[2019] JMSC Civ 259

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN THE CIVIL DIVISION
CLAIM NO. SU2019CV00117

BETWEEN	**JASON TAYLOR**	**CLAIMANT**
AND	**LEONARD WRIGHT**	**DEFENDANT**

Ms. Nicola Allison instructed by Bignall Law for the Applicant/Claimant.

Heard December 19, 2019.

Civil procedure – Claim form filed close to the expiration of limitation period – Application to extend the validity of the claim form filed within life of the claim form – Whether all reasonable steps taken to serve claim form – Whether it is appropriate to extend validity of the claim form after claim became time-barred – Rule 8.15(4) of the Civil Procedure Rules – Considerations for the Court.

MASTER N. HART-HINES

[1] On December 19, 2019 I heard an application to extend the validity of the claim form, pursuant to Rule 8.15 of the Civil Procedure Rules (hereinafter "CPR") and an application to permit service by a specified method, pursuant to Rule 5.14 of the CPR. I gave my decision on that date and I promised to put my reasons in writing. I now do so.

BACKGROUND

[2] By Without Notice Application (hereinafter "the application") filed on February 15, 2019, the Applicant/Claimant applied for an order extending the validity of the claim form. The Applicant also sought an order dispensing with personal

service of the claim form and permitting service via publication of a Notice of Proceedings in a newspaper, or, service on British Caribbean Insurance Company Limited ("BCIC"), which insured the Defendant's vehicle in February 2013. The claim arises from a motor accident which occurred on February 28, 2013, along Lyndhurst Road in the parish of St. Andrew. It is alleged by the Applicant that he was injured when a vehicle bearing registration 5789EW was so negligently operated by Defendant that he caused a collision with vehicle bearing registration CG150, driven by the Applicant.

[3] The claim form and the particulars of claim were filed on January 15, 2019, one-month shy of the expiration of the limitation period in respect of the personal injury claim. Details of the nature of the injuries sustained by the Claimant are not indicated in particulars of claim. It is also noted that there was no medical report accompanying the claim form, but there is a reference in particulars of claim to the cost of a medical report issued by the Kingston Public Hospital. The claim form and the particulars of claim are signed by the Claimant's Attorney, Mr. Vaughn Bignall.

[4] On February 15, 2019 the application was filed supported by an affidavit sworn by Attorney, Mr. Vaughn Bignall and an affidavit sworn by Mr. Howard Wilks, Process Server. The grounds of the application can be summarised as follows:

1. The Process Server Howard Wilks attempted to effect service on the Defendant without any success.
2. The whereabouts of the Defendant is unknown.
3. The Defendant was insured by BCIC at the time of the accident.
4. Publication of the Notice of Proceedings in The Gleaner is likely to give the Defendant notice of the action.
5. The granting of orders sought therein will enable the court to proceed with the claim fairly and expeditiously.

[5] The affidavit of Howard Wilks sworn and filed on February 15, 2019 stated that in the course of his employment as Process Server employed to Bignall Law, he received instructions on January 15, 2018 to serve the claim form, the particulars of claim and other accompanying documents on the Defendant. As

a result of instructions received, on January 22, 2018 between 1 p.m. and 2 p.m., he proceeded to Jackson Road, Kingston 10 in the parish of Saint Andrew, the Defendant's last known address. However, his attempt to locate the Defendant was unsuccessful as he was told by residents that the Defendant is not known in the area.

[6] The affidavit of Vaughn Bignall sworn and filed on February 15, 2019 indicated that he received instructions from the claimant and as a result, he commenced the action against the Defendant. Mr. Bignall averred that the Defendant's motor vehicle registered 5789EW was insured at the time of the accident by BCIC and that Notice of Proceedings were served on BCIC and it accepted same. As such, Mr. Bignall alleged that there was a contractual relationship with between BCIC and the Defendant and that service on BCIC would cause the claim form to come to the Defendant's knowledge. In addition, Mr. Bignall stated that The Gleaner is "the newspaper of general circulation in this country and this newspaper is most likely to give the Defendant(s) notice of the pendency of the action". Finally, Mr. Bignall stated that the Claimant had taken all reasonable steps to locate the Defendant and effect service within the prescribed period but has not been able to do so. The affidavit does not explain why the proceedings were only instituted in 2019.

[7] On February 28, 2019, the claim became statute barred. The claim form expired on July 15, 2019. The application was fixed for hearing on December 19, 2019, ten months after the claim became time-barred.

THE HEARING

[8] During the hearing on December 19, 2019, the Court enquired of counsel Ms. Allison whether any previous claims were filed before January 2019 and when Bignall Law commenced corresponding with BCIC. Counsel stated that her file did not reveal that any previous claims were filed, but there was evidence of correspondence between Bignall Law and BCIC six years earlier in 2013.

[9] During the hearing, the Court identified issues for consideration in relation to the application made pursuant to CPR Rule 8.15(4), and allowed counsel an

opportunity to make representations in relation to those issues. Thereafter the Court made its ruling having regard to the principles in the English Court of Appeal decisions in ***Drury v British Broadcasting Corporation and another*** [2007] EWCA Civ 497 and ***Ehsanollah Bayat and others v Lord Michael Cecil and others*** [2011] EWCA Civ 135.

THE ISSUES

[10] The issues identified were as follows:

1. Whether the Applicant had demonstrated that he had taken all reasonable steps to trace the Defendant and to serve the claim form on him.
2. Whether it was appropriate to make an order extending the validity of the claim form beyond February 28, 2019 (the date of the expiration of the limitation period) if this would deprive the Defendant of a limitation defence.

SUBMISSIONS

[11] In response to the issues identified by the Court, Ms. Allison submitted that there was no point in the Process Server revisiting the address since residents of the community stated that they did not know the Defendant. Counsel submitted that in the circumstances, the Applicant had satisfied the requirements of CPR Rule 8.15(4)(a) in that all reasonable steps had been taken to trace the Defendant and to serve the claim form.

[12] Ms. Allison further submitted that the application for the extension should be granted because:

1. the claim form was filed before the expiration of the limitation period, and
2. the application was filed before the claim form expired.

[13] Counsel posited that the Supreme Court Civil Registry failed to list the application for hearing before the claim form expired. Counsel further submitted that the overriding objective of the CPR requires that the Court dispense justice, and that the Claimant would be deprived of justice if the application was not granted.

THE LAW

[14] For the purpose of this application, the relevant portions of CPR Rule 8.15 provide as follows:

> ***"(1) The claimant may apply for an order extending the period within which the claim form may be served.***
>
> ***(2)*** *The period by which the time for serving the 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 the claim form specified by rule 8.14; or*
> *(ii) of any subsequent extension permitted by the court, and*
> *(b) may be made without notice but must be supported by evidence on affidavit."*
>
> ***(4) The court may make an order for extension of validity of the claim form only if it is satisfied that***
> ***(a) the claimant has taken all reasonable steps***
> ***(i) to trace the defendant; and***
> ***(ii) to serve the claim form, but has been unable to do so;*** *or*
> *(b) there is* ***some other special reason*** *for extending the period. (My emphasis)*

[15] In determining whether to grant an application for an extension of the the validity of the claim form, I must consider whether the Applicant has demonstrated that he has taken "all reasonable steps" to trace the Defendant and to serve the claim form on him, as stipulated by CPR Rule 8.15(4)(a). In determining whether the Applicant has satisfied the test in the rule, I must consider the nature and number of attempts made at service, and the reason proffered for the failure to serve the claim form within the six-month period specified by that rule. The Court must also be guided by the overriding objective and dispense justice to both parties. This process involves the Court giving consideration to the Defendant's right to rely on a limitation defence.

[16] I have found no judgments in this jurisdiction interpreting Rule 8.15(4). I therefore had regard to English cases. The corresponding rule in the English CPR (Rule 7.6) is slightly different from the Jamaican provision in four respects. Firstly, the English rule allows applications to be made after the end of the four-month period within which the claim form may be served (CPR 7.6(3)). Secondly, the rule does not stipulate a maximum period for an extension. Thirdly, either the court or a claimant may serve the claim form.

Finally, the rule has a two-part cumulative test, and CPR 7.6(3)(b) is one threshold condition. Notwithstanding these differences, the condition in CPR 7.6(3)(b) is a similar test to our CPR Rule 8.15(4)(a) in that it refers to the need for a claimant to take "*all reasonable steps*" to serve a defendant. I am therefore persuaded to apply the English cases considering CPR 7.6(3)(b).

[17] For the sake of completeness, the English Rules 7.6(2) and 7.6(3) state:

> *"**7.6**…**(2)** The general rule is that an application to extend the time for compliance with rule 7.5 must be made-*
>
> *(a) within the period specified by rule 7.5; or*
>
> *(b) where an order has been made under this rule, within the period for service specified by that order.*
>
> ***(3)** If the claimant applies for an order to extend the time for compliance after the end of the period specified by rule 7.5 or by an order made under this rule, the court may make such an order only if –*
>
> *(a) the court has failed to serve the claim form; or*
>
> *(b) **the claimant has taken all reasonable steps to comply with rule 7.5 but has been unable to do so**; and*
>
> *(c) in either case, the claimant has acted promptly in making the application."*

[18] The principles distilled from the English cases can be summarised thus:

1. Unless "*all*" reasonable steps have been taken, the court cannot extend time. A claimant applying to extend the time for service of a claim form must demonstrate that he has taken "all" reasonable steps to effect service on the defendant before the time permitted for service expired.

2. Claimants are not to leave service to the last moment. In ***Drury v Broadcasting Corporation and another*** [2007] EWCA Civ 497, Lady Justice Smith stated this at paragraph 40:

> *"40. This court has on more than one occasion stressed that **one of the intentions behind the Civil Procedure Rules is that litigation should proceed expeditiously and that time limits should be taken seriously**: see for example Vinos v Marks & Spencer PLC [2001] 3 AER 784 at 789-790. **Also, this court has warned litigants of the dangers of leaving until the last minute the taking of a procedural step governed by a time limit:** see for example Anderton v Clwyd County Council (supra) at page 3184. If repetition of this warning is necessary, let this case provide it. A litigant is entitled to make use of every day allowed by the rules for the service of a claim form. But it is well known that hitches can be encountered when trying to effect service. **A litigant who leaves his efforts at service to the last moment and then fails due to***

> ***an unexpected problem is very unlikely to persuade the court that he has taken all reasonable steps to serve the claim in time.*** *Without such a finding, the court will be unable to extend time for it is only if both sub-paragraphs (b) and (c) of Part 7.6(3) are satisfied that the court has any discretion to grant relief.* ***A litigant who delays until the last minute does so at his peril****.*
> *(My emphasis)*

3. The court is required to give effect to the overriding objective when it interprets any rule or exercises any power under the CPR (see Rule 1.2). Consequently, the power to extend time for the service of a claim form must be exercised in accordance with the overriding objective (see ***Hashtroodi v Hancock*** [2004] EWCA Civ 652 at paragraph 18).

4. When an application is made for an extension of the validity of the claim form, the Court must conduct an enquiry into the reason why the claim form was not served within the life of the claim form (see ***Hashtroodi*** at paragraph 18). This is in keeping with the overriding objective of enabling the court to deal with cases justly.

5. An important consideration for the Court is whether the limitation period has expired. In ***Hashtroodi***, Dyson LJ, while citing Adrian Zuckerman's text, Civil Procedure, said at paragraph 18:

> *"****For it is only fair to ask whether the applicant is seeking the court's help to overcome a genuine problem that he has encountered in carrying out service or whether he is seeking relief from the consequences of his own neglect****. A claimant who has experienced difficulty should normally be entitled to the court's help, but an applicant who has merely left service too late is not entitled to as much consideration.* ***Whether the limitation period has expired is also of considerable importance. If an extension is sought beyond four months after the expiry of the limitation period, the claimant is effectively asking the court to disturb a defendant who is by now entitled to assume that his rights can no longer be disputed****." (My emphasis)*

6. It is permissible for a claimant to file proceedings on the last day of the limitation period and serve the claim within the period specified for service, which in England is four months (see ***Aktas v Adepta*** [2010] EWCA Civ 1170 at paragraph 91).

7. The Court is to insist that time limits be adhered to, unless there is good reason for a departure (see ***Hashtroodi***, paragraph 20). The Court must strictly regulate the period granted for service, otherwise the limitation period could be unduly extended. In ***Aktas***, Rix LJ said at paragraph 91:

> *"91. …. the additional time between issue and service is, in a way, an extension of the limitation period.* ***A claimant can issue proceedings on the last day of the limitation period and can still, whatever risks he takes in doing so, enjoy a further four month period until service, and his proceedings will still be in time****. In such a system,* ***it is important therefore that the courts strictly regulate the period granted for service****.* ***If it were otherwise, the statutory limitation period could be made elastic at the whim or sloppiness of the claimant or his solicitors****. For the same reason,* ***the argument that if late service were not permitted, the claimant would lose his claim, because it would become time barred, becomes a barren excuse****…. It is sufficient for the rules to provide for service within a specified time and for the courts to require claimants to adhere strictly to that time limit or else timeously provide a good reason for some dispensation." (My emphasis)*

8. Even if the extension of the time for serving a claim form is just outside the limitation period, it would deprive the defendant of his limitation defence. This defence should not be circumvented except in exceptional circumstances. In ***Bayat and others v Cecil and others*** [2011] EWCA Civ 135 at paragraphs 54 and 55, Stanley Burnton LJ said:

> *"54. …* ***in the law of limitation, a miss is as good as a mile****. …* ***The primary question is whether, if an extension of time is granted, the defendant will or may be deprived of a limitation defence.****"*
>
> *"55. It is of course relevant that the effect of a refusal to extend time for service of the claim form will deprive the claimant of what may be a good claim.* ***But the stronger the claim, the more important is the defendant's limitation defence, which should not be circumvented by an extension of time for serving a claim form save in exceptional circumstances****." (My emphasis)*

9. Further, even if good reason had been shown for the failure to serve the claim form, it must be shown how this "good reason" surmounted the difficulty relating to the limitation defence. In ***Bayat v Cecil*** Rix LJ said at paragraph 108:

> *"108. …It is therefore for the Claimant to show that his "good reason" directly impacts on the limitation aspect of the problem, as for instance where he can show that he has been delayed in service for reasons for which he does not bear responsibility, or that he could not have known about the claim until close to the end of the limitation period. If he cannot do that, he is unlikely to show a good or sufficiently good reason in a limitation case."*

[19] In addition to the English cases, I found and considered a case from the Court of Appeal of the British Virgin Islands ("BVI"), ***Steinberg et al v Swisstor & Co et al*** BVIHCVAP 2011/0012. It should be noted that the BVI CPR Rule 8.13 is more akin to our Rule 8.15 than to the English Rule 7.6. Notwithstanding, that Court considered and applied several cases decided on the English Rule 7.6(3) (including ***Hashtroodi*** and ***Aktas***) that an extension of time should not deprive the defendant of any limitation advantage. The BVI Court of Appeal also applied the pre-CPR House of Lords decision of ***Dagnell and Another v J.L. Freedman & Co. (a firm) and others*** [1993] 1 W.L.R. 388, where it was held that the power to extend the validity of a writ was only to be exercised once "good reason" was shown for the failure to serve the writ during its period of validity. In ***Dagnell*** Lord Browne-Wilkinson (at page 396D) described a defendant's right to be served with proceedings within the statutory period of limitation and the period for the validity of the writ, as a "fundamental" right.

[20] In the ***Drury*** case, the first defendant, BBC, broadcast a programme about Mr. Drury on April 12, 2005, and second defendant, Mr. Carnegie was the editor of the programme. Pursuant to English law, Mr. Drury had one year in which to file a claim for libel. Between April and August 2005, Mr. Drury unsuccessfully wrote to the BBC seeking a 'without prejudice' meeting to discuss settlement of his proposed claim. On April 12, 2006, his solicitors issued a claim form. Mr. Drury had four months in which to serve the claim form on the defendants, the last day for service being August 11, 2006. On August 11, the claimant's solicitors contacted the BBC informing it that the claimant intended to serve proceedings on the second defendant, care of the BBC, but went on to ask that the BBC provide the second defendant's last known residential address in the event that the BBC did not have instructions to accept service on the second defendant's behalf. Up to that point, the claimant had not made any attempt to find out how he might serve the second defendant. The BBC replied stating that it had no instructions to accept service on behalf of the second defendant or authority to provide his residential address. Notwithstanding, the claimant's solicitors purported to serve the claim form via fax on the defendants. Service was effective only in respect of

the BBC and it returned the papers for the second defendant. The claimant then applied under CPR 7.6(3) for a retrospective extension of time in which the serve the claim form on the second defendant. The application was granted. The second defendant appealed.

[21] The Court of Appeal outlined the protracted history of the case and considered the law and the decision of the judge below. Mr. Drury's explanation for filing the claim on the date of the expiration of the limitation period was that he had not been able to instruct solicitors to act for him, due to a lack of funds. The firm had been advising him in respect of his proposed claim since 2005 and at one stage had agreed to represent him under a conditional fee agreement. However, he stated that the claim was not filed in 2005 because he was an undischarged bankrupt at the time, and he put off commencing proceedings in the hope that he would obtain his discharge before he had to commence proceedings. In any event, that was not possible. When it became necessary to commence proceedings, the solicitors were instructed in April 2006 to issue a claim form but Mr. Drury did not give them instructions to spend any money on taking any further action, as he was still hoping that the BBC would settle his claim. Thus service of the claim form was effected on the BBC on the last day for service and no checks were made in relation to the second defendant's home address. The Court of Appeal was not sympathetic and found that there was no valid reason for not having served the claim form before the period for service elapsed. The appeal of the second defendant was allowed as the claimant had not taken "all reasonable steps" to effect service of the claim form and therefore failed to satisfy the threshold condition in CPR 7.6(3)(b).

ANALYSIS

Were "all reasonable steps" taken to locate and serve the Defendant?

[22] The test of whether the Claimant or those instructed by him have taken all reasonable steps in compliance with Rule 8.15(4)(a) of the CPR is an objective one, having regard to the circumstances. In ***Drury*** Smith LJ considered what was required of a claimant and stated this at paragraph 37:

> *"37. … It seems to me that the right approach is to consider what steps were taken in the four-month period and then to ask whether, in the circumstances, those steps*

> *were all that it was reasonable for the claimant to have taken.* ***The test must…be objective;*** *the test is not whether the claimant believed that what he had done was reasonable.* ***Rather it is whether what the claimant had done was objectively reasonable, given the circumstances that prevailed****…" (My emphasis)*

[23] The reason proffered by the Claimant's Attorneys for the failure to serve the claim form, is that they experienced difficulties in serving the claim form. In my opinion, one attempt to locate the Defendant at his last known address could not be regarded as reasonable. It is also noted that Mr. Wilks did not indicate the number of residents spoken to, nor their names, nor their addresses. This evidence is unsatisfactory. However, even if more detail had been supplied, the circumstances of this single visit could not satisfy the requirement in Rule 8.15(4)(a) that all reasonable steps be taken to serve the Defendant. The time of the visit (between 1 p.m. and 2 p.m.) to the location was not likely to be a time at which working persons would be found at home. I do not find that the Applicant was sincere in suggesting that the visit on January 22, 2018 was a serious attempt to effect service and that the Defendant cannot be found. Neither do I find that the delay by the Civil Registry in fixing the hearing date would amount to "*some other special reason*" for extending the period pursuant to Rule 8.15(4)(b). I will address this below (paragraphs 33 to 34).

The overriding objective

[24] In deciding whether or not to exercise my discretion under CPR Rule 8.15(4), I must also assess what is fair in the circumstances, having regard to the overriding objective. For the purpose of this application, the relevant portions of Rule 1.1(1) and 1.1(2)(d) provide as follows:

> *"1.1(1) These Rules are a new procedural code with* ***the overriding objective of enabling the Court to deal with cases justly****.*
>
> *(2) Dealing justly with a case includes –*
> *(a) ensuring, so far as is practicable,* ***that the parties are on an equal footing*** *and are not prejudiced by their financial position; …*
> *(d)* ***ensuring that it is dealt with expeditiously and fairly*** *…" (My emphasis)*

[25] The requirement that the Court ensure that "*the parties are on an equal footing"* means essentially that there should be 'equality of arms'. Each party must have a reasonable opportunity to present his case under conditions which do not place him at a substantial disadvantage.

[26] In this case, an order extending the validity of the claim form after the claim is time-barred would place the Defendant at a substantial disadvantage.

[27] The requirement CPR Rule 1.2(d) that the Court ensure that cases are "*dealt with expeditiously and fairly"* essentially means that cases must progress swiftly and time limits stipulated in the CPR must be strictly observed, unless there is good reason to depart from them and it is fair and just to do so. In seeking to deliver justice, there should be equality in treatment, proportionality and procedural fairness in applying the rules of the CPR. The coming into effect of the CPR in Jamaica in January 2003 was expected to herald the end of an era of delay in litigation, through judge-driven case management. It was not the expectation that a Court would sanction delay or assist a tardy litigant. Neither is it expected that the rules of procedure would be used to enlarge, modify or abridge any right conferred on the parties by substantive law. Consequently, if a defendant's right to be served with proceedings within the limitation period and the period of the validity of the claim form, is regarded as a "fundamental" right[1], it cannot be abridged without an exceptional reason.

[28] Where no exceptional reason has been proffered as a basis on which to extend the validity of the claim form after a claim is time-barred, any such order would not be in keeping with the spirit of the CPR and the overriding objective. No exceptional reason has been provided in this case.

Has the explanation surmounted the difficulty relating to the limitation defence?

[29] Applying dictum in ***Bayat v Cecil***, the Applicant's explanation for not serving the Defendant must also address the difficulty relating to the limitation defence. There is nothing in the affidavit evidence which addressed this. Ms. Allison submitted that a greater injustice is done to the Applicant/Claimant, despite him failing to institute proceedings for six years.

[1] Per Lord Browne-Wilkinson in ***Dagnell*** at page 396D.

Where does the balance of prejudice lie?

[30] I must also assess the balance of prejudice or hardship between the parties if the order is made or not made. One prejudice to the Defendant by such an order, would be the loss of a statute of limitation defence. The Defendant might also be prejudiced by the unavailability of witnesses since 2013. In contrast, the prejudice to the Claimant if the order is not made, would be his inability to seek redress from the Defendant in respect of any injury sustained during the accident. The nature of the injuries is not indicated in the particulars of claim and there is no medical report accompanying the claim form (in breach of Rule 8.11(3)). Whilst I cannot speculate as to the extent of the injuries, I would expect that if the injuries were grave, the claim form would have been filed with much more expedition, particularly since Bignall Law was writing to BCIC from 2013. Nonetheless, whether the injuries were grave or minor, it seems that the Claimant rested on his laurels for six years, and then seeks a further eleven months after the expiration of the limitation period to serve the claim.

[31] In my opinion, it is not appropriate for the Claimant or his Attorney to wait until near the expiration of the limitation period to initiate proceedings, without sufficient explanation, and then seek the Court's assistance in getting more time to serve the claim form. In ***Hashtroodi*** at paragraph 21, Dyson LJ in essence said that the three-year limitation period for personal injury claims in England and the four month time limit within which to serve the claim form were already "*generous*" and these time limits should not be overlooked when considering an application to further extend the time in which to serve the claim form. In this country the limitation period is six years, and this is more than ample time to file and serve a claim.

[32] Having regard to the above guidance and the affidavit evidence before me, I find that the balance of prejudice tilts in favour of the Defendant. I am not satisfied on the evidence before the Court that the interests of justice would be served by granting an order extending the life of the claim form after the expiration of the limitation period.

Delay by the Court Registry in fixing the application for hearing

[33] While the delay in the fixing of the application for hearing might be attributable to the Court Registry, the delay in the filing of the claim form for six (6) years can only be attributable to the Claimant and/or his Attorneys. Further, the Claimant's Attorneys could have sought to have the application heard much earlier. Rule 1.3 of the CPR provides that the parties have a duty to help the Court to further the overriding objective of dealing with cases justly and expeditiously. After difficulties were experienced in attempting to serve the claim form on January 22, 2019, the application was filed with reasonable expedition on February 15, 2019. However, the duty of the Claimant's Attorneys to ensure the progression of the case did not end there. The Claimant's Attorneys ought to have pursued the Court Registry for a hearing date before the claim form expired on July 15, 2019. The Notice of Application was not fixed for hearing until December 19, 2019. It is the duty of Claimant's Attorneys to prosecute the claim and this includes liaising with the Court to ensure that the application was fixed for hearing at the earliest possible date, before the claim form expired. There is no evidence before the Court that this action was taken.

[34] As the Claimant's Attorneys knew when the claim would become statute barred and knew when the claim form would expire, it was their responsibility to write to the Registrar and to seek to have the application for service by a specified method fixed for hearing between February 15, 2019 and July 15, 2019. However, that aspect of the application cannot now be granted, as it is not appropriate to extend the validity of the claim form. This judgment therefore does not address the application pursuant to Rule 5.14 of the CPR which requires the Court to have regard to other considerations.

CONCLUSION

[35] I am not satisfied that the Claimant took all reasonable steps to locate the Defendant and to serve the claim form as required by CPR Rule 8.15(4)(a). Further, no "special reason" nor anything exceptional was indicated in the affidavit evidence to justify an order pursuant to Rule 8.15(4)(b). No good reason has been advanced to allow the Court to extend the validity of the claim

form after the claim has become time-barred. It is not appropriate in the circumstances of the present case to extend the validity of the claim form. This would deprive the Defendant of his right to a limitation defence which accrued from February 28, 2019.

ORDERS

[36] The application to extend the validity of the claim form is refused.

[37] The claim form was filed on January 15, 2019 and expired on July 15, 2019. However, the cause of action became statute barred on February 27, 2019. It is not just or appropriate to extend the validity of the claim form beyond the date of its expiration as that would have the effect of bringing the Defendant into the claim after the expiration of the six (6) year period of limitation.

[38] The Court is not satisfied that the process server took all reasonable steps to serve the claim form.

[39] Leave to appeal granted.