IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

Cause No FSD 167 of 2014 (NRLC)

IN THE MATTER OF THE COMPANIES LAW (2013 REVISION)

AND IN THE MATTER OF WEAVERING MACRO FIXED INCOME FUND LIMITED (IN LIQUIDATION)

BETWEEN:

(1) DAVID WALKER

(2) SIMON CONWAY

(AS JOINT OFFICIAL LIQUIDATORS OF WEAVERING MACRO FIXED INCOME FUND LIMITED)

Plaintiffs

-and-

CITCO GLOBAL CUSTODY N.V.

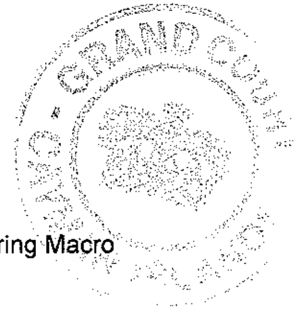
Defendants

Appearances: Mr Jan Golaszewski and Mr Denis Olarou of Carey Olsen on behalf of the Plaintiffs

Mr Jeremy Walton and Mr Andrew Jackson of Appleby (Cayman) Ltd on behalf of the Defendant

Coram: The Hon. Justice Nigel R.L. Clifford QC

Heard: Monday, 2 May 2016



RULING

Introduction

1. The applications before the Court are in one of a series of actions relating to Weavering Macro Fixed Income Fund Limited (In Liquidation) ("the Fund").

2. The actions have been instituted by the Joint Official Liquidators ("the JOLs") of the Fund. In December 2014, the JOLs issued twenty-four writs against various Defendants with claims brought pursuant to section 145 of the Companies Law ("the Preference Proceedings"). In these Preference Proceedings the JOLs seek the return of a total of some US82 million paid by the Fund to a number of redeeming investors in the months immediately prior to the commencement of the Fund's liquidation.

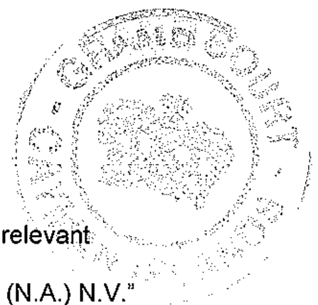
3. Various rulings have been given in certain of the Preference Proceedings. An earlier action for the same relief (FSD No. 98 of 2014) has proceeded to trial and judgment was given in favour of the Plaintiffs on 4 December 2015. An appeal against the judgment was heard by the Court of Appeal on 20 April 2016. The decision of the Court of Appeal is now awaited.

Applications

4. In this particular action two summonses now fall to be determined.

5. By Summons dated 29 January 2016, the Defendant applied for an order that the service of the Writ of Summons upon the Defendant be set aside on the ground that the Writ of Summons was invalid as at the date of service ("the Defendant's Summons").

6. Then by Summons dated 15 April 2016, the Plaintiffs applied for an order that the validity of the Writ of Summons issued on 31 December 2014, as amended on 23 October 2015, be extended until 30 June 2016 pursuant to GCR Order 6, rules 8 (2) and (3), with consequential directions for service and acknowledgment of service ("the Plaintiffs 'Summons").



Procedural History

7. The Writ of Summons was issued on 31 December 2014. This was shortly before the relevant limitation period was due to expire. The Writ mistakenly named "Citco Global Custody (N.A.) N.V." as Defendant and specified an address for service in Curacao.

8. On 2 June 2015, the Court made an order pursuant to GCR Order 11 rule 1(1) granting the Plaintiffs leave to serve the Writ out of the jurisdiction on the named Defendant at the specified address.

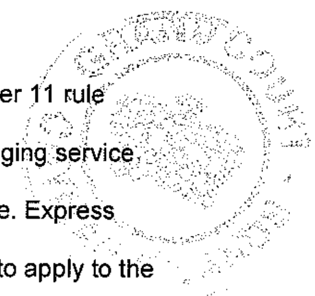
9. The Writ was then served on 25 June 2015, in accordance with the order, and before the validity of the Writ for service out of the jurisdiction was due to expire on 30 June 2015.

10. However, it then emerged that the wrong Defendant had been sued. Both the name of the Defendant and the address for service were incorrect. The correct Defendant was discovered by the JOLs to be "Citco Global Custody N.V.", a separate entity not in Curacao but in the Netherlands. The evidence shows that this came to light as a result of a letter dated 21 July 2015 received by the JOLs.

11. Following an investigation, the Plaintiffs then issued a Summons on 21 August 2015, seeking leave pursuant to GCR Order 20 rule 5 to amend the Writ to substitute the correct Defendant and its address.

12. This Summons was heard by me *ex parte* on 13 October 2015. In my Ruling[1] of that date I expressly found that the mistake sought to be corrected was a genuine mistake and was not misleading or such as to cause any real doubt as to the identity of the party intended to be sued. Accordingly, I exercised the discretion under the Rule to grant leave to make the amendment to substitute the new Defendant, notwithstanding that the relevant period of limitation current at the date of issue of the Writ had expired, on the basis that it was just to do so. In the Order dated 13

[1] Hearing Bundle Tab 3



October 2015[2] ("the October Order"), leave was also granted, pursuant to GCR Order 11 rule 1(1)(ff), to serve the Writ as amended out of the jurisdiction. The time for acknowledging service of the Writ by the new Defendant was ordered to be 28 days after the date of service. Express provision was made in the October Order giving liberty for the amended Defendant to apply to the Court. However, there has never been any challenge to this Order.

13. Pursuant to the leave granted, the amended Writ was re-issued on 23 October 2015, as shown by the Clerk of Court's date stamp on the face of the document. It contained the standard note that it may not be served later than 4 calendar months (or in the case of leave for service out of the jurisdiction 6 months) beginning with the date of issue unless renewed by order of the Court.

14. On 16 December 2015, the amended Writ was then served on the Defendant.

15. Subsequently, on 18 January 2016, the Defendant's attorneys raised the issue whether the Writ was valid for service when served if it had not been renewed at any time between 30 June 2015 and 16 December 2015. The issue raised then led to the issue of the Defendant's Summons on 29 January 2016. While the hearing of this Summons was pending, the Plaintiffs' Summons was issued on 15 April 2016 on a protective basis, in case it be found on the Defendant's application that the validity of the amended Writ had expired as at the date of service.

The Defendant's Summons

16. A defendant can only validly be served with a writ of summons while the writ remains valid: see **The Supreme Court Practice 1999 Vol. 1, paragraph 6/8/5**[3]. If the writ is invalid when the defendant is served, the defendant is entitled to apply to the Court within the time limited for service of its defence for an order setting aside the service of the writ upon him under GCR Order 12, rule 8(1)(a).

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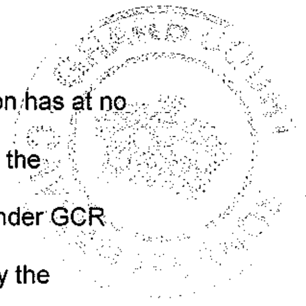
[2] Hearing Bundle Tab 2

[3] At page 53



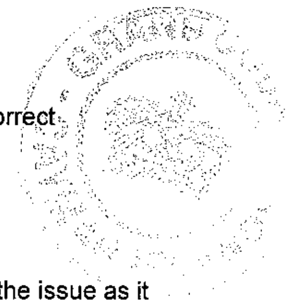
17. Here it is contended on behalf of the Defendant that the validity of the Writ in this action has at no time been expressly extended by an Order of this Court. The point taken is that, when the October Order was made, there was no application to extend the validity of the Writ under GCR Order 6, rule 8. So the question is raised whether its validity was implicitly extended by the October Order so that it was actually valid for service when it was served on the Defendant on 16 December 2015. Put another way, it is necessary to consider whether the October Order had the effect of extending the validity of the Writ to make service effective.

18. As indicated above, the October Order granting leave to amend the Writ to substitute the new Defendant was made pursuant to GCR Order 20, rule 5. The provisions of sub-rules 5(2) and (3) of that Order are as follows:

    "(2) Where an application to the Court for leave to make the amendment mentioned in paragraph (3), (4) or (5) is made after any relevant period of limitation current at the date of issue of the writ has expired, the Court may nevertheless grant such leave in the circumstances mentioned in that paragraph if it thinks it just to do so.

    (3) An amendment to correct the name of a party may be allowed under paragraph (2) notwithstanding that it is alleged that the effect of the amendment will be to substitute a new party if the Court is satisfied that the mistake sought to be corrected is a genuine mistake and was not misleading or such as to cause any reasonable doubt as to the identity of the person intending to sue or, as the case may be, intended to be sued."

19. Counsel for the Defendant, Mr Walton, takes the point that there is nothing in those sub-rules, or elsewhere in Order 20, which suggests that an amendment made pursuant to sub-rule (3) has the effect of revalidating a writ for service. He submits that the jurisdiction which the Court has to extend the validity of a writ for service is exercised pursuant to and in accordance with a wholly separate rule: GCR Order 6, rule 8. His contention is that even where a plaintiff is given leave to make corrective amendments to his writ under GCR Order 20, rule 5(2) and (3) outside of the applicable limitation period and after the writ has expired, it is still necessary for the plaintiff to



obtain an Order expressly extending the validity of the writ for service, unless the correct defendant has already been served.

20. Mr Walton submits that this is plain from English authorities which have addressed the issue as it arose in the context of applications made under the equivalent English rules, RSC Order 20, rules 5(2) and (3), to which he referred.

21. In **Rodriguez v Parker**[4] the plaintiff issued a writ claiming damages for personal injury and consequential loss arising out of a traffic accident. The writ was issued against the father of the driver of the vehicle, rather than his son who had been the driver. Certain factors which contributed to the mistake included that the father was the owner of the vehicle, he and his son had the same first and last name but different middle names, and both lived at the same address. The mistake was discovered after the applicable limitation period and after the writ had expired, so the plaintiff then applied under RSC Order 20, rule 5(3) to correct the error and for an extension of the validity of the writ under RSC Order 6, rule 8. In the circumstances of that case, Nield J considered it appropriate to allow the corrective amendment to be made to the writ, and the parties agreed in that event that the Court should also exercise its discretion to extend the validity of the writ for service[5]. Mr Walton points out that no suggestion was made in that case that the extension was unnecessary because the corrective amendment to the writ had been allowed.

22. There followed a decision of the English Court of Appeal in **Evans Ltd v Charrington & Co Ltd**[6]. In that case the applicant issued an originating application against Charringtons as landlord for the grant of a new tenancy under the Landlord and tenant Act 1954, in response to a notice it received from Charringtons as agent for Bass Holdings Ltd terminating its tenancy. By the time that leave was sought to make the corrective amendment naming Bass as the respondent landlord, the periods for filing such an originating application and serving it on the respondent had expired. The Court of Appeal, by a majority, held that it was a proper case for amendment under

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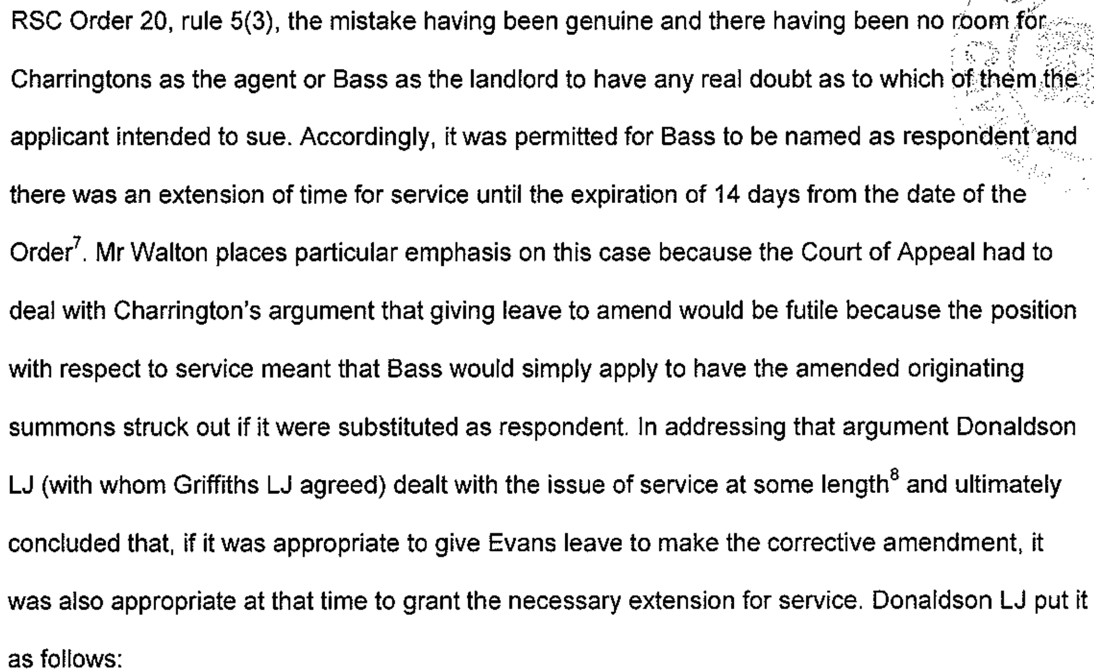
[4] [1967] 1 QB 116
[5] Page 140 C-D
[6] [1983] 1 QB 810



RSC Order 20, rule 5(3), the mistake having been genuine and there having been no room for Charringtons as the agent or Bass as the landlord to have any real doubt as to which of them the applicant intended to sue. Accordingly, it was permitted for Bass to be named as respondent and there was an extension of time for service until the expiration of 14 days from the date of the Order[7]. Mr Walton places particular emphasis on this case because the Court of Appeal had to deal with Charrington's argument that giving leave to amend would be futile because the position with respect to service meant that Bass would simply apply to have the amended originating summons struck out if it were substituted as respondent. In addressing that argument Donaldson LJ (with whom Griffiths LJ agreed) dealt with the issue of service at some length[8] and ultimately concluded that, if it was appropriate to give Evans leave to make the corrective amendment, it was also appropriate at that time to grant the necessary extension for service. Donaldson LJ put it as follows:

> *"R.S.C., Ord. 20, r. 5 (3) is itself hedged with every sort of protection for the intended respondent – the mistake must be genuine, the error in the name of the respondent must not be misleading or such as to cause any reasonable doubt as to the identity of the intended respondent and, above all, it must be just to allow the correction. Those protections will of themselves make a successful application under R.S.C., Ord. 20, r. 5 (3) something of a rarity, and in my judgment if leave to amend or correct would otherwise be given under that rule, the court should not hesitate to make any necessary extension of time [for service]"*[9]

23. Another case where the English Court addressed the question of service separately from the granting of leave to amend was **Owners of Sardinia Sulcis v Owners of Al Tawwab[10].** This was an Admiralty action in rem in which a writ was issued claiming the costs of repairs which the Sardinia Sulcis required following a collision with the Al Tawwab. The writ was issued on behalf of Sardanavi Societa di Navigazione Maritima SPA, as the owners of the Sardinia Sulcis, a few days before the applicable limitation period expired. The defendants named were subsequently served. However, it was later discovered that Sardanavi had ceases to exist before the writ was issued,

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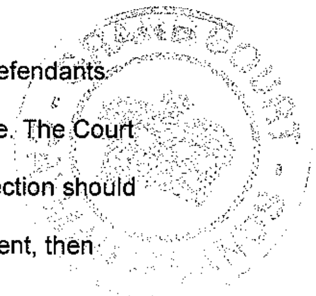
[7] Page 824E-G (per Donaldson LJ and page 826 (per Griffiths LJ)
[8] Pages 822G-824E
[9] Page 824C-E
[10] [1991] 1 Lloyd's Rep 201



and that the proper plaintiffs were its charterers, Kawasaki Kishen Kaisha Ltd. The defendants applied to strike out the action, and the plaintiffs applied to correct the plaintiffs' name. The Court of Appeal considered it appropriate that leave to amend to make the necessary correction should be granted under RSC Order 20, rule 5(3) and, having decided to allow the amendment, then made an order dispensing with reservice. It is to be noted, nevertheless, that doubt was expressed as to whether it was actually necessary to make the order dispensing with reservice.[11]

24. Reference was also made by Mr Walton to other cases, by way of comparison, where leave was sought under RSC Order 20, rule 5(3) to correct errors made in naming defendants, but where the intended defendants had been served with the writ while it remained valid, and so there was no question of an extension being necessary.[12]

25. It is submitted by Mr Walton that these English authorities provide no support for any proposition that the granting of leave or the amendment of a writ with leave under GCR Order 20, rule 5(3) has the effect of extending the validity of that writ for service on the substituted defendant. On the contrary, it is contended that they show that, where the validity of the writ has expired, an express extension is required to allow for service on the new defendant. As there was no such express extension in the present case, so it is maintained that there has been no due service on the Defendant and such service should be set aside.

26. In opposition to this application, it is submitted on behalf of the Plaintiffs that, on a proper interpretation of the relevant rules, whereas the period of validity of an original writ runs from the date of its issue, the period of validity of a writ amended under the rarely exercised jurisdiction of GCR Order 20, rule 5(3) runs from the date of its re-issue for the purpose of serving it on the party who is substituted by operation of that rule.

27. The prescribed periods of validity of a writ are set out in GCR Order 6, rule 8 (referred to above). The terms of Order 6, rule 8 (1) are as follows:

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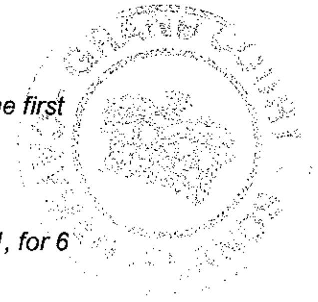
[11] Per Lloyd LJ at page 207

[12] Mitchell v Harris Engineering Company [1967] 2 QB 703; and Whittam v W.J. Daniel &Co. Ltd [1962] 1 QB 271



"For the purpose of service, a writ (other than an office copy of a writ) is valid in the first instance –

(a) Where leave to serve the writ out of the jurisdiction is required under Order 11, for 6 months; and

(b) In any other case, for 4 months,

beginning with the date of its issue and an office copy of a writ is valid in the first instance for the period of validity of the original writ which is unexpired at the date of issue of the office copy.

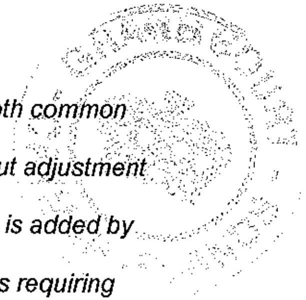
28. The Plaintiffs accept that under this rule the validity of the Writ as originally issued in this case expired on 30 June 2015. However, Mr Golaszewski, counsel for the Plaintiffs, contends that, in the case of the Amended Writ, the period of validity specified in the rule ran from the date of re-issue of the Writ on 23 October 2015.

29. Mr Golaszewski derives support for his submission from commentary in **The Supreme Court Practice 1999 Vol. 1**, in relation to the corresponding RSC Order 6, rule 8. Paragraph 6/8/5[13], in its material parts relied upon, states as follows:

"The original writ of summons in an action (unless leave is required to serve out of the jurisdiction) is valid for the purposes of service for 4 calendar months from the date of its issue, including such date, and if renewed for the period of the renewal. If leave is required to serve the writ out of the jurisdiction the appropriate period is 6 months ....

The service of the writ on one of two or more defendants within the appropriate period does not make it valid for service on any of the other defendants outside the appropriate period, and therefore even though the writ may have been duly served on one defendant, renewal of the writ must be obtained so as to make it available for service as against each defendant who has not been served within the appropriate period (Jones v. Jones [1970] 2 Q.B. 576,

[13] Pages 53-54



CA).This requirement applies in respect of each defendant named in the writ. Both common sense and the reasoning in Jones v. Jones ... indicate that it cannot apply without adjustment in respect of a defendant who is not named in a writ as originally issued but who is added by way of amendment; in respect of such a defendant the rule must be construed as requiring service on that defendant within the appropriate period from the date of the amendment by which he is added."

30. The case referred to in the commentary, **Jones v Jones**[14], involved a consideration of RSC Order 6, rules 8(1) and 8(2), as they were amended in 1964. Although slightly different from GCR Order 6, rules 8(1) and 8(2), such difference is immaterial for present purposes. The English rules provided as follows:

    "(1) For the purpose of service, a writ (other than a concurrent writ) is valid in the first instance for 12 months beginning with the date of its issue ...

    (2) where a writ has not been served on a defendant, the court may by order extend the validity of the writ from time to time for such period, not exceeding 12 months at any one time ..."

31. This was a traffic accident case in which the plaintiff, who had suffered severe injuries, issued a writ naming two defendants. The writ was served on the first defendant within 12 months from issue. However, it was not served on the second defendant until after that time. The issue before the Court of Appeal was whether, on the true construction of rule 8, a writ, once served on one of two or more defendants within the required time, remained valid for service on any other defendant. It was held that the rule was not to be construed in this way. In reaching this decision Salmon LJ said as follows[15]:

    "I read the rule as meaning that for the purpose of service on a defendant, a writ is valid in the first instance for 12 months, and that where the writ has not been validly served on that

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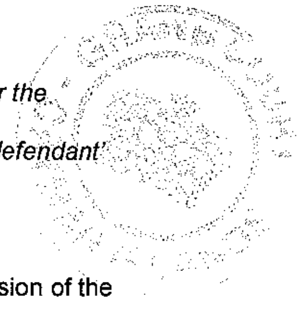
[14] [1970] 2 QB 576

[15] Page 580 G



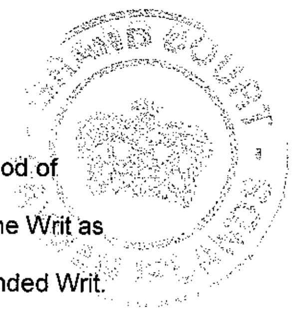
defendant the court may by order extend the validity of the writ from time to time for the purpose of serving it on him. It seems to me that it is only by reading the words 'a defendant' as 'any of the defendants' in sub-rule (2) that the argument could get off its feet."

32. The Court of Appeal was reinforced in its conclusion by observing that the previous version of the rule had provided that *"if any defendant therein named shall not have been served therewith, the plaintiff may, before the expiration of the 12 months, apply to the court or a judge for leave to renew the writ..."* It was not thought that the subsequent change in wording was intended to alter the law.[16]

33. The case of **Jones** is not, of course, determinative of the issue in the present case. Mr Walton submits that it was decided on facts that were wholly different from the present case, although he also points out that this was another case where there was an order made extending the validity of the writ for service on the second defendant. He submits that it provides no real support for the commentary in **The Supreme Court Practice**, relied upon by Mr Golaszewski, and that such commentary takes no account of the authorities cited above in support of the Defendant's application. It is therefore, he contends, of no assistance in deciding this application.

34. The point, however, made by Mr Golaszewski is that it is the reasoning which underlies the decision in **Jones** which provides support for the commentary. This reasoning is based on recognition that in so far as RSC Order 6, rule 8(1) regulates the validity of a writ for service, it applies separately to each individual defendant named in a particular writ, rather than applying *en-masse* to all the defendants or (still less as Mr Golaszewski submits) to defendants who are not named in it at all. As was held in **Jones**, it is not open to a plaintiff to contend that by serving one of two named defendants in time the writ is then valid for service on the remaining defendant at any time thereafter. By parity of reasoning it is submitted that it is no more open to the Defendant in the present proceedings to contend that the period of validity of the writ which applied to the original defendant (a different entity) also applied to the Defendant who was not even named in the original writ. In my view there is some force in such reasoning.

[16] Page 580 H -581 A



35. So, on the basis of this reasoning, it is submitted on behalf of the Plaintiffs that the period of validity under GCR Order 6, rule 8(1) that was applicable to the original Defendant in the Writ as issued cannot be applied without modification to the Defendant substituted in the Amended Writ. Instead it is contended, in the words of the commentary, that *"the rule must be construed as requiring service on that defendant within the appropriate period from the date of the amendment by which he is added."*[17]

36. On this footing time for service would run (for 6 months for service out of the jurisdiction) from 23 October 2015.

37. The matter does not rest with **Jones**. Mr Golaszewski also submits that there is other authority which supports the commentary. He cited **Payabi v Armstel Shipping Corporation**[18]. In that case the owners of cargo allegedly damaged on board a ship on which it was being carried sued under a bill of lading which was subject to a one-year time bar under the Hague Rules, which expired on 9 March 1991. The writ was issued within that period, on 28 February 1991, naming Oceanview Limited ("Oceanview") believed to be the ship owner as the first defendant and Panthai Shipping Limited ("Panthai") as the second defendant. In fact Oceanview had at some time prior to the events giving rise to the writ sold the ship to Armstel Shipping Corporation ("Armstel"). On 12 April 1991, the plaintiff sought to serve on Oceanview by delivering the writ to its solicitors. The plaintiff never served Panthai. On 15 April 1991, Oceanview's solicitors replied that they were instructed to accept service on behalf of the registered owners (Armstel) but not Oceanview.

38. In response in that case, the plaintiff obtained leave to and did serve Oceanview out of the jurisdiction (which service was subsequently set aside by consent) but also applied for leave to amend the writ by substituting Armstel, instead of Oceanview, as the first defendant under RSC Order 20, rule 5, as well as seeking a renewal of the writ for 4 months from 28 June 1991. This order having being granted, Armstel applied for it to be set aside.

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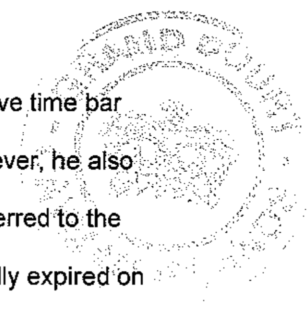
[17] Paragraph 6/8/5 at page 54
[18] [1992] 1 QB 907

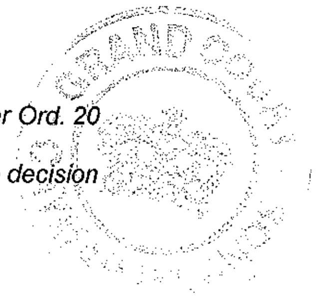


39. Hobhouse J granted Armstel's application on the basis, *inter alia*, that the substantive time bar under The Hague Rules meant that RSC Order 20, rule 5 was not applicable. However, he also made certain observations on the question of the validity of the original writ and referred to the **Jones** case. It had been argued on behalf of the plaintiff that the writ had not actually expired on 28 June 1991, and hence the application had been unnecessary. The argument was on the footing that since the original writ was one where leave to serve out of the jurisdiction was required for service on Oceanview, its validity was not 4 months but 6 months in relation to any defendant. Hobhouse J rejected this argument as based on a misreading of RSC Order 6, rule 8(1) and as being inconsistent with **Jones**. He observed, echoing **Jones** in this respect, that *"the relevant concept is that of validity of service on a given defendant."*[19] It was therefore reasoned that any right the plaintiff might have had to join and serve Armstel (whose solicitors had said they would accept service within the jurisdiction) without obtaining first the leave of the court was lost within 4 months of the date of the original writ, unless the plaintiff obtained *"an order which either expressly or implicitly extended the validity of the writ"*[20] .

40. Mr Golaszewski relies on the reference to implicitly extending the validity of the writ. He points out that earlier in the judgment Hobhouse J observed that the procedural position at the time of the order which gave leave to amend the writ by joining Armstel instead of Oceanview and extended the validity of the writ involved an element of paradox because:

> *"...if it was proper to add a new party to the writ by amendment then it would not be necessary to extend the time for service of the writ on that defendant since time for such service would begin to run from the date of the amendment to the writ and the joinder of that defendant: see Jones v. Jones [1970] 2 Q.B. 576. On the other hand if the result of the consent order* [to set aside service on Oceanview] *was that there had not been any 'service of the writ on any party to the action', the only service on Oceanview having been set aside and there never having been any attempt to serve Panthai, leave to amend, even to join a new party, was not required because the amendment could be made without leave under Ord. 20, r. 1(3). However, it was not open to the plaintiffs, after the validity of the writ had expired*

[19] Page 919 H
[20] Page 920 E-F



without service, effectively to renew the writ by purporting to exercise a liberty under Ord. 20 r. 1(3) and avoid the need to make any application to the court; this is implicit in the decision in Jones v. Jones."[21]

41. So it is submitted, on behalf of the Plaintiffs, that Hobhouse J was of the view that the decision in **Jones** meant that leave to add or substitute a party under RSC Order 20, rule 5 had the effect of implicitly extending the time for service of the writ, by re-setting the time for service on the new defendant to run from the date of the amendment. The contention is that Hobhouse J's understanding of the effect of the reasoning in **Jones** is further support for the relevant commentary in **The Supreme Court Practice**.

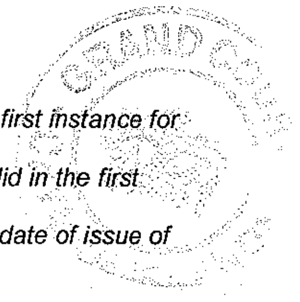
42. Mr Walton submits that the commentary runs contrary to GCR Order 6, rule 8 which lays down a very specific regime for extension of validity of a writ for of service. He maintains that an extension of validity of a writ requires to be made by an express order under that rule.

43. He also disputes that **Jones** provides support for the opinion expressed by Hobhouse J. It is further submitted that the opinion expressed by Hobhouse J on the point was obiter and is contrary to the earlier higher authority of the English Court of Appeal in **Evans v Charrington**. In my view, whether or not the opinion was strictly obiter, it can at least be said that the reasoning underlying it provides some persuasive support for the commentary.

44. This approach was also followed by the High Court of the Hong Kong Special Administrative Region in the case of **Yau Ngai and Others v Yau Tak and Others**[22]. In this case a number of defendants were joined to the action and concurrent writs were issued. Certain of the defendants applied to set aside the order that gave leave to join them and serve them on the ground, *inter alia*, that the validity of the original writ expired before the concurrent writs were issued. In support of their argument the defendants relied on Order 6, rule 8(1) of the Hong Kong Rules of the High Court which provided that:

[21] Pages 916 H – 917 B

[22] HCA 1309/2007 - unreported decision, dated 9 January 2009



"For the purpose of service a writ (other than a concurrent writ) is valid in the first instance for twelve months beginning with the date of its issue and a concurrent writ is valid in the first instance for the period of validity of the original writ which is unexpired at the date of issue of the concurrent writ."

45. Deputy High Court Judge Chan rejected the defendants' contention. He accepted the submissions of counsel for the plaintiffs, who relied on **Jones** and **Payabi**, that:

"the rule cannot apply without adjustment in respect of a defendant who is not named in the writ as originally issued but who is added by way of amendment. In respect of such a defendant, the rule must be construed as requiring service on that defendant within the appropriate period from the date of the amendment by which he is added."[23]

46. So, having regard to the commentary in **The Supreme Court Practice** and the authorities cited by Mr Golaszewski, it is submitted on behalf of the Plaintiffs that where a writ is amended under GCR Order 20, rule 5(3) with the effect that one legal entity is substituted for another as a defendant, the provisions of GCR Order 6, rule 8(1) which regulate the validity of a writ for service must be construed as requiring service on that defendant within the appropriate period from the date of the amendment by which such party is added. It is observed that were this not the case then the October Order would have been to no purpose.

47. Accordingly, the position is that set against the English authorities relied upon on behalf of the Defendant, there is also a degree of support for the contention of the Plaintiffs. Faced with this dichotomy, it might have been preferable, with the benefit of hindsight, to have put the matter beyond doubt by making an express order under GCR order 6, rule 8 extending the validity of the amended writ for service on the substituted Defendant. However, in the circumstances of the case, and having particular regard to the protections referred to by Donaldson LJ in **Evans v Charrington**, which have been amply afforded here under GCR Order 20, rule 5(3), I am of

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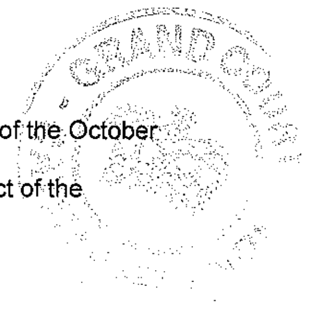
[23] Paragraph 6



the view that such extension can safely and properly be inferred from the making of the October Order. Adopting the reasoning of Hobhouse J in **Payabi**, this was the implicit effect of the Order.

48. There is an added dimension to the October Order, not dealt with in the authorities. This is the granting of leave under GCR Order 11, rule 1 for service of the amended writ out of the jurisdiction on the substituted defendant. In my view this must be taken to have had the effect of allowing the prescribed time of 6 months for service on such a defendant, beginning with the date of issue of the amended writ, in accordance with GCR Order 6, rule 8(1). If this were not the case, then the October Order would have been to no purpose.

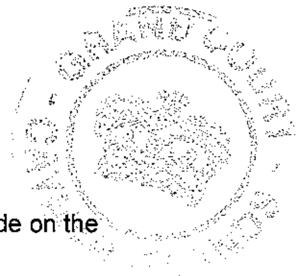
49. Reaching this conclusion appears to me to meet the requirements of justice and to make sense. In granting leave to amend the writ, it was found that the mistake to be corrected was a genuine mistake and was not misleading or such as to cause any real doubt as to the identity of the person to be sued. Furthermore, it was held to be proper to grant leave to serve the substituted Defendant out of the jurisdiction. It should follow from this that the Plaintiffs then had the usual time to effect service on the new Defendant on reissue of the writ.

50. In conclusion, I am of the view that the effect of the October Order was to make the amended writ valid for service on the substituted Defendant for a period of 6 months from the date of its reissue. The amended writ was reissued on 23 October 2015 and served on 16 December 2015. Accordingly, it was validly served within the required time.

The Plaintiffs' Summons

51. As referred to above, the Plaintiffs' Summons was issued on a protective basis, in case it be found on the Defendant's application that the validity of the amended Writ had expired as at the date of service.

52. This not having found to be the case, it is not necessary to determine whether to extend the validity of the amended Writ.



Conclusion

53. The Defendant's Summons is dismissed, with costs to follow the event. No order is made on the Plaintiffs' Summons.

54. An order is to be drawn up accordingly and submitted to the Court for approval.

Approved this 23rd day of May 2016

The Hon. Justice Nigel R.L. Clifford, QC

JUDGE OF THE GRAND COURT