SAINT LUCIA

IN THE COURT OF APPEAL

HCVAP 2010/044

BETWEEN:

CARLOS ANTHONY AUGUSTIN

Appellant

and

UNI -V (ST. LUCIA) LTD. trading as
UNIQUE VACATIONS OF CHOC BAY CASTRIES

Respondent

Before:

The Hon. Mde. Ola Mae Edwards	Justice of Appeal
The Hon. Mde. Janice M. Pereira	Justice of Appeal
The Hon. Mr. Davidson Kelvin Baptiste	Justice of Appeal

Appearances:

Mr. Gerard Williams for the Appellant
Mr. Mark Maragh for the Respondent

2011: July 26, 27.

Procedural appeal – Service of claim accepted by legal practitioner in the jurisdiction on behalf of client who was out of the jurisdiction after substituted service had already been authorised by an order of the court – The effect such an action would have on the time limit for acknowledging service of the claim – Whether judgment in default had been entered prematurely – Rule 5.6 of the Civil Procedure Rules 2000 ("CPR 2000") – Rule 5.19 CPR 2000 – Practice Direction 4 of 2008

ORAL JUDGMENT

[1] PEREIRA, J.A.: The short facts which give rise to this appeal are as follows:

(a) On 12th March 2010, an order was made by Wilkinson J in which she granted to the respondent[1] an order for substituted service of the claim and other documents on the appellant.[2]

(b) The respondent duly proceeded under the order and caused to be published in two consecutive issues of a local newspaper and in the Official Gazette of Saint Lucia a notice of the claim. The last publication was dated 5th April 2010. That notice gave to the appellant forty two days within which to respond to the application.[3]

(c) What next happened is that the legal practitioner for the appellant, by letter dated 13th April 2010, wrote to the legal practitioner for the respondent making reference to the claim by name and number of the action, and informed him that he was instructed to accept service of the claim on behalf of the appellant. The respondent's legal practitioner accordingly served the claim on the appellant's legal practitioner the same day.

(d) The appellant's legal practitioner's letter also contained this statement:

> "We look forward to receiving these documents at the soonest to allow us to put in our Acknowledgment of Service"

It is therefore clear that the appellant fully intended to file an Acknowledgement of Service and no doubt intended to defend the claim.

(e) Thereafter, a period of fourteen days elapsed with the appellant not having acknowledged service. Promptly, on the fifteenth day, the respondent requested and obtained judgment in default.

(f) The appellant applied to set aside the judgment pursuant to rule 13.2 of the Civil Procedure Rules 2000; ("CPR 2000") contending that the

---

[1] The respondent was the claimant in the court below.
[2] The appellant was the defendant in the court below.
[3] No time frame for acknowledgment of service or for service of a defence was contained in the order of 12th March 2010. It was contained in the published Notice.

judgment was irregular on the basis that it had been entered prematurely. This was on the basis that the published notice pursuant to the Order for substituted service had given him forty two days from the date of the last publication. Further, counsel submitted that the appellant was out of the jurisdiction and that the time limited for acknowledging service out of the jurisdiction is twenty eight days and that the twenty eight day period had not yet elapsed when the default judgment was entered. He prayed in aid Practice Direction 4 of 2008 which sets out time limits for acknowledging service depending on the country. No other basis or ground was relied on for setting aside the default judgment.

(g) The learned master refused to set aside the default judgment on the bases advanced. The appellant appealed.

[2] It bears note that the 12th March order for substituted service was not an order directing service out of the jurisdiction. It was simply an order permitting service by a method other than by personal service which is the general requirement for service of originating process. Accordingly, we do not consider that Practice Direction 4 of 2008 relating to service out of the jurisdiction is applicable.

[3] What became apparent is that the appellant's legal practitioner, notwithstanding that he had at his express request, accepted service of the claim and was of the view that the service and the time for acknowledgement of service was still governed by the order for substituted service and not by CPR 2000 relating to service. This was, though understandably, a mistaken view. There was a failure to appreciate that once he had engaged rule 5.6 CPR 2000,[4] rule 5.19 CPR 2000 also kicks in, which in essence deems the claim as having been served as from the date it is served on and accepted by the legal practitioner so authorised.

[4] Rule 5.6 CPR 2000 provides for service on a legal practitioner once that practitioner gave notification of being so authorised.

[4] The Court is of the view, that the appellant by his letter of 13th April 2010, notifying the respondent's legal practitioner of his authorisation to accept service and having been so served, effectively, at his volition, changed the method of service from being by substituted service to a method equating to personal service. This then took the matter outside of the operation of the substituted service order and brought it under the operative parts of CPR 2000 relating to personal service within the jurisdiction and more specifically to service on the legal practitioner for the party, where the normal time limit of fourteen days[5] would come into operation. Having taken that course which engaged rules 5.6 and 5.19 of CPR 2000, the order for substituted service (though a valid order) simply ceased to be operative.

[5] Accordingly, the default judgment having been entered after the expiration of the fourteen day period allowed for acknowledging service would have been regularly entered (if otherwise regular in all other respects). The learned master was therefore correct in refusing to set it aside on this basis only. Regrettably, no other or alternative ground was advanced which brought into play the exercise of the master's discretion. The master's decision refusing to set aside the judgment must accordingly be upheld as a matter of law.

[6] For these reasons, the appeal is dismissed. By agreement of the parties, there shall be no order as to costs.

Janice M. Pereira
Justice of Appeal

I concur.

Ola Mae Edwards
Justice of Appeal

I concur.

Davidson Kelvin Baptiste
Justice of Appeal

[5] See rule 9.3 CPR 2000.