In The Supreme Court of Bermuda

COMMERCIAL JURISDICTION

2021 No: 366

BETWEEN:

VL ASSURANCE (BERMUDA) LIMITED (In liquidation)

Plaintiff

v

BF&M LIMITED

Defendant

RULING

Dates of Hearing: 26 April, 6 and 11 June 2024
Date of Judgment: 23 September 2024

Plaintiff: Mr. Nick Miles (Kennedys Chudleigh Limited)
Defendants: Mr. Keith Robinson and Ms. Charlotte Donnelly (Carey Olsen Bermuda Limited)

Application to set aside ex parte order – Extension of time for service of a writ

RULING of Shade Subair Williams J

Introduction

1. This Court is concerned with the Defendant's summons filed on 9 November 2023 (the "discharge summons") seeking a discharge of an *ex parte* order made by Mussenden J (as he then was) on 28 October 2022 (the "Extension Order") whereby the validity of the Plaintiff's 17 November 2021 Generally Indorsed Writ of Summons (the "Writ") was extended for a one-year period.

2. The Extension Order was made on the strength of the Plaintiff's 28 October 2022 summons (the "*ex parte* application") as supported by the First Affidavit of Mr. Michael Morrison, one of the Plaintiff's joint liquidators.

3. The discharge summons is supported by the affidavit evidence of Mr. Robinson. That evidence is opposed by the Second Affidavit of Mr. Morrison which was followed by further affidavit evidence from Mr. Robinson.

4. Having had the benefit of both oral and written arguments from Counsel, I now provide this Ruling with reasons.

Legal Test for Extending the Validity of a Writ

5. RSC Order 6/8(1) provides for the validity of a writ for the purpose of service, so long as the period commencing from the date of issue does not exceed 12 months. Under RSC Order 6/8(2), the Court is empowered to extend the validity of the writ for no more than 12 months at any one time, counting from the first day of the expiry period.

6. Citing the House of Lord decisions in both *Kleinwort Benson Ltd v Barbrak Ltd, The Myrto (No. 3)* [1987] A.C. 597 and *Waddon v Whitecroft-Scovill Ltd* [1988], the following legal principles are spotlighted in the 1999 White Book commentary [para 6/8/6]:

   "…

   (1) It is the duty of the plaintiff to serve the writ promptly. He should not dally for the period of its validity; if he does so and gets into difficulties as a result of, he will get scant sympathy.

   (2) Accordingly there must always be a good reason for the grant of an extension. This is so even if the application is made during the validity of the writ and before the expiry of the limitation period; the later the application is made, the better must be the reason.

(3) It is not possible to define or circumscribe what is a good reason. Whether a reason is good or bad depends on the circumstances of the case. Normally the showing of good reason for failure to serve the writ during its original period of validity will be a necessary step for establishing good reason for the grant of an extension."

7. The English Court of Appeal's decision in *Battersby v Anglo-American Oil Co. Ltd*. [1945] K.B. 23 was cited by Brandon LJ in *Kleinwort Benson Ltd v Barbrak Ltd* as an endorsement of Lord Goddard's reference to the "good reason" test. Although the "good reason" test can only be assessed on a case-by-case basis, an example of a good reason case would likely be a clear agreement between the parties to defer service of the writ. Another example provided in the 1999 White Book commentary relates to extreme difficulty in effecting service due to a defendant's attempt to evade service.

8. In previous cases "bad reasons" were found to include (i) the fact of ongoing negotiations between the parties and (ii) the difficulty of tracing witnesses or obtaining expert or other evidence. (*Portico Housing Association v Brian Moorehead and Partners* (1985) 1 Const. L.J., CA). As for the subject of a limitation period, case law suggests that a writ will not normally be renewed where the effect of the renewal would deprive a defendant of the accrued benefit of a limitation period.

9. In *Kleinwort Benson Ltd v Barbrak Ltd* Brandon LJ quoted from Goddard LJ's illustration in *Battersby v Anglo-American Oil Co. Ltd* [at 32-33] on the "good reason" test:

"*…The best reason of course, would be that the defendant has been avoiding service, or that his address is unknown, and there may well be others, but ordinarily it is not a good reason that the plaintiff desires to hold up the proceedings while some other case is tried or to await some future development. It is for the court and not for one of the litigants to decide whether there should be a stay, and it is not right that people should be left in ignorance that proceedings have been taken against them if they are here to be served. While a defendant who is served with a renewed writ can, no doubt, apply for it to be set aside on the ground that there was no good reason for the renewal, his application may very possibly come before a master or a judge other than the one who made the order and who will not necessarily know the grounds on which the discretion was exercised*."

10. Procedurally speaking, an application to set aside a writ or service of a writ must be made by summons pursuant to RSC O. 12/8. In determining the application to either grant a renewal or to set aside a grant of renewal, a two-stage discretionary test applies:

    (i) Was there a good reason to extend the time for service of the writ?
    (ii) If so, what is the balance of hardship between the parties?

11. The second part of the test, which appears to have been first introduced into English law by the decision in *Jones v Jones* [1970] 2 Q.B. 576, is only engaged where the Court is satisfied that the good reason test has been established. As Salmon L.J. put it [584]:

"*Should the order of the judge be reversed, the plaintiff might well be left without any remedy. That hardship must be balanced against the hardship which the judge recognized that the defendant may suffer as a result of the long delay*."

12. This two-stage test was affirmed by the House of Lords in *Kleinwort Benson Ltd v Barbrak Limited*. As to the operation of the second part of the test, Brandon LJ, delivering the judgment of the House in both *Kleinwort Benson Ltd v Barbrak Limited* and later in *Waddon v Whitecroft Scovell Ltd.* (H.L.(E)) 1WLR explained the "balance of hardship" limb only becomes a relevant consideration once the applicant has satisfied the first hurdle, which is the good reason test. Clarifying the sequential relationship between the limbs, Brandon LJ said in *Waddon v Whitecroft* [p.317-318]:

"*…This House was not saying that balance of hardship could of itself constitute good reason for extending the validity of a writ. What it was saying was that, where there were matters which could, potentially at least, constitute good reason for extension, balance of hardship might be a relevant consideration in deciding whether an extension should be granted or refused. In the present case Michael Davies J. found, rightly as I think, that there were no matters which could, even potentially, amount to good reason for extension. In those circumstances the question of balance of hardship did not arise*."

13. In *Kleinwort Benson Ltd v Barbrak Limited* the plaintiff, a mortgagor bank, repossessed a cargo vessel known as the "Myrto". Before the ship could be sold, the bank had to bear the cost of offloading the cargo which was owned by various parties. The application was first determined by the Admiralty Registrar and reviewed by a judge of the High Court. On further appeal, the Court of Appeal directed for the discharge costs to be undertaken by the bank in the first instance. It would have then been open to the bank to seek indemnification from the cargo owners who sought delivery of their goods. However, the total costs of the discharge exceeded all the sums offered by the cargo-owners who obtained delivery. After failed attempts to negotiate a settlement with the cargo-owners, the bank issued court proceedings against the owner of the largest freight. These proceedings were termed the "Sahami proceedings". An "omnibus writ" was also filed, but not served, against 164 of other owners.

14. In the Sahami proceedings the plaintiff bank sought to establish the liability of all cargo-owners to the extent that it corresponded with their share of the goods. For that reason, the plaintiff was keen for the Sahami proceedings to be decided prior to the serving of the omnibus writ

against the other defendants. In the bank's attempt to avoid incurring the legal costs of serving the other owners prior to the conclusion of the Sahami proceedings, it secured a 12-month extension on the validity of the writ on an *ex parte* application before the Admiralty Registrar.

15. Just over three months into the 12-month extension period, the Court determined the Sahami proceedings in favour of the bank, making the cargo owners liable for the overall costs. The decision was not appealed. Instead, the bank embarked on a time-consuming exercise of calculation of the cargo-owners' costs. So, approximately two weeks prior to the extended period of the writ, the bank obtained a further extension. This time the extension was granted for three months. One week prior to the further extension, the bank served the omnibus writ and subsequently obtained payment from 35 of the cargo owners. Up to 79 of the remaining defendants refrained from defending the writ.

16. Five of the cargo owners, however, applied to the Admiralty Registrar for the extensions of the validity of the writ to be set aside. Having been refused on their applications, they appealed to a judge who upheld the refusal. On further appeal from Sheen J to the Court of Appeal, the appeals were allowed and the extensions were set aside. In the only judgment of the Court of Appeal, Sir John Donaldson M.R. is reported to have said [quoted at p.621 of the House of Lord's judgment]:

    "… … *The real purpose of the power to extend is to deal with difficulties of service. It was never intended simply to enable a plaintiff to deal with the matter in a slightly cheaper way, if indeed it was cheaper on the facts of this case. It was intended to give the court control of the action at the earliest opportunity, and only to extend the time when the court took control where there were difficulties in service. The cases do of course refer to hardship, and hardship is a factor; but here there is no particular hardship one way or the other. The fundamental principle that the courts should not extend the validity of a writ unless there are exceptional circumstances affecting the service of the writ is, in my judgment, paramount. I would allow the appeal accordingly*."

17. The House of Lords rejected the Court of Appeal's finding that difficulties of service would be the only basis for an extension. In the speech of Brandon LJ, he identified three main categories of extension applications in which the question of a statutory limitation period arises. It is important to note that in all three of these categories the original issue of the writ occurred prior to the expiry of the limitation period. The three categories are as follows:

    <u>Category 1</u>:
    This refers to extension applications made at a time when the writ is still valid and the limitation period applicable to that cause of action has not expired.

Category 2:
This also refers to applications made at a time when the writ is still valid but the limitation period applicable to that cause of action has now expired.

Category 3:
This refers to applications made at a time when the writ is no longer valid (i.e. the application is being made after the expiry of the 12-month period) and the relevant period of limitation has also expired. (see *Kleinwort Benson Ltd v Barbrak Ltd*. [at p.617] where an "exceptional circumstances" test is stated to apply to this category, citing *Battersby v Anglo-American Oil Co. Ltd*.)

18. It follows that in both a Category 1 and Category 2 case, it is open to the plaintiff to withdraw the extension application and simply serve the writ (or issue a fresh writ in relation to a Category 1 case) without breaching the limitation period. This is because the application is being made while the writ remains valid and in cases where the original issue of the writ took place prior to the expiry of the relevant limitation period. So, the defendant has not yet accrued a right to limitation at the point at which the application is being made.

19. However, for Category 3 cases, the applicant requires a retroactive extension on the validity of the writ. So, it is not open to the plaintiff in this category to simply serve the writ instead of proceeding with the application. This is on account of the belated making of the application for extension. Moreso, in Category 3 cases, although the writ was originally filed before the expiry of the limitation period, the limitation period will have expired at the point at which the application for extension of validity is made.

20. Speaking to Category 1 and 2 cases, in *Kleinwort*, Brandon LJ said [p.616]:

"*It would not be right, however, to regard the question whether, at the time of the application for extension, a defendant on whom a writ has not been served has an accrued right of limitation is the only significant factor in relation to such extension. For, even in category (1) cases and category (2) cases, where there is no such accrued right, the effect of an extension may still enable a plaintiff to serve a writ, which was issued before the relevant period of limitation expired, more than 12 months after the expiry of that period. This necessarily involves a departure, in favour of a plaintiff, from the general rule on which a defendant* is *entitled to rely that a writ against him, if it is to be effective, must be issued before the relevant period of limitation has expired and must be served on him within 12 months of its issue.*

21. The application of the "good reason" test to all three categories of cases was explained by Brandon LJ as follows [p.623]:

"*Good reason is necessary for an extension in both category (2) cases and category (3) cases. But in category (3) cases the applicant for an extension has an extra difficulty to overcome, in that he must also give a satisfactory explanation for his failure to apply for extension before the validity of the writ expired*.

The decision whether an extension should be allowed or disallowed is a discretionary one for the judge who deals with the relevant application. Jones v Jones shows that, in exercising that discretion, the judge is entitled to have regard to the balance of hardship. In doing so, he may well need to consider whether allowing an extension will cause prejudice to the defendant in all circumstances of the case. Once a judge has exercised his discretion, it is only on very limited grounds, too well known for it to be necessary for me to set them out here, that an appellate court will be justified in interfering with his decision."

22. In *Kleinwort* the first application for an extension was a Category 1 case. In answer to that application the Admiralty Registrar granted a 12-month extension on the validity of the writ. The second application was a Category 2 case, to which a 3-month extension was granted. Referring to Sheen J's evaluation and exercise of discretion, Brandon LJ concluded [623]:

"*Sheen J's judgment shows that, in exercising his discretion, he took into account the following matters. First, that the case was a wholly exceptional one, as it undoubtedly was. Secondly, that the plan followed by the bank was designed to save, and did save, legal costs which, if they had been incurred, would ultimately have fallen on the cargo-owners. Thirdly, that the respondents had had their cargo delivered to them in 1977 and had then given undertakings to pay their share of the cost of discharge if it should later be decided that they were liable to do so. Fourthly, that the respondents knew of the possibility of claims being made against them as a result of the bank's unsuccessful attempt to negotiate a settlement in 1979. Fifthly, that none of the respondents had been prejudiced by the delay in service of the writ. Having taken all these matters into account, Sheen J. decided that the hardship to the bank if he set aside the extensions would outweigh the hardship to the respondents if he allowed them to stand*.

In my opinion these matters, taken together, constituted material on which Sheen J. could properly hold that there was good reason for allowing the two extensions, previously granted ex parte, to stand. Put shortly the good reason was the saving of unnecessary proceedings and costs achieved without any prejudice to the respondents."

Background

23. The Defendant, BF&M, was the parent company to Bermuda International Insurance Services Limited ("BIISL") with a 100% interest. BF&M and BIISL entered into three agreements by which BF&M's obligations to indemnify BIISL were agreed. Those agreements are: (i) the

Keep Well Agreement dated 17 March 2006, (ii) the Parent-Subsidiary Agreement dated 30 April 2009 and (iii) the Parent-Subsidiary Agreement dated 28 January 2013 (collectively the "three agreements"). Complementing those agreements are a series of "Comfort Letters".

24. The first of the Comfort Letters produced before this Court is a generic letter from BF&M dated 17 May 2006. In that letter it is confirmed that BF&M and BIISL entered into an agreement whereby BF&M promised to guarantee that BIISL would always maintain a Net Worth of a sum no less than the required regulatory minimum capital in Bermuda. This was said to ensure BIISL's financial continuity in the event of unexpected and unprecedented events. In that same letter it is stated that BF&M, as an investment holding company, is not permitted to conduct the business of insurance. On that basis, BF&M would not be permitted to guarantee directly any of BIISL's insurance obligations.

25. The remaining Comfort Letters to the policyholders and distributors were authored by BIISL. Those letters confirmed the agreement entered into between BF&M and BIISL.

26. In a 2015-merger between the Plaintiff and BIISL, the Plaintiff survived. The 2015 merger effectively operated like an acquisition in that the Defendant's shares in BIISL were cancelled and BIISL was subsumed under the Plaintiff company.

27. It is said that BIISL's contractual entitlements under the three agreements then vested in the Plaintiff as per section 104H of the Companies Act 1981. That said, the ultimate beneficiaries of the monies said to be owed under the three agreements are the Plaintiff's creditors.

28. On 17 March 2020 a Petition was presented for the winding up of the Plaintiff. Joint Provisional Liquidators ("JPLs") and Joint Receivers, Mr. Michael Morrison and Mr. Mark Allitt, were appointed on the 25 March 2020. By letter of 7 May 2020, the then JPLs wrote to BF&M flagging their obligations under the three agreements. In that letter, the JPLs also foreshadowed that the process of establishing the company's financial position would be time-consuming.

29. On the evidence of Mr. Morrison, it was in December 2020 when the JPLs received the full set of documentation needed to carry out their inquiry. These documents are said to have included 600,000 separate electronic documents. As the JPLs were concerned about the possibility of infringing a statutory limitation period dating back to the 2015 merger, a tolling agreement was made between the parties to take effect from 16 April 2021 to 16 October 2021.

30. On 26 July 2021 a winding-up order was made by the Court and the JPLs were appointed as permanent liquidators ("JLs").

31. By a second letter to the Defendant, BF&M, dated 25 October 2021, the JL wrote:

> "*The Joint Liquidators of the Company and the Receivers of the segregated accounts of the Company ("JLs") have substantially completed their investigations into the various agreements between BF&M and BIISL and wish to provide a response to your letter dated June 8, 2020 and outline our position on this matter based on the outcome of our investigation*."

32. The following month the Plaintiff, then represented by ASW Law Limited ("ASW"), wrote to the Defendant's former attorneys, Conyers Dill & Pearman Limited ("CDP"), putting the Defendant on notice of their intention to file the Writ, by letter dated 17 November 2021.

33. That same day, the JLs filed a Generally Indorsed Writ of Summons (the "Writ") on 17 November 2021 bringing a claim against the Defendant for breach of contract relating to damages in excess of GBP 1,552,507. These sums are said to represent the indemnification obligations assumed by BF&M under one or more of the three agreements. By way of further relief, the Plaintiff also seeks various declarations of the Court on the Writ.

34. By an Order made by Mussenden J, dated 22 March 2022, Mr. Mark Allitt was replaced by Mr. Charles Thresh as a new JL and Joint Receiver.

35. Thereafter and approximately 9 months following the filing of the Writ, ASW wrote to CDP, confirming the filing of the writ, by letter dated 16 August 2022.

36. In November 2022, the Plaintiff changed its legal representatives from ASW to Kennedys Chudleigh Limited ("Kennedys"). The Extension Order having been granted only a couple of months prior, Kennedys sent a letter before action (the "LBA") to the Defendant's attorneys, CD&P on 22 December 2022.

37. On the eve of the expiry of the Extension Order, being 27 October 2023, Kennedys served the Writ on the Defendant's current attorneys, Carey Olsen Bermuda Limited ("Carey Olsen"), prompting the filing of the application now before me, which was filed just over a week later, on 9 November 2023.

Analysis, Decision and Reasons

38. Mr. Robinson pointed out that the *ex parte* application before Mussenden J was determined on the papers without the aid of any written submissions from ASW, the Plaintiff's legal representative. The pleaded ground for renewal is contained in a single paragraph from Mr. Morrison's First Affidavit. The supporting evidence provided:

"*The Joint Liquidators do not yet wish to proceed with this action in Bermuda, as they are currently conducting investigations into the affairs of the Plaintiff, including in relation to the allegations set out in the Writ*."

39. The Defendant's complaint is that the Extension Order ought not to have been granted as the evidence was scant and failed to establish any good reason for the renewal. Mr. Robinson also argued that the *ex parte* application fell short of the Plaintiff's duty to provide full and frank disclosure.

40. On the Defendant's case, the application before Mussenden J was inconsistent with the requirements endorsed by the commentary section of the 1999 WhiteBook [6/8/11]:

"*An application to renew the writ is made, ex parte, and must be supported by an affidavit showing all the circumstances relied upon, including the date of issue of the original writ, and if it has already been renewed, the date of the last renewal, and a full explanation of why the writ has not already been served*…."

41. Notwithstanding, the Extension Order was granted on 28 October 2022. In Mr. Morrison's Second Affidavit he explained:

"*It was necessary to file the Plaintiff's Writ as a protective measure given the Joint Liquidators were continuing to investigate a potential claim against the Defendant. This further investigation included the potential for further outreach to the population of policyholders and distributors in relation to the Comfort Letters*."

42. During Counsel's oral submissions, Mr. Robinson clutched tightly onto ASW's 25 October 2021 letter where the JL's stated that their investigations into the various agreements between BF&M and BIISL were "substantially completed". In that same letter, the JLs stated that they would send a further reply outlining their position "based on the outcome" of their "investigation". Notably, this letter was never placed before the Court as part of the *ex parte* application documents filed.

43. Mr. Robinson slammed down on Mr. Morrison for subsequently mischaracterizing the JL's investigations as being in its initial stages by 25 October 2021 in addition to misstating what was expressly conveyed to the Defendant in the said 25 October 2021 letter. Making good this criticism, Mr. Robinson referred to Mr. Morrison's Second Affidavit wherein he deposed [para 28]:

"*On 25 October 2021, the Joint Liquidators wrote to the Defendant outlining their initial findings in relation to the Comfort Letters, and summarised the further information provided directly by certain distributors and policyholders following the 24 February 2021 request and the Joint Liquidators views on the establishment of collateral contracts as a result of these investigations*…"

44. More so, Mr. Robinson also relied on this 25 October 2021 letter as compelling evidence that the Plaintiff's investigation into the claims against the Defendant would have and/or should have been long completed by the time the *ex parte* application was made before Mussenden J a year thereafter.

45. Both Mr. Robinson and Mr. Miles agreed that the *ex parte* application before Mussenden J was a Category 2 case. As earlier noted, in all three categories identified in *Kleinwort*, the original issue of the writ occurred prior to the expiry of the limitation period. In this case, the extension application was made prior to the expiry of the validity of the writ but after the period of limitation is said to have expired.

46. As a matter of both fact and law, the accrual of the limitation period is a source of real contention between the parties. So, if the Extension Order is discharged, this Court will likely be called upon to resolve the disputed question as to whether the limitation period had in fact expired during the 12-month period preceding the actual service of the Writ.

47. Notwithstanding, in treating this as a Category 2 case, I must proceed on the basis that the granting of the Extension Order effectively allowed the Plaintiff to delay service on the Defendant by an additional 12 months. The effect of this is that it deprives the Defendant of its entitlement to rely on a limitation defence.

48. Of course, it was always open to the Defendant to serve the Writ within 12 months of its original issue and then to seek an Order of stay from the Court. In the decision to instead seek an extension to the validity of the Writ, the Plaintiff was exposed to the risk of the Extension Order being set aside, since such orders are made on an *ex parte* basis. In the case of a discharge of the Extension Order, the accrual of the limitation period would be counted from 12 months prior to the service of the Writ. This makes it particularly important for the Plaintiff in this category of case to be truly armed with a good reason for an extension before venturing into the risks of delayed service, albeit under the temporary cover of an *ex parte* order. This is because, as I have already noted, an *ex parte* order is always capable of being set aside.

49. I now turn to the real question: whether there is evidence before me demonstrating that there was a good reason to justify the granting of an extension. I do not accept Mr. Miles argument that balance of hardship could of itself constitute good reason for extending the validity of a

writ. I am grounded in this view having regard to Brandon LJ's judgment in *Waddon v Whitecroft* [p.317-318]. Balance of hardship does not arise unless the Court is first satisfied that there is a good reason for extension.

50. With the benefit of well-prepared legal submissions from experienced Counsel on both sides, I am bound to accept that the evidence placed before Mussenden J lacked sufficient supporting evidence. In Mr. Morrison's Second Affidavit, however, the JL's need to carry out further investigations on behalf of the Plaintiff is said to have entailed a further outreach to the policyholders and distributors in relation to the Comfort Letters. Mr. Morrison stated that on 6 September 2022 the JLs wrote to all known policy holders and their representatives about the Comfort Letters. He explained that responses to the JLs' 6 September letter were received from distributors between September and December 2022, after which the JL's conducted further keyword searches of BIISL's internal records to obtain evidence of what was represented to the policyholders.

51. To the reasons for the making of the extension application, Mr. Morrison added that the JLs wrote to the Defendant's lawyers of CD&P on 16 August 2022 in efforts to bring forth a settlement. A response was not received until 27 September 2022, at which point it was accepted that a settlement would not be achieved.

52. Mr. Morrison also stated in his evidence that the JLs were required to make further investigations to locate the statutory books and records of BIISL. He said that these had not been provided with the other documents from the Plaintiff, making it necessary to send out requests to various service providers from January 2023 onwards. He said [38]:

"*We ultimately inferred that the minute book of the company was kept at the offices of the Defendant. This led us to make a request to the Defendant for help recovering the minute book of the Plaintiff, a request that went unanswered despite chasing*…

53. Balking at the Plaintiff's attempts to lay blame on the Defendant, Mr. Robinson argued that as a matter of standard corporate practice, the Plaintiff, as the surviving company of the 2015 merger, was entitled to receive BIISL's company documents. In any event, Mr. Robinson submitted, there would have been no obligation on the Defendant to assist the JL's in building its case against the Defendant.

54. Taking Mr. Morrison's evidence at the highest, a summary of the fuller grounds relied on to justify the extension are as follows:

    (i) The JLs' need to liaise with the policyholders as part of the JLs' investigation into the merits or readiness of the claims pleaded in the Writ;

(ii) The JLs' need to electronically search BIISL's records as part of their investigation into the representations made to policyholders;

(iii) The JL's efforts to locate the statutory books and records of BIISL as part of the JLs' investigation into the merits or readiness of the claims pleaded in the Writ; and

(iv) The JL's unsuccessful efforts to settle the claims pleaded in the Writ;

55. The question for determination by this Court on the discharge summons is whether any of the above grounds constituted a good reason as a matter of legal principle. In my judgment, no good reason has been established on the above grounds.

56. On the facts of this case, JPLs were first appointed in March of 2020 and in May 2020 those JPLs commenced pre-litigation correspondence with BF&M. On the evidence before this Court, the JPLs were in receipt of the lion share of documents needed to carry out their investigation by December 2020 and on Mr. Morrison's letter to the Defendant's former lawyers, that investigation was substantially complete by 25 October 2021. So, looking at that chronology, it is unsurprising that the Writ was filed during the following month. From that point, the JLs had 12 months to tie up any loose ends before having to serve the Writ.

57. I see no good reason why the above grounds continued to be an issue for the JPLs beyond the 12 months following the original issuance of the Writ. In any event, I am satisfied that as a matter of general legal principle, a continued need to prepare or investigate a claim does not qualify as a good reason for extending the validity of a writ. The same is so for a Plaintiff whose extension is premised on delay caused by failure to successfully negotiate or settle the claim(s).

58. Mr. Miles, drawing on his skillful advocacy, made every effort to promote the importance of balance of hardship. However, in my judgment, the failure to establish a good reason for the Extension Order renders the question of balance of hardship nugatory.

59. For these reasons, I am bound to find that the Extension Order ought not to have been made.

Postscript

60. Under the Extension Order the validity of the Writ was extended for a 12-month period. However, this was absent any asserted justification for a 12-month extension. Seemingly, Mr.

Morrison's request for a 12-month extension was premised on a misconception that any grant of an extension would be made to the maximum period of 12 months.

61. While a Court of this jurisdiction is empowered to extend a writ for up to 12 months, the period of renewal ought only to be determined by what is justified in the circumstances of the case. In other words, it would be wrong in principle for the Court to indulge any assumption that once an entitlement to an extension is established that it will be made for up to the maximum period permitted by the Rules. (See para 6/8/13 of the 1999 White Book).

Conclusion

62. For all of these reasons the Defendant's summons for the Extension Order to be set aside is granted. Either party may be heard on the issue of costs upon filing a Form 31TC within 21 days of the date of this Ruling. Otherwise, costs of this application should follow the event and be granted in favour of the Defendant on a standard basis to be taxed if not agreed.

Dated this 23rd day of September 2024

HON. MRS. JUSTICE SHADE SUBAIR WILLIAMS
PUISNE JUDGE OF THE SUPREME COURT