



Neutral Citation Number: [2024] EWHC 2447 (Ch)

Case No: BL-2023-000911

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)

The Royal Courts of Justice
7 Rolls Buildings
Fetter Lane
London, EC4A 1NL
Date: 1 October 2024

Before :

DEPUTY MASTER RAEBURN

Between :

(1) LYNDA MAXINE FRANKA JOSEPH

Claimant

- and -

(2) McFADDENS LLP

Defendant

Hugh O’Donoghue (instructed by Direct Access) appeared on behalf of the Claimant
Thomas Phillips (instructed by Reynolds Porter Chamberlain LLP) appeared on behalf of
the Defendant

Hearing date: 18 March 2024

APPROVED JUDGMENT

This judgment was handed down remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 3pm on 1 October 2024.

Deputy Master Raeburn:

Introduction

1. This is my judgment on:
 - i) the Defendant's application requesting that the Court decline to exercise jurisdiction in relation to the underlying claim (pursuant to CPR rule 11(1)) and/or strike out the claim (pursuant to CPR rule 3.4(2)(c)) on the basis that the Claimant served her Particulars of Claim on the Defendant after the latest time for service of the Claim Form; and
 - ii) the Claimant's cross-application for retrospective permission to serve its Particulars of Claim and if so required, relief from sanctions.
2. The crux of the parties' rival contentions centre upon whether the Claimant's service of the Particulars of Claim was within the period of validity of service of the Claim Form and if not, whether it is appropriate to grant retrospective permission for an extension of time and relief from sanctions.
3. The Claimant's case is that service of the Particulars of Claim was in time on the basis that the relevant deadline (i.e. the latest time to serve the Claim Form) includes the additional two business days for deemed service of the Claim Form.
4. The Defendant's primary case in written submissions is that the latest time to serve the Claim Form should be approached with reference to "taking the relevant step" as prescribed by the CPR and that therefore the touchpoint for service of the Particulars of Claim is not the "deemed date" of service of the Claim Form, but the latest point at which the relevant step can be taken. In oral submissions a further case was advanced by Counsel for the Defendant that the

deemed service date of the Particulars of Claim is in any event outside of the latest deemed service date of the Claim Form.

5. For the reasons set out below, in my judgment, it is appropriate in these circumstances to make a declaration that the Court has no jurisdiction in this claim in light of the Claimant's failure to serve the Particulars of Claim within the period of validity of the Claim Form.
6. The Claimant is a litigant in person (albeit instructing counsel on a direct access basis) who in the underlying claim alleges breach of contract, fiduciary duty, and/or professional negligence including conflict of interest on the part of the Defendant (a law firm) who it is alleged at the material time was acting as a solicitor to the Claimant in relation to a facility agreement she entered into on 18 August 2017 with a third party (the "**Facility Agreement**"). It is alleged by the Claimant that the Facility Agreement was negotiated, arranged and recommended by the Defendant. The Facility Agreement secured the facility by way of a second legal charge on the Claimant's property at 17 Imperial Square, London, SW6 2AE (the "**Property**").
7. The claim alleges that the Defendant acted as her solicitors and her agent or principal in respect of a mis-sold loan, resulting in losses sustained by the Claimant which arise for which it is said the Defendant is liable.

The Relevant Procedural Background

8. By way of brief procedural background, on 20 June 2018, following possession proceedings brought by a third party against the Claimant, the third party was awarded a money judgment and possession of the Property.

9. On 24 June 2019, the Claimant brought a claim in the County Court Money Claims Centre for, amongst other things, the “*mis-selling of a financial product and subsequent punitive damages from being evicted...*” against the Defendant (“**First Claim**”), which on 7 August 2019, was struck out on the basis it disclosed no grounds for bringing the claim. The Defendant does not advance any application that the principles of *res judicata* or issue estoppel apply in relation to the current claim.
10. On 18 October 2019, the Claimant issued an application in this Court for injunctive relief to prevent the Defendant disbursing the sale funds of the Property following the possession proceedings (“**Injunction Application**”).
11. On 25 October 2019, the Injunction Application was dismissed on the basis that the proceeds of the possession proceedings had already been disbursed (on 11 October 2019). An order requiring the Claimant to pay the Defendant’s costs in relation to resisting the Injunction Application remains outstanding.
12. On 28 June 2023 the Claimant issued the present claim against the Defendant.

The service of the Claim Form and Particulars of Claim in these proceedings

13. A short summary of the uncontested evidence of the parties gives rise to the following brief chronology:
 - i) The Claim Form was issued on 28 June 2023 and served on the Defendant on 18 October 2023. The box was marked on the Claim Form indicating that the Particulars of Claim were to follow; and

- ii) The Particulars of Claim were posted by the Claimant by way of Royal Mail Special Delivery on Monday 30 October 2023 and received by the Defendant on 1 November 2023.

The Evidence

14. The Defendant's application is supported by the first and second witness statements of Melenik Forde, (a solicitor with conduct of the proceedings on behalf of the Defendant) dated 14 November 2023 and 13 March 2024, respectively, which set out the procedural history to the claim and amongst other things, seeks to set out factual matters relevant to the applications before the Court.
15. The Claimant's application is supported by the witness statement of Lynda Joseph (the named Claimant in the proceedings), dated 16 January 2024 which sets out her chronology of service and the reasons for the delay in posting the Claim Form as well as other factual context to her application.

The Relevant Legal Principles

Service under the Civil Procedure Rules

16. The starting point in the context of the Defendant's application is CPR rule 7.4(2) which states that Particulars of Claim must be served no later than the latest time for serving the claim form.
17. CPR rule 7.5(1) provides as follows:

“Where the claim form is served within the jurisdiction, the Claimant must complete the step required by the following table in relation to the

particular method of service chosen, before 12.00 midnight on the calendar day four months after the date of issue of the claim form:

<i>Method of service</i>	<i>Step required</i>
<i>First class post, document exchange or other service which provides for delivery on the next business day</i>	<i>Posting, leaving with, delivering to or collection by the relevant service provider</i>
<i>Delivery of the document to or leaving it at the relevant place</i>	<i>Delivering to or leaving the document at the relevant place</i>
<i>Personal service under r 6.5</i>	<i>Completing the relevant step required by r 6.5(3)</i>
<i>Fax</i>	<i>Completing the transmission of the fax</i>
<i>Other electronic method</i>	<i>Sending the email or other electronic transmission”</i>

18. The modern concept of “deemed service” was introduced by the Civil Procedure (Amendment) Rules 2008 (SI 2008/2178) and amended by the Civil Procedure (Amendment) Rules 2011 (SI 2011/88).
19. In this regard, pursuant to CPR rule 6.14: “*A claim form served within the United Kingdom in accordance with this Part is deemed to be served on the second business day after completion of the relevant step under rule 7.5(1).*”
20. Further, pursuant to CPR rule 6.26, “*A document other than a Claim Form [...] is deemed to be served [...]: Method of Service: First class post (or other service which provides for delivery on the next business day); Deemed Service: The second day after it was posted, left with, delivered to or collected by the relevant service provider provided that day is a business day; or if not, the next business day after that day.*”

21. I remind myself of the judgment of the Court of Appeal in Howard Kennedy v The National Trust for Scotland [2019] EWCA Civ 648 at [134] which states that:

“a deeming provision does not state absolute truth...It states that which is assumed to be true for limited purposes” (at [134])

22. In the same judgment, the Court of Appeal approved the following summary of the law by Nourse J's (as he then was) judgment in Inland Revenue Commissioners v Metrolands (Property Finance) Ltd [1981] 1 WLR 637 at 646:

"When considering the extent to which a deeming provision should be applied, the court is entitled and bound to ascertain for what purposes and between what persons the fiction is to be resorted to. It will not always be clear what those purposes are. If the application of the provision would lead to an unjust, anomalous or absurd result, then, unless its application would clearly be within the purposes of the fiction, it should not be applied. If, on the other hand, its application would not lead to any such result then, unless that would clearly be outside the purposes of the fiction, it should be applied."

Discussion

Issue 1: Whether the Court should decline to exercise jurisdiction in relation to the present claim, or otherwise strike out the same

23. As indicated above, it is the Defendant's position that the Claimant served her Particulars of Claim on the Defendant after the latest time for the service of the Claim Form. It is said that the latest time to serve the claim form was 28 October

2023 and that accordingly, the relevant touchpoint for service of the Particulars of Claim is not the deemed date of service of the Claim Form, but the latest point where service could actually have been effected, which was on 28 October 2023.

24. Counsel for the Claimant contends that her Particulars of Claim were served before the latest time for service of the Claim Form. It is averred that the combined effect of the rules is such that the latest time within CPR rule 7.4(2) for the separate service of the Particulars of Claim is the deemed service date *following* the completion of the relevant step. In this regard, Counsel for the Claimant relies on the following passage of the White Book, [7.4.2, page 368] as supporting that proposition:

The calculation of the “latest time for serving the claim form” within 7.4(2) requires reference to r7.5 although in fact unlike r7.4(2) that rule...says nothing about “serving” a claim form within a particular time, but about completing “a step required” by the rule within the set time. Where service is to be effected within the jurisdiction, a claim form served in accordance with Pt 6 is deemed to be served on the second business day after “completion of the relevant step under 7.5(1) (see r6.14). Presumably in such circumstances it is intended that the “latest time” within 7.4(2) for the separate service of the particulars of claim is that deemed date. (my emphasis).

25. I was taken to T&L Sugars Ltd v Tate & Lyle Industries Ltd [2014] EWHC 1066 (Comm) by Counsel for the Claimant, who in particular relies on the following dictum of Flaux J (as he then was) at [31]:

“In my judgment two rules, CPR 7.5 and 6.14 taken together draw a clear distinction between the date when service is effected, which is the relevant step under 7.5 had been completed and the date two business days later when the service is deemed to take place under CPR 6.14. If one asks oneself why that distinction is there, it is not ...because service does not actually occur until the deemed day, but because, whereas CPR 7.5 is looking at when actual service takes place, so that a claimant who takes the requisite step, depending on the method of service he employs, can be sure that he has served within four months of validity of the claim form (thereby avoiding, if relevant, limitation issues), CPR 6.14 is looking at when service will be deemed to have taken place for the purpose of other steps in the proceedings thereafter, beginning with the filing of an acknowledgment of service. In my judgment, that construction of the rules is supported not only by the reasoning of Green J in the Ageas case [63]-[80], with which on this point I entirely agree, but by the wording of the rules themselves and by the various commentaries on the CPR, not only in Blackstone’s Civil Practice ... but, on a proper analysis, the notes to the White Book.

26. In my judgment, the correct approach in the circumstances is to determine whether the Claimant has in fact carried out the “step required” by CPR rule 7.5(1) within the 4 month period of validity.
27. Accordingly, in this context the concept of “serving” the Particulars of Claim pursuant to CPR rule 7.4(2) necessarily refers to the Claimant taking the “step required” under CPR rule 7.5(1).

28. The purpose of the concept of “deemed” service in these circumstances does not, in my view, operate so as to determine the date by which the Claimant must take the steps required by CPR 7.5(1). The “deemed” service construct is relevant for other purposes in the course of the proceedings, including the calculation of subsequent procedural steps.
29. Contrary to Counsel for the Claimant’s submissions, I do not find T&L Sugars to support the Claimant’s position, which is clear when one considers the reasoning and conclusions borne out in, *inter alia*, paragraphs [32] – [40] of that judgment. Further, whilst I note that T&L Sugars involved the interpretation of service provisions in a contract, the issues may be considered analogous to the present case (and there is indeed direct reference to the consideration of the effect of CPR 7.5). In that regard, the Court ultimately determined that there was “...*absolutely no justification for reading the word “served” in cl 11.3 as referring to “deemed service” under CPR 6.14 rather than actual service under CPR 7.5*”.
30. Whilst I was not taken to the following authorities in the course of submissions, I consider the conclusion I have reached to also be consistent with analogous reasoning exemplified in: Paxton Jones v Chichester Harbour Conservancy [2017] EWHC 2270 (QB); Oran Environmental Solutions Ltd v QBE Insurance (Europe) Ltd [2020] EWHC 1271 (Comm); and Howard Kennedy v The National Trust for Scotland [2019] EWCA Civ 648.
31. Therefore, in my judgment, the Claimant’s service of the Particulars of Claim was late; “the relevant step” having been taken on 30 October 2023 which is

after the latest time for the service of the Claim Form. In the circumstances, I do not regard the purpose of the “deemed service” fiction to be engaged.

32. Alternatively, the Claimant’s service of the Particulars of Claim is late even if the correct approach in this context is to apply the fiction of the deeming provisions as having a central role for the purposes of regulating the date by which the Particulars of Claim are to be served.
33. It would mean that the four month period of validity of the Claim Form is to be regarded as extending until the date of deemed service of the Claim Form (in this case, two business days following the 28 October 2023 – i.e. 31 October 2023) pursuant to CPR rule 6.14. Therefore the “latest time” within CPR 7.4(2) for the separate service of the Particulars of Claim would be “that deemed date” (i.e. the 31 October 2023).
34. Taking that approach, it would logically follow that the concomitant deeming provisions for the service of the Particulars of Claim would also be relevant in determining when “service” took place. In this case it would result in the Particulars of Claim being deemed served on 1 November 2023 which is, in any event, after the latest time for the service of the Claim Form (where that is to be regarded as) 31 October 2023.

Issue 2: Whether the Court should grant the Claimant’s Application for a retrospective extension of time

35. It is common ground that the application for an extension by the Claimant should be determined according to the Denton v TH White Ltd [2014] EWCA Civ 906 principles.

36. Counsel for the Claimant submits in summary that:
- i) Viewed objectively, the delay is minimal – even if deemed service is taken to be 1 November 2023, the overriding objective is such as to militate toward granting an extension in the exercise of the Court’s discretion;
 - ii) The Defendant is not prejudiced; the Claim Form was served on time and a letter before action inviting conciliation and pre-action exchanges together with a standstill offer was also sent at an earlier stage of the proceedings, which was impermissibly ignored;
 - iii) The personal circumstances of the Claimant were such that there should be consideration of the difficulties faced by the Claimant at the material time (in the form of work related time pressures).

The Denton Test

Stage 1: Seriousness or significance of the breach

37. Counsel for the Claimant further submits that the default is neither serious nor significant - it is submitted that in addition to the work-related pressure that the Claimant faced at the material time, she was also not assisted by “legal litigation support”.
38. Reliance is placed on the decision of Popplewell J, as he then was, in the case of Viridor Waste Management Ltd v Veolia ES Ltd [2015] EWHC 2321 (Comm), (in which the Particulars of Claim had been served between 1-3 days late) and in particular in the dictum at [19]:

"It must be remembered that although there are formal rules of service which ought to be complied with, their ultimate purpose is to bring the relevant document to the attention of the relevant person acting on the other side in circumstances where that other person knows that a procedural step has been taken see Abela v Baadarani [2013] 1WLR 2043 per Lord Clarke at paragraph [39]. When one is assessing the significance of a default and complying with a letter of rule which involve services, in my view is part of the focus on the purpose of the rule. The significance of a default in complying the rule or order as to service, where a default has happened nevertheless would propose the purpose which underlies, an order will usually be small."

39. It is submitted that the default in the present case is, in light of Viridor, to be considered as a minor delay which has no real impact on the course of the litigation.
40. The Defendant submits that Viridor is distinguishable on the basis that amongst other things, the facts were very different given that in particular, Viridor concerned two parties who had negotiated repeated extensions of time together with a stay and that there had been no history of non-compliance with the rules by the parties.
41. In my judgment, the breach clearly is serious and significant: (i) the Particulars of Claim were only served toward the end of the period of validity; (ii) although the claim had been intimated by the Claimant, the Defendant was entitled to understand within the 4 month period set in the Civil Procedure Rules what that claim actually comprised of.

Stage 2: Why the breach occurred

42. The Claimant's evidence includes the following reasons for the breach:
- i) Personal circumstances and work pressures at the time (at the end of October 2023). It is stated in the Claimant's evidence that, "*Although I was made aware of the deadline my employment duties in the main caused the delay. To compound these pressures I had a family crisis.*";
 - ii) "*My lawyer provided me with the cut-off date but as I say I allowed other considerations to distract me*".
 - iii) "*I perhaps unwisely had an idea in my mind that of counting days for service should be working days only and I became too complacent about the need for timely service*".

43. In my judgment, these do not amount to good reasons for the breach.

Stage 3: All the circumstances of the case

44. The Court must consider all of the circumstances of the case, including the factors listed in CPR rule 3.9(1)(a) and (b). In this case, I note the following factors in particular:
- i) Although the First Claim was brought in June 2019, the Claimant waited until June 2023 to bring the present claim;
 - ii) The Claimant would have been on notice from the Defendant's application in November 2023 that there was an issue with the service of her Particulars of Claim and the need for her to seek a retrospective

extension of time; however there is no good reason advanced as to why she waited until January 2024 to make the present application;

- iii) It is clear from the evidence that the Claimant knew of the deadlines she needed to comply with; it was open to the Claimant to indicate that there had been, or would be, an issue(s) with service and/or seek an extension of time for service of the Particulars of Claim accordingly;
- iv) The Particulars of Claim were not drafted until 29 October 2023. Accordingly, the Claimant waited until the very end of the period for service of the Particulars of Claim to prepare the same;
- v) Whilst the First Claim is said to be different to the current claim in this Court, it is clear that the issues arise out of similar facts. The First Claim was issued in 2019 and there is no good reason advanced as to why it took until October 2023 to particularise the current claim.

45. I do not regard it as appropriate in these circumstances to grant relief from sanctions in this case. The Claimant has had a significant period of time and opportunity to articulate and advance her claims and it would appear that a considerable amount of court resources has been devoted to the issues between the parties.

46. There is a clear interest in finality in litigation; I would therefore dismiss the Claimant's application.

47. In my judgment it is appropriate to make a declaration in favour of the Defendant that the Court has no jurisdiction in this claim as a result of the failure to serve the Particulars of Claim within the period of validity of the Claim Form.

48. I will hear Counsel on any matters consequential upon this judgment, including the settling of a form of order and any application for costs at a subsequent hearing.