EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL

GRENADA

GDAHCVAP2014/0027

VEROLINA GEORGE

Appellant

and

[1] AGNES RICHARDSON
[2] KENDELL RICHARDSON

Respondents

Before:

The Hon. Dame Janice M. Pereira, DBE	Chief Justice
The Hon. Mde. Louise Esther Blenman	Justice of Appeal
The Hon. Mde. Gertel Thom	Justice of Appeal

On written submissions:

Mr. Alban M. John for the Appellant

2015: January 7.

Interlocutory appeal – Service out of jurisdiction – Whether the learned judge in the court below erred in dismissing application for permission to serve claim out of the jurisdiction – Rules 7.3(2), 7.3(4) and 7.5 of the Civil Procedure Rules 2000

By application together with affidavit in support filed on 14th July 2014, the appellant applied to the court below for permission to serve a claim out of the jurisdiction on the respondents, who were said to reside in the United States of America. The learned judge considered the application without a hearing and by order of the court dated 16th July 2014, the application was dismissed. The learned judge's reasons for the dismissal of the application were, firstly, that the deponent of the affidavit in support did not state how she was aware that the respondents ordinarily reside at the address in the United States of America stated in the application and secondly, that the court was not satisfied that if the documents were served at the proposed address that they would be brought to the attention of the respondents. The appellant was aggrieved by the learned judge's dismissal of the application and sought leave to appeal her decision, which was granted on 23rd September 2014.

Held: Allowing the appeal; granting permission to the appellant to serve the claim form, statement of claim and other documents including a sealed copy of this order on the respondents out of the jurisdiction; and ordering that costs of the appeal be costs in the cause below that:

1. Rule 7.3 of the Civil Procedure Rules 2000 provides various gateways for service out of the jurisdiction. This includes CPR 7.3(2)(b), where a claim is made for an injunction ordering the defendant to refrain from doing some act in the jurisdiction and CPR 7.3(4) where a claim in tort is made and the act causing the damage was committed within the jurisdiction or the damage was sustained within the jurisdiction. The learned judge, it would seem, failed to address her mind to the various gateways provided for by CPR 7.3 for service out of the jurisdiction. Had the learned judge done so, she would have appreciated that the claim satisfied at least two requirements of CPR 7.3, namely, that the appellant sought an order for an injunction and that the claim made was for a tort committed in the jurisdiction. The learned judge's consideration as to the basis of knowledge of the respondent's foreign address in the circumstances was irrelevant.

   Rules 7.3(2)(b) and 7.3(4) of the Civil Procedure Rules 2000 applied.

2. In an application for permission to serve a claim out of the jurisdiction, no concern arises as to whether documents would be brought to the attention of the party on whom it is being served. Such a concern would only arise where a party is seeking to substitute some other mode of service for personal service. The learned judge seemingly misunderstood the application that was before her as the appellant's application was solely for permission to effect service out of the jurisdiction on the basis that the claim qualified as such under the provisions of CPR 7.3.

JUDGMENT

[1] PEREIRA CJ: Pursuant to leave granted on 23rd September 2014, the appellant appeals against the decision of the learned judge in the court below made on 16th July 2014, whereby she dismissed the appellant's application seeking permission to serve the claim form out of the jurisdiction on the named respondents herein who were said to ordinarily reside in the United States of America. The respondents are not effectively parties to this appeal as the appeal arises from a refusal to have the respondents served with the claim. As matters currently stand they would be unaware that proceedings have been commenced against them.

[2] The appellant's application for permission to serve out of the jurisdiction was stated on its face to be variously made under a number of rules of the Civil Procedure Rules 2000 ("CPR 2000") including CPR 7.3(2) and (4). The grounds stated on the application and contained in the supporting affidavit were that the appellant had brought a claim against the respondents for, among other things:

> "(a) An order that the Defendants break down and remove from the path of an allowed road, a wooden structure erected thereon to allow access to the Claimant's property at Tivoli [in the parish of Saint Andrew in the State of Grenada].
>
> (b) A permanent injunction;
>
> (c) Damages; …"

The appellant also stated her belief that she has a legitimate claim against the respondents and that there is a real issue to be tried as between them as disclosed on the statement of claim. She further stated that the respondents cannot be served within the jurisdiction as they ordinarily reside at 4515 Snyder Avenue, Apt. 4D, Brooklyn, New York, 11203, USA. She therefore sought permission to serve the claim form and other documents on the defendants out of the jurisdiction at the address indicated.

[3] The learned judge's reasons for dismissing the application which was determined without a hearing can be gleaned from her order which reads as follows:

> "1. Application filed 14th July, 2014 is dismissed since the deponent of the affidavit in support has not stated how she is aware that the Defendants ordinarily reside at the address stated in paragraph five (5) of the affidavit.
>
> 2. The Court is not satisfied that if the documents are served on the Defendants at the proposed address they would be brought to the attention of the Defendants."

[4] The appellant complains in essence that:

(a) the learned judge was wrong to refuse the application as the reasons given for refusal were not contemplated by the rules of court pursuant to which the application was made and thus were irrelevant considerations and led to error on the part of the learned judge;

(b) the learned judge treated the application seemingly as one for substituted service which it was not but rather for personal service on the respondents out of the jurisdiction which again led to having regard to a wholly irrelevant consideration as appears from the second reason given;

(c) the learned judge was wrong to consider the application without a hearing in circumstances where dismissal of the application would be the result notwithstanding the power given in CPR 11.14.

I propose to deal with the complaints in the same order.

Failure to State Basis of Knowledge as to Awareness of Respondents' Address

[5] From my review of the application I would hold that it was properly made in accordance with the requirements of CPR 7.5. It appears that the learned trial judge did not alert her mind to the grounds of the application or the provisions of CPR 2000 under which the application was made. CPR 7.3(2)(b) provides in effect that permission may be given for the service of a claim form out of the jurisdiction if a claim is made for an injunction ordering the defendant to do or refrain from doing some act within the jurisdiction. This would have required the learned trial judge to consider the nature of the relief being sought by the appellant against the respondent. The claim form clearly sought an injunction requiring the respondents to remove a wooden structure from the path of an allowed road at Tivoli in the parish of Saint Andrew within the State of Grenada. This would have satisfied the gateway for service out of the jurisdiction provided under CPR 7.3(2)(b). Further, on an examination of the statement of claim it would have become apparent that the appellant is asserting an entitlement to a right of way in respect of which she alleges the respondents have interfered by the erection of a wooden structure blocking the asserted right of way resulting in damage to the appellant. This averment would additionally have satisfied the gateway provided in CPR 7.3(4) which says that a claim form may be served out of the jurisdiction if a claim in tort is made and the act causing the damage was committed within the

jurisdiction or the damage was sustained within the jurisdiction. Indeed, the learned trial judge appears not to have addressed her mind to the various gateways provided by CPR 7.3 for service out of the jurisdiction. Had she done so, it would have been appreciated that the claim form and statement of claim had satisfied at least two of the requirements of CPR 7.3 and would have no doubt appreciated that a consideration as to the basis of knowledge of the respondents' foreign address was an irrelevant consideration. The appellant had, in her statement of claim, averred that she and the respondents were originally from Tivoli in Grenada and they were all now residing in Brooklyn, New York. In my view this complaint is well founded and is sufficient for allowing this appeal.

No Application for Substituted Service

[6] The second reason given by the learned trial judge reflects, it would seem, a misunderstanding of the nature of the application before her. The concern as to whether the documents would have been brought to the attention of the respondents at the address given would have been a consideration where the appellant was seeking to substitute some other mode of service for personal service. But this was not the appellant's application. The appellant's application was solely for permission to effect personal service out of the jurisdiction on the basis that the claim qualified under the provisions of CPR 7.3 for service out of the jurisdiction – not for substituted service either within or without the jurisdiction. Accordingly, the reason contained in paragraph 2 of the learned judges' order was also an irrelevant consideration which led her into error. On this additional ground I would also allow the appeal.

[7] Having arrived at these conclusions, there is no need to address the general complaint made by the appellant in respect of the learned judge's use of the powers contained in CPR 11.14.

Conclusion and Order

[8] For the reasons given above I would allow the appeal and grant permission to the appellant to serve the claim form, statement of claim and other documents including a sealed copy of this order on the respondents out of the jurisdiction. I would further direct as follows:

(a) that the time limited for the respondents to file an acknowledgement of service in the Registry of the Supreme Court in Grenada be 35 days after service of the claim form and other documents referred to in paragraph 8 above;

(b) that the time limited for the respondents to file and serve a defence to the claim be 56 days after service of the claim.

[9] I would further order that the costs of this appeal and on the application be costs in the cause below.

Dame Janice M. Pereira, DBE
Chief Justice

I concur.

Louise Esther Blenman
Justice of Appeal

I concur.

Gertel Thom
Justice of Appeal