwin concluded that r. 6.9 is sufficiently widely worded to entitle the court to dispense retrospectively with service of the claim form in an appropriate case. It was decided in **Wilkey v British Broadcasting Corporation** [2002] EWCA Civ 1561, [2003] 1 WLR 1, that the discretion to make an order under r. 6.9 should ordinarily be exercised in category 2 cases provided the attempt to serve was made before the decision in **Anderton v Clwyd County Council** (No. 2), which was 3 July 2002 (the decision was reported in the All England Law Reports on 14 August 2002). In category 2 cases since 3 July 2002 the discretion under r. 6.9 will only be exercised in exceptional cases, with the court applying a strict approach and considering matters such as the claimant's explanation for the late attempt to serve and any other criticisms that may be appropriate about the claimant's conduct of the proceedings. It may also be appropriate to make an order dispensing with service where there has been some minor departure from the permitted methods of service (**Cranfield v Bridgegrove Ltd** [2003] EWCA Civ 656, [2003] 1 WLR 2441). Where a draft, unsealed, claim form was sent to the defendant's insurers during the period of validity, but service was not duly effected on the defendant, it could not be said that the circumstances were exceptional so as to justify dispensing with service (**Cranfield v Bridgegrove Ltd**). In **Cranfield v Bridgegrove Ltd** the Court of Appeal, at [32], stated emphatically that: The Godwin principle is important and must not be subverted. It will

be subverted unless the power to dispense with service retrospectively is confined to truly exceptional cases.

- [35] Exceptional circumstances are discussed in Kevin Hellard et al v Flavio Maluf and Durant International Corp (in Liquidation) v Flavio Maluf BVIHCV(COM) 2017/0134 and BVIHCV(COM) 2020/0062. It was highlighted that 7.8B (1) allows “the court to dispense with service completely in exceptional circumstances. This also has the practical effect of turning nonservice into service.”⁸
- [36] Further the Justice Jack highlights a decision previous given by himself⁹ and one by the Privy Council.¹⁰ An analysis is done of the modern approach to service and dispensing with service. It is highlighted that the Court should not spend undue time analysing decisions of previous decisions, but instead the Court should simply ask itself “**whether, in all the circumstances of the particular case, there is a good reason to make the order sought.**” (my emphasis)
- [37] Using the factors laid out as what should be considered to justify exceptional circumstances I shall now turn to the facts of the instant case.
- [38] The Claimant sought to effect service personally within the jurisdiction of Antigua but having found out that the Defendant had left, the option of serving on his Counsel was explored. This was not fruitful as Counsel indicated she did not have the authority to accept service. Thereafter the Claimant sought to effect on 1800 Madison Avenue an address previously held by the first Defendant. The property no longer belongs to him but had been bought by his son in 2002. The package was delivered to an individual at that address. Peter Bramble Jr. disputes the date proffered by the United States Postal service and the evidence that it was served on an individual. However, he answered the claim in the capacity of the first Defendant.
- [39] I now turn to the affidavit of Peter Bramble Snr. which was filed on the 15th September, 2021 as an affidavit in response to this application. He states his current address of 5219 Al Jones Drive, Shady Side, Maryland 20764, United States of America. He states that he has not been served with the claim form nor any of the “documents stipulated by the court order dated 25th September 2020, which my attorney brought to my attention.”¹¹
- [40] At paragraph 4 of the affidavit, he provides the proof that he moved to the address at 5219 Al Jones Drive in the form of exhibits of his earnings statement from as far back as 1999 and 2003. He states that he has not lived at 1800 Madison Ave since 1997, over 24 years ago. At paragraphs 6, 7 and 8 he states why the information to the Court for his address at 1800 Madison is incorrect due to the length of time that has passed, and how the information is no longer current.

⁸ Kevin Hellard et al v Flavio Maluf BVIHCV (COM) 2017/0134 at paragraph 21.

⁹ Commercial Bank of Dubai v 18 Elvaston Place Ltd [2020] BVIHC(COM) 2020/0072

¹⁰ Abela v Baadarani [2013] UKSC 44

¹¹ Paragraph 3 of affidavit of Peter Wilkin Duke Bramble filed 15th September 2021

[41] At paragraph 9 he states as follows:

“I am informed by my attorney and do verily believe; that I am not a party to these proceedings until I am served with the relevant documents. I only became aware of this matter since speaking to my attorney. Sometime recently, my son informed me that there was a document left at his front door, and he called an attorney in Antigua who was dealing with the matter. I was not aware that the said package was addressed to me until recently. He also informed me that he told the attorney to deal with the matter. I am informed by my son and verily believe he filed an affidavit explaining he received the claim, but he was the wrong person.”

[42] At paragraphs 16 he states he was not aware of when a defence was filed, nor did he instruct anyone to file a defence. In the affidavit filed by Peter Bramble Jr. at paragraphs 7, 8, 9 and 10 indicate in summary that the documents were not served on any one but pushed through the door, and he only noticed them on or about the 21st or 22nd December, 2020. That he spoke with his attorney Mrs. Knight-Edwards and she spoke with him about the Order of the Court to file a defence.

[43] Peter Bramble Jr. refers to the fact that he holds no brief for his father and is not obligated to inform him and that service was not in accordance with the laws of the state. His affidavit is 25 paragraphs long as to all the reasons why service was not proper.

[44] This case falls within the category 2 type cases as described by the authors of Blackstone's. There were several attempts to effect service within the period of the life of the claim but due to technical issues and minor departure from effecting service it could not be effected in strict compliance with the Order of the Court.

[45] Having found that this case comes within category type 2 cases I will now consider the factors¹² to determine if service should be dispensed with retrospectively.¹³

The factors to be considered (a) the Defendant's knowledge of the details of the claim; (b) the Defendant's non-residential status; (c) the Claimant's attempt to effect service; (d) the Claimant's conduct in the claim; (e) prejudice to the Defendant; and (f) prejudice to the Claimant

[46] As stated above the affidavit of Peter Bramble Snr. is telling in that it states that he had a conversation with his Attorney before the filing of this matter and that she was awaiting some documents.¹⁴ Further whilst the affidavit seeks to repeatedly deny having knowledge of the claim and what it is about, he has acknowledged reading the affidavits made in support of the application by Katheryn Ambrose, he had discussions with his son about accompanying documents with the claim, about the mistakes made by the Claimant in the documents served or

¹² Ibid at paragraph 32 above

¹³ *Lakah Group v Al Jazeera Satellite Channel* [2003] EWHC 1297 (QB)

¹⁴ Affidavit filed 15th September 2021 paragraph 20

not served, and the defence filed – which he refers to in paragraph 17, “**the First Defendant is an Attorney At Law in Baltimore, Maryland and a Real Estate Developer and is a principle of MCB Real Estate.**” (My emphasis)

- [47] While I accept there is a distinguishing feature in that Peter Bramble Snr. has not accepted service but, when considering the facts of the case and the affidavit supplied by Peter Bramble Snr. on the 15th September, 2021 I am reminded of the **Barclays** case law - that the purpose of service is to give the Defendant knowledge of the existence of proceedings against him.¹⁵
- [48] The evidence of the USPS tracking service history states that the package was served on an individual at 1800 Madison Ave on the 1st December, 2020. This contrasts the evidence of Peter Bramble Jr. who indicates he noticed a package pushed through on or about 21st or 22nd December, 2020 which coincidentally takes it outside the period of the life of the claim by 3 to 4 days. While I have noted the difference, I find on a balance of probabilities that service was effected at the residence of 1800 Madison Avenue on the 1st December, 2020 at 6:33 p.m. I therefore find as a fact that the first defendant, Peter Bramble Snr. has had sufficient knowledge of the proceedings against him within the time of the life of the claim.¹⁶
- [49] The first defendant, Peter Bramble Snr. was resident in Antigua and service was attempted within the jurisdiction at first, despite the claim referring to his address being out of the jurisdiction. It is not disputed that the first Defendant currently lives out of the jurisdiction as his own affidavit provides his former address of Antigua and his current address in the United States of America. The Claimant was mistaken as to the proper address but efforts were made to effect service.
- [50] The Claimant made one attempt to effect service personally within the jurisdiction and one enquiry with the Attorney of the first Defendant if service would be accepted on his behalf. This was answered negatively which then resulted in the application to serve out of the jurisdiction.
- [51] Whilst there have been points for the Court to consider in the suggested technical omissions of the Claimant with respect to the documents served and not served, I note that the affidavits of Peter Bramble Jr. do not provide copies for the Court to consider. On the balance I accept the affidavits of Ms. Ambrose on what was posted to be served.
- [52] In any event issues on technicalities of this nature or where the order granting service is set aside can be considered as not being fatal to the service of the claim.¹⁷ I am further bolstered by the decision in **Trans World Metals**¹⁸ where the Court in that instance (not having at the time the

¹⁵ Barclays Bank Ltd V Hahn [1989] 2 All ER 398 as per Lord Brightman at 402H

¹⁶ It is noted that CPR does not provide for an extension on the life of the claim once it is not made within the requisite period, this is contrasting with the English CPR which does allow for the extension if a claim is expired.

¹⁷ R v Immigration Appeals Tribunal, ex parte Jeyantham [1999] 3 ALL ER 231 – where the setting aside of an order does not invalidate the steps take. Applied in Michael James v Tasman Gaming Inc. ANUHCv – Decision of Master Mathurin referred to in the Civil Appeal no 6 of 2006, which appeal was dismissed.

¹⁸ Trans-World Metals SA (Bahamas) et al v Bluzwed Metals Limited (BVI) et al BVIHCB2003/0179 Barrow J (Ag) as he then was, March 2005.

amended CPR 7.8B) used CPR 26.9(3) to rectify matters where there has been a procedural error in relation to the issue of service out of the jurisdiction. I also adopt and agree with this approach and it further confirms why service should be dispensed with in this case.

- [53] At this juncture there is no prejudice to the first Defendant as he can be given an opportunity to defend this claim, however the prejudice to the Claimant is severe. By the filing of the defence by Peter Bramble Jr., the Claimant was severely prejudiced. The overriding objective of the rules is to ensure that matters are proceeded with justly and in the circumstances of this case the Claimant is severely prejudiced in his claim if the right first defendant is not a party to the suit.

Conclusion

- [54] I therefore find in the facts of the case that there are an exceptional set of circumstances as to why the Order to dispense with service should be made. Accordingly, the application is granted under CPR 7.8B.

- [55] I also wish to hear from the Parties on the Court striking out the defence of Peter Bramble Jr.

- [56] For the above-mentioned reasons the Order of the Court is as follows:

1. The Claimant's application to grant service based on section 7.8A is refused;
2. The Claimant's application to dispense with service based on CPR 7.8B is granted;
3. The Defendant having been unsuccessful in the application – Parties to address on the issue of costs.
4. The defence filed by the Peter Bramble Jr. is struck out as he is not a party to the proceedings;¹⁹
5. The first defendant – Peter Bramble Snr. is granted 56 days from date of the delivery of the judgment to file a defence;
6. The Claimant to draw, file and serve this Order.

Charon Gardner-Hippolyte
High Court Master

By the Court

Registrar

¹⁹ This is made pursuant to the court's power under CPR 26.2 and 26.3(1)(b)