

**EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

ANTIGUA AND BARBUDA

ANUHCVP2014/0013

BETWEEN:

ROBERT ALLEN STANFORD

Appellant

and

**[1] STANFORD INTERNATIONAL BANK LIMITED (In Liquidation)
(Acting by and through its Joint Liquidators, Marcus A Wide
and Hugh Dickson)**

Respondent

**[2] ANDREA STOELKER
[3] STANFORD DEVELOPMENT COMPANY LIMITED
[4] MAIDEN ISLAND HOLDINGS LIMITED
[5] GILBERT RESORT DEVELOPMENT HOLDINGS LIMITED
[6] STANFORD HOTEL PROPERTIES LIMITED**

Defendants

Before:

The Hon. Dame Janice M. Pereira, DBE
The Hon. Mr. Davidson Kelvin Baptiste
The Hon. Mde. Gertel Thom

Chief Justice
Justice of Appeal
Justice of Appeal

On written submissions:

Mr. Hugh C. Marshall Jr. and Ms. Kema M.L.M. Benjamin for the Appellant
Mr. Anthony Astaphan, SC and Ms. Nicolette Doherty for the Respondent

2015: October 15.

Interlocutory appeal – Service of claim form out of jurisdiction – Time period within which a claim form may be served out of the jurisdiction – Whether an application to serve a claim form out of the jurisdiction must be made within 6 months or 12 months – Rules 7.5, 8.12 and 8.13 of the Civil Procedure Rules 2000 – Whether proceedings are parallel to proceedings instituted in the United States – Whether the learned judge ought to have declined jurisdiction – Whether permission of United States court was required to institute proceedings

On 20th July 2011, the respondent filed a claim against the appellant, its former manager and several companies owned by the appellant. Prior to these proceedings, the respondent's United States appointed receiver had instituted proceedings in the United States against the appellant, the respondent and others. On 12th March 2009, a judge in a Texas court ordered that no further proceedings be brought against the appellant without the permission of the court. The United States proceedings remain ongoing.

On 28th July 2011, the respondent was granted leave by the Antigua and Barbuda High Court to serve the claim on the appellant out of the jurisdiction in the United States. The respondent amended the claim form on 12th August 2011 and served the appellant on 19th September 2011.

On 31st October 2011, the appellant applied for an order to set aside the service out order. The application was granted by a judge in the court below on 15th August 2015; however, this order was set aside by the Court of Appeal on 30th October 2015 and the matter was remitted to the High Court. In the meantime, on 6th July 2012, the respondent applied to extend the time for serving the claim on the appellant and on 7th September 2012, the respondent applied to serve the claim on the appellant out of the jurisdiction. Both applications were heard by a judge on the same day and were granted. The amended claim was then served on the appellant in the United States on 15th October 2012.

The appellant acknowledged service of the claim on 19th November 2012 and filed an application on the same day to set aside the service out of the jurisdiction on the grounds that the application was made out of time; that the proceedings were parallel to proceedings in the United States; and that permission was not obtained from the Texas court pursuant to the order of the judge in the Texas court. The learned judge in the court below dismissed the appellant's application. In doing so, the judge found that the application for an extension of time to serve the claim out of the jurisdiction, having been made within the 12 month period for service of a claim out of the jurisdiction, was made within time. The judge also found that the proceedings were not parallel to the proceedings in the United States and that the order of the Texas court did not apply to Antigua and Barbuda.

The appellant, being dissatisfied with the judge's decision, has appealed on a number of grounds.

Held: dismissing the appeal; and ordering the appellant to pay the respondent costs on the appeal, assessed in the sum of \$2,500, that:

1. The provisions of rules 7.5, 8.12, and 8.13 of the **Civil Procedures Rules 2000** are unambiguous. When read conjointly, the rules provide a procedure and time frame which must be followed by a litigant who is desirous of instituting proceedings against a person who resides outside of the jurisdiction of the court. While there is no time specified in CPR 8.12 or 7.5 for when the application to serve out must be made, CPR 8.12 makes a clear distinction between the time within which a claim must be served within the jurisdiction and the time within

which a claim must be served outside of the jurisdiction. Since it is necessary for permission to be obtained for service outside of the jurisdiction, the permission has to be obtained before the 12 month period for service has expired or any extension for service granted pursuant to CPR 8.13. Accordingly, in this appeal, the learned judge was quite correct in holding that the respondent made its application for an extension of the period of validity of the claim form in time and had 12 months to do so.

Rule 8.12 of the **Civil Procedure Rules 2000** applied; **Anderton v Clwyd County Council (No. 2)** [2002] 1 WLR 3174 applied; **Rondex Finance Inc. v Ministry of Finance of the Czech Republic et al** BVIHCV2010/0069 (delivered 13th May 2011, unreported) considered; **Marty Steinberg et al v Banque De Partrimonies Prives Geneve et al** BVIHCV2009/0353 (delivered 19th April 2011, unreported) considered; **Bayat and others v Cecil and others** [2011] EWCA Civ 135 considered.

2. The decision of a judge to decline jurisdiction to hear a matter on the basis that proceedings are parallel to proceedings in another jurisdiction, is the exercise of a judicial discretion. It is a well settled principle that an appellate court should not interfere with the exercise of a judge's discretion where the judge has applied the correct principles and has taken into account matters which should be taken into account and omitted matters which are irrelevant, unless the appellate court is satisfied that the decision is wholly wrong and therefore outside the generous ambit of the judge's discretion. In this appeal, the appellant filed no submissions and did not address the issue in his earlier submissions at the leave stage that the court should have declined jurisdiction. The appellant did not advance any reason which showed that the learned judge erred in exercising his discretion. The proceedings in the United States were not instituted by the respondent but by the United States appointed receiver and the respondent is a defendant in those proceedings. In the circumstances, there was no basis to interfere with the exercise of the judge's discretion.

Spiliada Maritime Corporation v Cansulex Ltd [1987] AC 40 referred; **Sibir Energy v Gregory Trading SA et al** BVIHCVAP2005/0026 referred.

3. The mere fact that a foreign court makes an order restricting further proceedings without its prior permission does not automatically make the order enforceable in Antigua and Barbuda. It cannot be taken that an order of a court in a foreign jurisdiction has extra territorial effect without more. In this appeal, the appellant made no application for registration or recognition of the foreign order. Consequently, the learned judge was correct in concluding that the order of the Texas court did not apply in Antigua and Barbuda.

JUDGMENT

- [1] **THOM JA:** This appeal arises from the dismissal of the appellant's application to have the service of the claim form on him in the United States set aside.
- [2] The background to this appeal is that on 20th July 2011, the respondent filed a claim against the appellant, its former manager and several companies owned by the appellant. Prior to the institution of these proceedings, the United States appointed receiver instituted proceedings in the United States against the appellant, the respondent and others. On 12th March 2009, Judge Godbey ordered that no further proceedings be brought against the appellant without the permission of the Houston Court. Those proceedings are ongoing. On 28th July 2011, leave was granted to the respondent to serve the claim form on the appellant out of the jurisdiction. The claim form was amended on 12th August 2011 and served on the appellant on 19th September 2011.
- [3] On 31st October 2011, the appellant applied to set aside the order. The application was heard on 27th January 2012 and the order granted on 15th August, 2012. On appeal, this order was set aside on 30th November 2012. In the interim, the respondent, on 6th July 2012, applied to have the validity of the claim extended. On 7th September 2012 the respondent filed an application to serve the claim form out of the jurisdiction. Both applications were heard on 3rd October 2012 and the orders granted. The amended claim form was served on the appellant in the United States on 15th October 2012.
- [4] On 19th November 2012, the appellant acknowledged service and on even date made an application to have the order for service out of the jurisdiction set aside on the grounds that the application was made out of time; that the proceedings were parallel proceedings to the proceedings in the United States courts in Houston, Texas and permission of the Texan court was not obtained pursuant to the order of Judge Godbey prior to the institution of the proceedings.

- [5] The learned judge in the court below dismissed the appellant's set aside application. In doing so he found that the application for extension of time made on 6th July 2012 having been made within the period of 12 months, was not made out of time, the proceedings were not parallel proceedings since the claims were different and concerned different parties and the order of the Texan court did not apply to Antigua and Barbuda.
- [6] In finding that the time within which an application must be made to serve the claim form out of the jurisdiction was 12 months, the learned judge adopted the approach of the English Court of Appeal in **Anderton v Clwyd County Council (No 2)**¹ and the decision of the Virgin Islands Commercial Court in **Marty Steinberg et al v Banque De Partrimoines Prives Geneve et al**² and **Rondex Finance Inc. v Ministry of Finance of the Czech Republic et al**.³ The learned judge refused to adopt the position of the Nevis High Court in **Kenneth Williams v Leslie Chang et al**.⁴ I will return to these decisions.
- [7] Three issues arise from the appellant's grounds of appeal, being: (i) whether an application to serve a claim form out of the jurisdiction must be made within 6 months or 12 months; (ii) whether the proceedings are parallel to proceedings instituted in the United States court and on that basis the court below ought to have declined jurisdiction; and (iii) whether permission of the United States court was required prior to the institution of the claim.
- [8] While the appellant filed submissions in support of the application for leave to appeal, the appellant did not file submissions with the notice of appeal as required by rule 62.10(1) of the **Civil Procedure Rules 2000** ("CPR 2000").

¹ [2002] 1 WLR 3174.

² BVIHCV2009/0253 (delivered 19th April 2011, unreported).

³ BVIHCV2010/0069 (delivered 13th May 2011, unreported).

⁴ NEVHCV 2010/0153 (delivered 10th October 2012, unreported).

Service Out of the Jurisdiction

- [9] The appellant contends that the claim having been filed on 20th July 2011, the validity of the claim form was for 6 months. Since no application was made to serve the claim form out of the jurisdiction within the six month period pursuant to CPR 8.13, the validity of the claim was not extended to 12 months. Therefore when the court made the order on 3rd October 2012 extending the validity of the claim and granting permission to serve the claim form out of the jurisdiction, the validity of the claim form had already expired on 19th January 2012. The order of 3rd October 2012 was therefore a nullity. The appellant relied on the following statements in **Kenneth Williams v Leslie Chang et al** at paragraphs 15 and 18:

“[15] CPR 8.12 provides a general rule that the claim form must be served within six (6) months. If permission is given for it to be served out of the jurisdiction, then by CPR 8.12(2) the period for service is extended to twelve months”.

...

“[18] The claim form in this case was issued on 8th October, 2010. Therefore, given that permission to serve it out of the jurisdiction was granted (29th March 2011) it became a claim under 8.12 (2) and so the period for service expired on 10th October 2011. The application at bar was however filed some 9 months after the expiry of this period and not within the period for serving the claim as mandated by CPR 8.13(a).”

- [10] The appellant also contends that the fact that the order of 15th August 2012 was set aside on appeal on 30th November 2012, is of no moment since the order was in effect when the order of 3rd October 2012 was made. Further, the Court of Appeal ordered that the matter be remitted to the High Court for rehearing.
- [11] The respondent submits that the provisions of CPR 8.12 and 8.13 are very clear. CPR 8.12(2)(a) provides for a claim form to be served out of the jurisdiction within 12 months and the words ‘within the period’ in CPR 8.13(3)(a) means the 12 months period prescribed in CPR 8.12(2)(a).

[12] The respondent further contends that CPR 7.5 contains no stipulation that permission to serve out of the jurisdiction must be obtained before the 12 month period in CPR 8.12(2)(a) is triggered. In other words, a claim intended to be served out of the jurisdiction has an automatic validity period of 12 months. The position is the same as in admiralty claims. Learned Senior Counsel, Mr. Anthony Astaphan, relied on several cases including **Anderton v Clwyd County Council (No 2)**⁵ and **ST Shipping & Transport Inc v Vyzantio Shipping Ltd 'The Byzantio'**⁶ and submits that the statements in **Kenneth Williams** relied on by the appellant were obiter and were in any event an incorrect interpretation of CPR 8.12(2).

Discussion

[13] The relevant provisions are CPR 8.12, CPR 8.13(1)-(4), and CPR 7.5.

[14] CPR 8.12 sets out the time within which a claim form must be served. It reads:

“8.12 (1) The general rule is that a claim form must be served within 6 months after the date when the claim was issued.

(2) The period for –
(a) service of a claim form out of the jurisdiction; or
(b) service of an Admiralty claim form in rem;
is 12 months.”

[15] CPR 8.13 provides for extending the time for serving a claim form and the requirements for the grant of an extension. The rule provides that:

“8.13 (1) The Claimant may apply for an order extending the period within which a claim form may be served.

(2) The period by which the time for serving a claim form is extended may not be longer than 6 months on any one application.

(3) An application under paragraph (1) –
(a) must be made within the period –
(i) for serving a claim form specified by rule 8.12; or
(ii) of any subsequent extension permitted by the court; and

⁵ [2002] EWCA Civ 933.

⁶ [2004] All ER (D) 219 (Dec).

- (b) may be made without notice but must be supported by evidence on affidavit.
- (4) The court may make an order under paragraph (1) only if it is satisfied that –
 - (a) the claimant has taken all reasonable steps to-
 - (i) trace the defendant, and
 - (i) serve the claim form;but has been unable to do so; or
 - (b) there is some other special reason for extending the period.”

[16] These rules and their English counterparts were referred to in the cases cited in the submissions and the judgment of the court below.

[17] In **Rondex**, the claim form was issued on 1st April 2010 and the application for extension of time for service was made on 29th March 2011. The Virgin Islands Commercial Court assumed that the time for making the application to serve out was within 12 months. The learned judge based this assumption on the approach taken by the English Court of Appeal in **Bayat and others v Cecil and others**.⁷ In **Bayat**, the claim form was marked ‘Not for service out of the jurisdiction’. The English Court of Appeal in considering whether the court below had properly exercised its discretion in extending the time for service of the claim form and granting permission for service out of the jurisdiction stated at paragraph 40:

“For the present purpose, I shall proceed on the basis that the claim form was valid for six months from the date of issue; ie, with the extra two months normally allowed for service out of the jurisdiction.”

[18] In **Marty Steinberg**, the claim form was issued on 9th July 2009 and the application for extension of time and permission to serve out of the jurisdiction was made 10 months later on 11th May 2010. On 9th June 2010 the claimant applied for an extension of the time for service of 6 months to 8th January 2011. This application was granted but was later set aside. It is implied in the judgment setting aside the order, particularly at paragraphs 33 and 34, that the learned

⁷ [2011] EWCA Civ 135.

judge assumed that 12 months was the period of validity for a claim form to be served out of the jurisdiction.

[19] On appeal by Marty Steinberg,⁸ while both parties made submissions on the period of validity of a claim to be served out of the jurisdiction, the appeal was disposed on other grounds; therefore no definitive ruling was made on the issue. However, the following statement of the Court at paragraph 71 of the judgment seems to indicate that the Court was of the view that the period of validity of a claim to be served out of the jurisdiction was 12 months. Paragraph 71 reads:

“The failure of the appellants to show that they had taken any steps at all to serve the claim form in Hong Kong within the initial twelve (12) month period, or to give any explanation as to why they had failed to do so or what they had been doing, entitled the learned judge to set aside his earlier order extending time for service out of the jurisdiction by a further six (6) months and to set aside the subsequent service on the respondents as a matter of discretion.”

[20] In **Kenneth Williams**, the claim form was issued on 8th October 2010. The claimant applied to serve the claim form out of the jurisdiction on 17th December 2010 and permission was granted on 29th March 2011. The claimant did not serve the claim form on the defendant, but on 30th July 2012, he applied for an extension of time to serve the claim form. The court was not required to determine whether the period for making an application to serve a claim form out of the jurisdiction was 6 months or 12 months. The central issue before the court was whether an extension of time could be granted under the court’s general case management powers pursuant to CPR 26.1(2)(k), where CPR 8.13(3)(a) specifically sets out the period within which an application for extension must be made. The learned judge found that the court had no power to grant an extension where the application was made outside of the specified time in CPR 8.13(3)(a). I agree with the submission

⁸ Marty Steinberg, Receiver (In his capacity as Receiver of Lancer Offshore, Inc. and The Omnifund, Limited Appointed by the United States District Court for the Southern District of Florida) et al v Swisstor & Co. et al BVIHCVAP2011/0012.

of the respondent that the statements of the court at paragraphs 15 and 18 relied on by the appellant were obiter.

[21] I turn now to the English case of **Anderton**. The English CPR 7.5(3) is in similar terms to CPR 8.12, except the time for service of a claim form in the United Kingdom is 4 months and the period for serving a claim form outside the jurisdiction of the United Kingdom is 6 months.

[22] In the case of **Anderton**, the English Court of Appeal, having heard several appeals on the construction of certain provisions of the English CPR, gave a single judgment. One of the appeals included in the judgment is **Cummins v Shell International Manning Services Ltd**. The case of **Anderton** itself was concerned with the construction of the English CPR 6.7 which dealt with 'deemed day of service' and in my view is not relevant to the present appeal. In **Cummins**, the claim form was instituted on 2nd February 2001 against two defendants, one of which had an address outside of the UK. On 8th June 2001, after the expiration of 4 months but before the expiration of 6 months, the master granted the claimant permission to serve the claim form on the second defendant outside of the jurisdiction. This order was set aside by the judge. On appeal, the respondent stated that they were not contending as they did before the judge that the application to serve the claim form outside of the jurisdiction must be issued before the end of the 4 month period, rather, their submissions were focused on the criteria to be applied in exercising the discretion. The court in allowing the appeal confirmed at paragraph 98 of the judgment that no extension of time was required, as the 6 month period for service had not expired. Paragraph 98 reads:

"The relevant provisions governing permission to serve a claim form out of the jurisdiction are in the "Special Provisions" in Section III of Pt6 (see also r 6.5(1)), not in the general provisions in Pt7, save for the time for service of the claim form out of the jurisdiction in 7.5(3), as to which no extension of time was required, as the 6 month period for such service had not expired ... In the circumstances Master Murray was entitled to exercise his discretion to grant permission to serve the claim form on Shell International Manning out of the jurisdiction."

- [23] In the court below, the appellant had relied on the decision of Gray J in the Queen's Bench in **Cummins**, however as pointed out above, this decision was overruled on appeal.
- [24] In my view the provisions of CPR 7.5, 8.12, and 8.13 are unambiguous. When read conjointly, they provide a procedure and time frame which must be followed by a litigant who is desirous of instituting proceedings against a person who resides outside of the jurisdiction of the court. While there is no time specified in CPR 8.12 or 7.5 when the application to serve out must be made, CPR 8.12 makes a clear distinction between the time within which a claim to be served within the jurisdiction must be served and the time within which a claim must be served outside of the jurisdiction. Claims for service outside of the jurisdiction are grouped with claims in admiralty and are given the same time period for service. They must be served within 12 months. Permission being necessary for service outside of the jurisdiction, the permission has to be obtained before the 12 month period for service has expired or any extension for service granted pursuant to CPR 8.13. If the argument of the appellants is correct, it would mean that a litigant who wishes to institute admiralty in rem proceedings would have to serve the claim within 6 months unless permission is given to serve within 12 months. This would be contrary to the very clear provisions of CPR 8.12(2)(b) which provides for admiralty in rem claims to be served within 12 months.
- [25] The court in construing legislative provisions is required to give provisions that are clear and unambiguous their plain and natural meaning.⁹ There is no reason for this court to give a different construction to CPR 8.12 from the construction placed on the English CPR 7.5(3) by the English Court of Appeal. The obiter statements of the court in **Kenneth Williams** are not a correct construction of CPR 8.12 and 8.13.

⁹ See *Rainy Sky SA and others v Kookmin Bank* [2011] UKSC 50; *Attorney General of Belize and others v Belize Telecom Ltd and another* [2009] UKPC 10; *Caribbean Commercial Bank (Anguilla) Limited v. Starry Benjamin AXAHC VAP2014/0009* (delivered 23rd July 2015, unreported).

Parallel Proceedings

[26] In their submissions on the application for leave to appeal, the appellant made no submissions in relation to this ground of the appeal. In the court below (as stated in the judgment),¹⁰ the appellant argued that the court should decline jurisdiction in view of the following factors:

- (a) the Texan proceedings were commenced earlier in time than this claim;
and
- (b) both concern stewardship of Stanford International Bank Limited (in Liquidation) (SIB) by Mr Stanford;
- (c) the case Mr Stanford is facing is the same in both jurisdictions
- (d) he will have to use the same resources to defend both;
- (e) a United States judgment would be representative of the claims made against him in Antigua;
- (f) both concern the same parties.

[27] Mr. Astaphan, SC, in response submits that the claim brought by the United States Receiver in the United States and the claim brought by the respondent are not parallel proceedings. The test for the appropriate forum is the test laid down in **Spiliada Maritime Corporation v Cansulex Ltd**¹¹ and **Sibir Energy v Gregory Trading SA et al.**¹² The court is required to consider where is the most appropriate place for the trial of the claim in the interest of all parties and the ends of justice.

[28] The appeal on this ground is an appeal against the exercise of the learned judge's discretion. It is a well settled principle that an appellate court would not interfere

¹⁰ At para. 63

¹¹ [1987] AC 460 at p. 474.

¹² BVIHCVAP2005/0026 (delivered 18th September 2006, unreported).

with the exercise of a judge's discretion where the judge has applied the correct principles and has taken into account matters which should be taken into account and omitted matters which are irrelevant, unless the appellate court is satisfied that the decision is wholly wrong and therefore outside the generous ambit of the judge's discretion.

- [29] As stated earlier, the appellant has filed no submissions and did not address this ground of appeal in his earlier submissions at the leave stage. He has not advanced any reason which shows that the learned judge erred in exercising his discretion. The proceedings in the United States were not instituted by the respondent but by the US appointed receiver and the respondent is a defendant in those proceedings. In my opinion, there is no basis to interfere with the exercise of the judge's discretion.

Permission of the United States Court

- [30] On this ground also there are no submissions from the appellant. In the lower court the appellant contended that the claim should not be allowed to proceed because the order of Judge David Godbey in the United States proceedings states that no further proceedings may be brought against the appellant without the permission of the court and no such permission was obtained by the respondent.
- [31] The respondent submits that in the absence of a reciprocal enforcement of judgment treaty with the United States, the courts of Antigua and Barbuda retain an inherent jurisdiction to recognise the order of Judge Godbey. The exercise of this power is discretionary. However, no application has been made for recognition of this order.
- [32] I am of the view that this ground of appeal is without merit. The mere fact that a foreign court makes an order restricting further proceedings without its prior permission is not automatically enforceable in Antigua and Barbuda. It cannot be taken that an order of a court in a foreign jurisdiction has extra territorial effect

without more. The respondent correctly submits that there has been no application for registration or recognition of the foreign order.

Conclusion

[33] In conclusion, I find that the time for service of a claim form out of the jurisdiction is within 12 months or any further period of extension granted by the court. The proceedings instituted in Antigua and Barbuda by the respondent, the receiver appointed by the High Court of Antigua and Barbuda, are not parallel proceedings to the proceedings instituted by the United States appointed receiver and no permission was required from Judge Godbey by the respondent to institute or continue these proceedings.

[34] For the reason give above, I would dismiss this appeal and order the appellant to pay the respondent costs of this appeal assessed in the sum of \$2,500.

Gertel Thom
Justice of Appeal

I concur.

Dame Janice M. Pereira, DBE
Chief Justice

I concur.

Davidson Kelvin Baptiste
Justice of Appeal