

**BARBADOS**

**IN THE SUPREME COURT OF JUDICATURE**

**HIGH COURT**

**CIVIL DIVISION**

**No. 1866 of 2014**

**BETWEEN:**

**SELVIN BEST**

**CLAIMANT**

**AND**

**KEAN GREAVES**

**FIRST DEFENDANT**

**TREVOR BAIRD**

**SECOND DEFENDANT**

**Before Dr. the Honourable Justice Olson DeC. Alleyne, Judge of the High Court**

**Date of Decision: 22 June 2017**

**Mr. Lorimer Denny in association with Ms. Andwele Sandiford for the Claimant.**

**DECISION**

**INTRODUCTION**

[1] This is a without notice application by the claimant for (i) an extension of time within which to serve his claim form filed on 18 December 2014 on the defendants pursuant to *Part 8.11* of the *Supreme Court (Civil Procedure) Rules, 2008 (the CPR)*; and (ii) leave to serve the defendants by an alternative method of service pursuant to *CPR 5.14*.

[2] The claimant filed a statement of claim with the claim form. His claim against the defendants is for damages for damage to his motor car allegedly caused by their negligence on 24 December 2008, interests and costs. The first defendant's address is stated on the statement of claim as 357 Kingsland Gardens, Christ Church and that of the second defendant as 3 Kirtons, St. Philip.

### **THE LEGISLATIVE PROVISIONS**

[3] I will now set out the various legislative provisions that are relevant to the application. These provisions relate to (i) the time within which to serve a claim form; (ii) some methods by which a claim form may be served; (iii) the Court's power to rectify procedural errors; (iv) the overriding objective of *the CPR*; and (v) the limitation period relating to the claim.

*(i) Time within which to serve a claim form*

[4] *CPR 8.10* and *CPR 8.11* deal with time for serving a claim form. *CPR 8.10*

*(1)* reads:

**8.10 (1)** The general rule is that a claim form may only be served within twelve months after the date when it was issued.

[5] *CPR 8.11* provides:

**8.11 (1)** The claimant may apply for an order extending the period within which the claim form may be served.

(2) Save in special circumstances, an application under sub-rule (1) must be made within the period for serving the claim form specified by rule 8.10, or within the period of a previous extension by the court.

(3) Save in special circumstances, the court may make such an order only if it is satisfied that the claimant has taken all reasonable steps

(i) to trace the defendant, and

(ii) to serve the claim form,

but has been unable to effect service.

**(ii) *Methods of service of claim form***

[6] ***CPR 5*** regulates the service of a claim form within the jurisdiction. It provides for different methods of service, three of which are relevant here. These are provided for in ***CPR 5.1, 5.13*** and ***5.14(1)***.

[7] ***CPR 5.1(1)*** states that “[t]he general rule is that a claim form may be served personally on each defendant”.

[8] ***CPR 5.13 (1) to (3)*** provide:

***5.13(1)*** Instead of personal service a claimant may choose an alternative method of service.

(2) Where a party

(a) chooses an alternative method of service;

(b) the court is asked to take any step on the basis that the claim form has been served,

the party who served the claim form must file evidence on affidavit proving that the method of service was sufficient to enable the defendant to ascertain the contents of the claim form.

- (3) An affidavit under sub-rule (2) must
  - (a) exhibit a copy of the documents served;
  - (b) give details of the method of service used;
  - (c) show that
    - (i) the person intended to be served was able to ascertain the contents of the documents; or
    - (ii) it is likely that the person would have been able to do so; and
  - (d) state the time when the person served was or was likely to have been in a position to ascertain the contents of the documents.

[9] **CPR 5.14** regulates the power of the court to make an order for service by a specified method. It reads:

**5.14** (1) The court may direct that a claim form may be served by a method specified in the court's order.

(2) An application for an order to serve by a specified method may be made without notice but must be supported by evidence on affidavit

- (a) specifying the method of service proposed; and
- (b) showing that the method of service is likely to bring the document to the attention of the person to be served and to enable him to ascertain the contents of the application and if relevant, the claim form.

*(iii) Power to rectify procedural error*

[10] **CPR 26.4** sets out the Court's power to rectify procedural errors. It provides:

**26.4** (1) This rule applies in relation to a matter in respect of which an order has not been sought or if sought, has not been made under 26.3 striking out a statement case or part of a statement of case.

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

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

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

*(iv) The overriding objective*

[11] The overriding objective of the **CPR** is prescribed in **CPR 1** which reads:

**1.1** (1) The overriding objective of these Rules is to enable the court to deal with cases justly.

(2) Dealing justly with a case includes, so far as is practicable,

(a) ensuring that the parties are on equal footing;

(b) saving expense;

(c) dealing with the case in ways which are proportionate to

(i) the amount of money involved;

- (ii) the importance of the case;
  - (iii) the complexity of the issues; and
  - (iv) the financial position of each party;
- (d) ensuring that it is dealt with expeditiously and fairly; and
- (e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.

**1.2** The court must seek to give effect to the overriding objective when interpreting these Rules or exercising any powers under these Rules.

**1.3** The parties are required to help the court to further the overriding objective.

(v) *The limitation period*

[12] The claimant's claim against the defendants sounds in the tort of negligence. It involves property damage only. The relevant limitation period is expressed in *section 6* of the *Limitation Act Cap 231* which provides that "[n]o action founded on tort may be brought after the expiration of 6 years from the date on which the cause of action accrued."

**THE EVIDENCE**

[13] The claimant filed four affidavits in support of the application. The first was sworn by Ms. Andwele Sandiford who appeared on his behalf in association with Mr. Lorimer Denny. She works at the Insurance Corporation of Barbados Limited (ICBL). She deposed to the arrangements that were made

with process servers Ms. Harriett Byer-Walker (Ms. Byer-Walker) and Mr. Wilfred Hayde (Mr. Hayde) for service of the claim form on the defendants.

[14] Ms. Sandiford's evidence is that Ms. Byer-Walker collected the claim form from ICBL's head office on 17 December 2014 but reported that she was unable to serve the defendants. She deposed further that Mr. Hayde was contacted in December 2015 and that he collected the documents from ICBL's head office on 4 December 2015. Her further evidence is that he too reported that he was unable to serve the defendants.

[15] Both process servers swore affidavits. Ms. Byer-Walker deposed that she collected the claim form and statement of claim from ICBL on 17 December 2014 and filed them at the Registration Office on 18 December 2014. Her further evidence is that on 30 December 2014 she attempted to serve the defendants but did not find them at the addresses shown on the claim form. She stated that she was informed that they had moved and left no forwarding addresses.

[16] Mr. Hayde's evidence is that he attempted service on 12 December 2015 at the addresses shown on the claim form. He deposed also that he was informed that the defendants had left their respective addresses and had left no forwarding addresses.

[17] The fourth affidavit was sworn by Mr. Francisco Lewis. He deposed that around September 2012, he was engaged as a Private Investigator to investigate the whereabouts of the second defendant for ICBL. At that time, the latter's last known address was 110 Kingsland Drive, Christ Church. His further evidence is that he reported to ICBL that at 5 November 2012 the second defendant was residing at 3 Kirtons, St. Philip where he rented a room. He deposed further to reporting that the second defendant was a non-national, held a valid national registration number and driver's license but did not work, or reside, in one place for long periods.

#### **SHOULD TIME BE EXTENDED?**

[18] In light of the evidence outlined above which I accept, I will consider the application for an extension of time within which to serve the claim form. If that application succeeds, I will go on to consider the application for leave to serve the claim form by a specified method. However, if it fails, that is the end of the matter.

[19] I had the benefit of written submissions filed by Ms. Sandiford and an oral explication by Mr. Denny which was advanced with frankness and tenacity. At paragraph 27 of the written submissions, Counsel urged that this Court may allow the application provided the claimant has satisfied the court that he has taken all reasonable steps to trace and serve the defendant but was

unable to effect service. They cited *CPR 8.11(2)* and (3) and *CPR 26.4 (2), (3) and (4)* in support of this submission.

[20] I must now consider the application of those provisions to this case. *CPR 8.10(1)* is a necessary starting point. It sets the period for service of a claim form as twelve months after the date of issue. *CPR 8.1(2)* provides that “[a] claim is issued on the date entered on the claim form by the Registry”. Hence, the claim form was issued on 18 December 2014. The general rule for service was not satisfied by the claimant. It is that failure which gave rise to his application for an extension of time within which to serve the claim form pursuant to *CPR 8.11(1)*.

[21] *CPR 8.11(2)* regulates the filing of extension applications. It requires that, save in “special circumstances”, the application be filed within the allotted period of twelve months after the date of issue of the claim form, or within the period of a previous extension. Hence, where as in this case there has been no previous extension of time, special circumstances excepting, the application must be filed within the twelve-month period.

[22] *CPR 8.11(3)* sets out the conditions for the grant of an extension order. It provides, in effect, that save in “special circumstances”, a court may not make an extension order unless satisfied that the claimant has taken all

reasonable steps to trace the defendant, and to serve the claim form but has been unable to do so.

[23] **CPR 26** is a curative rule. It gives the Court a general power to determine the ultimate effect of a procedural error or non-compliance with a rule, practice direction, or court order. It does so in two ways. First, it provides that no step taken in proceedings is invalidated on account of any such failing unless the court so orders (**CPR 26.4(3)**). Secondly, it enables a court to make orders to rectify any error or failure. (**CPR 26.4(4)**).

[24] Despite the unqualified reference to **CPR 26.4** in the written submissions, I did not understand Mr. Denny as contending that the claimant could rely on that rule to avoid the failure to file the extension application within the prescribed time period being of fatal effect. He conceded that the language of **CPR 8.11(2)** requires proof of “special circumstances”, if the late filing of the application is to be overlooked.

[25] I had occasion to examine **CPR 26.4** in *Bourne et al v. Fields (High Court Suit no. 1798 of 2015, date of decision 27 January 2017)*. At paragraphs 36 to 43, I reasoned that the curative powers in **CPR 26.4(3)** are exercisable even where the material error or failing involves the breach of a jussive rule but that it cannot be invoked where the language of the violated rule renders its unbridled application impossible.

- [26] In *Gomez v Nunes Civ. App. No. P126 of 2016, Court of Appeal of Trinidad and Tobago*, delivering the decision of the court, Mendonça JA opined similarly with respect to the power of the Trinidad and Tobago courts to use the curative power set out in rule 26.8 of the *Civil Proceedings Rules, 1998* of Trinidad and Tobago (*CPRTT*).
- [27] In that case, the court considered the propriety of applying the corrective power to rectify a failure to serve a claim form within the prescribed period, where the conditions set out in *CPRTT 8.14(3)* were not satisfied. *CPRTT 8.14* is in *pari materia* to *CPR 8.11*. *CPRTT 8.13(1)* prescribes four months as the general period within which a claimant must serve a claim form.
- [28] Adopting reasoning from the judgment of May LJ in *Vinos v Marks and Spencer plc [2000] 3All ER 784*, Mendonça JA stated at paragraphs 22 as follows:

It is not disputed that the reasoning in the Vinos case applies with equal force to the construction of CPR rule 8.14(3). So that where a claim form was not served within the four month period the court had no power to extend the time under rule 26.8 where the circumstances of the case fell outside rule 8.14(3). But equally importantly for the purposes of this appeal is that the Vinos case illustrates that although r. 26.8 is to be given wide effect there are limits to its application. It cannot be utilized to achieve something which another rule prohibits or to achieve something, such as for example an extension of time, which specific rules dealing with extensions of time do not permit.

[29] *CPR 8.11(2)* precludes an unbridled application of *CPR 26.4(3)* by expressly indicating that the late filing of an extension application is permissible only “in special circumstances”. It establishes a time bar which may only be overridden in “special circumstances”.

[30] This leads me to the submissions relating to the term “special circumstances”. The claimant referred me to passages found at paragraphs 29 and 30 of *Smith v Taylor et al High Court Suit No. 1262 of 2010, date of decision 25 September 2014*, for guidance. Those paragraphs read in full:

[29] ... The term ‘special circumstances’ is not defined by CPR. It requires no definition. It suggests a requirement for the existence of circumstances which are of a special, exceptional or peculiar nature.

[30] Further, in order to successfully invoke the ‘special circumstances’ exceptions in CPR 8.11(2) or (3), the circumstances relied upon should be such that it would be unjust, upon a fair consideration of them, not to depart from the rule of general application. As a corollary, the non-application of the general rule must be justified by reference to the special circumstances.

[31] I find it useful to also reproduce what I said at paragraphs 31 and 32 of *Smith*. Those paragraphs read:

[31] ... it seems to me that the scope of the term ‘special circumstances’ must also be circumscribed by the context in which it appears. CPR 8.11(2) provides a general time bar in respect of the making of an application. The term ‘special circumstances’ in that sub-rule must be limited to circumstances which satisfactorily account for an applicant’s failure to make a timely application, thus rendering it unjust to apply the limitation period.

[32] CPR 8.11(3) deals with the factors to be satisfied before a court may make an extension order. Hence, the term ‘exceptional circumstances’ as it appears in that sub-rule, must be limited to circumstances that would justify the grant of an extension order, despite the fact that the court is not satisfied that the applicant had taken all reasonable steps to trace the defendant and serve the claim form but was unable to effect service.

[32] It seems to me that I might have added to paragraph 32 of *Smith* that the proffered circumstances should satisfactorily explain or justify the failure to satisfy any unmet *CPR 8.11(3)* conditions.

[33] Before applying these principles to the facts before me, I will address Counsels’ submission with respect to the overriding objective. They urged that in determining whether “special circumstances” exist, the Court must bear in mind the overriding objective of *the CPR*. I disagree.

[34] The role and purport of the overriding objective is set out in *CPR 1* which I have reproduced at paragraph 11. *CPR 1.1(1)* states that the overriding objective of *the CPR* is “to enable the court to deal with cases justly.” *CPR 1.1(2)* provides a non-exhaustive list of ingredients which may constitute dealing with a case justly. These factors apply, “so far as is practicable”.

[35] Significantly, *CPR 1.2* requires a court to seek to give effect to the overriding objective when interpreting *the CPR* or exercising any powers under that procedural code. While the meaning to be assigned to the term “special circumstances” is an issue of interpretation, the determination of

whether special circumstances exist involves neither an interpretation of *the CPR* nor the exercise of a power under it. It is a question of fact to be found by the Court after a fair consideration of the evidence.

[36] The power to grant an extension of time is a discretionary one and a court must have regard to the overriding objective in determining how to exercise that discretion. However, where factual preconditions must be met in order for that discretionary power to be invoked, the overriding objective can have no role in the fact-finding aspect of that exercise.

[37] Counsel referred to *Parts 7.5 and 7.6* of the *Civil Procedure Rules, 1998* of England and Wales. (*ECPR*). Though acknowledging that those rules are not identical to *the CPR*, they submitted that they are “somewhat instructive”. Continuing with this adherence to English authorities, they cited two extracts from *Hashtroodi v Hancock [2004] 1 WLR 3206*, a decision of the Court of Appeal of England and Wales. I set these out next.

[38] The first passage cited by Counsel is a statement taken from paragraph 18 of the case in which Dyson LJ stated that “it will always be *relevant* for the court to determine and evaluate the reason why the claimant did not serve the claim form within the specified period.” The second is an extract from *Zuckerman, Civil Procedure, page 180, paragraph 4.121*. It was mentioned by Dyson LJ, at paragraph 18 of the decision in this way:

As a matter of commonsense, the court will always want to know why the claim form was not served within the specified period. As Mr. Zuckerman says in Civil Procedure, p. 180, para 4.121:

“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.”

[39] I found this expedition outside the contour of our procedural realm to be generally unhelpful. I do not consider the *ECPR* as they relate to the area of law under consideration to be beneficial to our cause. As I demonstrated at paragraphs 24 to 26 in *Smith*, *ECPR 7.6* is cast entirely differently to *CPR 8.11*. *ECPR 7.5(2)* provides: “The general rule is that a claim form must be served within four months after the date of issue.” *ECPR 7.6* reads:

- (1) The claimant may apply for an order extending the period for compliance with rule 7.5.
- (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 of 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.

[40] In *Smith*, I highlighted crucial differences between *ECPR 7.6* and *CPR*

**8.11**. I stated, at **paragraphs 25** and **26**:

[25] Like the CPR, [ECPR 7.6] stipulates a general time limit for the making of extension applications. However, unlike the case in Barbados where it is left to the court to determine whether “exceptional circumstances” exist such as to allow for a circumvention of the time bar, the ECPR expressly set out the conditions that must exist before a court can grant an order on an application filed out of time. ... those conditions appear to include, at Part 7.6(3)(b), those which the Barbados code stipulates, at CPR 8.11(3)(i) and (ii) as being conditional to the grant of an order regardless of when the application was filed.

[26] ... Unlike the case in Barbados, the English provision sets out no general conditions that are applicable to the grant of the orders where an application is made in a timely manner. Hence, in such cases, applications are left entirely to the discretion of the court.

[41] In *Hashroodi*, Dyson LJ concluded, at paragraph 17, that “it was not intended to impose any threshold condition on the right to apply for an extension of time under [ECPR] 7.6(2)”. He continued at paragraph 18 to

determine that “[i]n the absence of any such condition, therefore, the power must be exercised in accordance with the overriding objective: see CPR r 1.2(b)”. Dyson LJ then proceeded to ask the question: “What does that mean in practice?” It was in response to that question that Dyson LJ went on to reason as to the relevance of evaluating the reason for the failure to serve the claim form in time and to cite the extract from *Zuckerman*.

[42] That is the context in which the statements cited from *Hashtroodi* were made. The necessity for a like evaluation may well exist in this jurisdiction but the legislative context in which it arises differs. *CPR 8.11(3)* establishes threshold conditions which must be satisfied before the court can consider whether to exercise its discretion to make an extension order. It must be shown that the claimant has taken all reasonable steps to (i) trace the defendant; and (ii) serve the claim form, but has been unable to do so. An evaluation of the reason why a claimant has not served the claim form in the prescribed time is a necessary part of the judicial exercise required to determine if those conditions are met.

[43] If the *CPR 8.11(3)* conditions are satisfied, a court must then determine whether to exercise its discretion to extend time. In exercising that discretion, a court is required by *CPR 1.2* to have regard to the overriding objective, the general thrust of which is to deal with cases justly, as set out in

*CPR 1.1(1)*. *CPR 1.1(2)* provides a non-exhaustive list of factors that are included in dealing justly with a case. The open-ended nature of that list leaves a court positioned to take account of any factor that may be relevant in the particular circumstances in the quest to secure a just outcome. Whether or not a limitation period has expired may well be an example of one such factor.

[44] The usefulness of *Hashtroodi* is that it lends support to the notion that where no criteria is set out as to how a court's discretion is to be exercised in a particular circumstance, it must have regard to the overriding objective in exercising that discretion; and that, in doing so, it may take account of any relevant factor.

[45] There is, though, persuasive regional authority supportive of the approach. It is to be found in *James v The Attorney-General, Civ App No. 44 of 2014, Court of Appeal of Trinidad and Tobago, date of decision 19 December 2014*. At paragraphs 20 to 23 of that decision, Mendonça JA, though speaking in the context of a different procedural rule, articulated the method with admirable clarity. Delivering the judgment of the court, he stated:

20. Unlike rule 26.7, rule 10.3(5) does not contain a list of criteria for the exercise of the discretion it gives to the Court. The question then arises, how the Court's discretion is to be exercised. I think because no criteria is mentioned in rule 10.3(5) it was intended that the Court should exercise its

discretion having regard to the overriding objective (see *Robert v. Momentum Services Ltd.* [2003] EWCA Civ. 299).

21. The overriding objective of the CPR is identified in rule 1.1(1) as enabling the Court to deal with cases justly. Rule 1.1(2) identifies some of the considerations relevant to dealing justly with cases. This rule is as follows:

“(2) Dealing with cases justly includes-  
...

22. It is relevant to note that the list in 1.1(2) is not intended to be exhaustive and in each case where the Court is asked to exercise its discretion having regard to the overriding objective, it must take into account all relevant circumstances. This begs the question, what other circumstances may be relevant.

[46] Turning more frontally to the application, I will follow the approach which I articulated in *Smith* at *paragraphs 36 to 38*. I must first consider whether there are special circumstances to justify the late filing of the application, given that it was filed outside of the twelve-month period. If I am not so satisfied, the application must fail for failure to surmount the procedural time bar in *CPR 8.11(2)*.

[47] However, if the *CPR 8.11(2)* hurdle is surmounted, I must then determine whether the qualifying conditions in *CPR 8.11(3)* have been satisfied. To state it more expansively, I must be satisfied that the claimant took all reasonable steps to trace the defendants and to serve them but has been unable to do so. If I find that those conditions have been met, I must then consider how to exercise my discretion.

[48] If, though, the claimant does not satisfy me that the *CPR 8.11(2)* conditions were met, I must go on to consider whether there are special circumstances that justify my moving to the discretion stage. If I am not so satisfied, the matter comes to an end.

[49] If required to exercise my discretion, in doing so, I must have regard to the overriding objective which is to deal with the case justly. That requires me to consider the factors set out in *CPR 1.1(2)* so far as is practicable, and to determine, and consider, what other factors may be relevant in the circumstances.

[50] As a postscript to what I said in *Smith*, I should add that where, as in this case, the application relates to more than one defendant, a court must carefully consider the circumstances that apply with respect to each defendant at every stage of the exercise. Common circumstances may necessitate a uniform outcome but different circumstances may lead to the order being granted in relation to one or more of the defendants, but not all of them.

[51] I turn therefore to consider whether the claimant has established special circumstances for the purposes of *CPR 8.11(2)*. Nothing in the evidence explains his tardy filing of the application and Counsel offered no explanation for the delay.

[52] Nonetheless, Counsel urged that the failure to file in time was not fatal since in their opinion, special circumstances exist. In this regard, they urged that (i) given that the limitation period has expired, the claimant would be deprived of a remedy if the application is not permitted; (ii) the delay should not be deemed a long one; and (iii) from the date of the vehicular accident, the claimant had made “repeated efforts” to locate the defendants.

[53] Taken separately or together, these planks do not point to special circumstances. Neither the extent to which the claimant sought the defendants, nor the fact that the limitation period has expired leaving the claimant potentially remediless, in anyway explain, far less justify, the late filing of the application. There is nothing special, peculiar or exceptional about these events for the purposes of *CPR 8.11(2)*. As to the extent of the delay, in the absence of some plausible explanation that is immaterial.

[54] It follows that the application for an extension of time within which to serve the claim form cannot succeed. I need not go on to consider whether the conditions contained in *CPR 8.11(3)* have been satisfied or, if so, whether the judicial discretion ought to be exercised in favour of the grant of the order. However, out of deference to Counsel, I will comment briefly on their submission that the claimant took all reasonable steps to trace the defendant and to serve the claim form but has been unable to do so.

[55] *CPR 8.11(3)* requires proof of more than casual or spasmodic efforts at service on a claimant's part. The language it employs expresses the claimant's obligations in fairly stringent terms. He must establish that he took **all** reasonable steps to trace and serve the defendants but has been **unable** to do so. This stringency is moderated only by the fact that he is not required to take all possible steps but only those that are reasonable. Future cases may well provide an opportunity for more meaningful jurisprudential consideration of the test of reasonableness applicable to *CPR 8.11(3)*.

[56] However, I am in no doubt that the claimant in this case has not established that he took all reasonable steps. His only evidence of what was attempted is that Ms. Harriett-Byer tried and failed a few days after the claimed form was filed and that Mr. Hayde did likewise almost one year later. His effort was predictably futile given Ms. Harriet-Byer's indication that the defendants were no longer to be found at the addresses shown on the claim form. The claimant offers no explanation for the apparent inertia that otherwise prevailed over the period allotted for service.

[57] The notion that there must be reasonable efforts at service over that period is articulated by *Zuckerman* at paragraph 5.97 of the third edition of his work. The passage contained in that paragraph was largely reproduced and applied, by Wallace J (Ag.) in *Williams v Chang and Surrey Paving and Aggregate*

*Co. Ltd., High Court of St. Kitts and Nevis, date of decision 10 October*

2012. I cite it with approval. Zuckerman states:

The question of whether the claimant has taken all reasonable steps to serve the claim form must be judged by reference to the entire period for service. Much will therefore depend on the reasonableness of periods of inactivity as well as on the active steps taken. A claimant who sits back for the most of the period and springs into action only close to the end of the service period would not normally be considered to have taken all reasonable steps, even if what he has done at the last moment was in itself reasonable.

[58] I should add that there is a view that a claimant cannot be said to have taken all reasonable steps but have been **unable** to serve the claim form if, being unable to locate and serve a defendant personally he fails to employ one of the alternative methods of service available to him under the *CPR*.

[59] A claim form may be served by different means. *CPR 5.1(1)* provides that “[t]he general rule” is that a claim form may be served personally on each defendant”. However, *CPR 5.13* enables a claimant to choose an alternative method of service, or he may apply to the Court under *CPR 5.14* for an order for service by a specified method, as the claimant does now. I reproduced those provisions at paragraphs 6 to 9.

[60] In *Daniel et al v Mohammed, High Court of Trinidad and Tobago, date of decision 23 May 2007*, Jamadar J, as he then was, was unpersuaded that a claimant who had failed to exploit the availability of alternative could be

said to have taken all reasonable steps to serve the claim form. I did not hear arguments on this point from Counsel and it is unnecessary for me to rule on it.

[61] Counsel did not address me on the question of whether any special circumstances existed for the purposes of *CPR 8.11(3)*. What “special circumstances”, though, could the claimant have invoked? I saw no evidence of any. He offered no explanation for his failure to meet the conditions.

## **DISPOSAL**

[62] Be that as it may, the application for an extension of time within which to serve the claim form fails because it was not filed within the prescribed period and no special circumstances have been shown to exist to justify this Court entertaining it. That being so, the application for leave to serve the defendants by an alternative method must be dismissed.

[63] In the circumstances, the application is refused in its entirety. The claimant must bear his own costs.

**OLSON DeC. ALLEYNE**  
**Judge of the High Court**