[2020] JMCA Civ 17

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO 70/2017

BEFORE: THE HON MR JUSTICE MORRISON P
THE HON MRS JUSTICE MCDONALD-BISHOP JA
THE HON MRS JUSTICE FOSTER-PUSEY JA

BETWEEN	**RAYAN HUNTER**	**APPELLANT**
AND	**SHANTELL RICHARDS**	**1ST RESPONDENT**
AND	**STEPHANIE RICHARDS**	**2ND RESPONDENT**

Written submissions filed by Burton-Campbell & Associates for the appellants

Written submissions filed by S Earl O Hamilton for the respondents

6 December 2019 and 6 May 2020

PROCEDURAL APPEAL

(Considered on paper pursuant to rule 2.4(3) of the Court of Appeal Rules 2002)

MORRISON P

[1] I have read in draft the judgment of McDonald-Bishop JA. I agree with it and there is nothing that I can usefully add to it.

MCDONALD-BISHOP JA

[2] Mr Rayan Hunter, the appellant, and the defendant in the case below, is in this appeal seeking to set aside the order of K Anderson J ("the judge") made in the Supreme Court on 25 November 2016. By that order, the judge refused to grant an order setting aside the service on the appellant of two claim forms and particulars of claim each filed by the respondents, Mesdames Shantell Richards and Stephanie Richards.

[3] This court is required to consider centrally the procedure established by the Civil Procedure Rules, 2002 ("CPR") under Part 9, for disputing the jurisdiction of the Supreme Court or for arguing that the court should not exercise its jurisdiction over a claim due to breach of a rule of procedure. The core question for the consideration of this court is whether the filing of acknowledgments of service by the appellant, in respect of the claims, precluded the appellant from raising the point that the service on him should be set aside on the ground that it was an irregularity or nullity.

The factual background

[4] The salient facts may be briefly summarised as follows: On 3 July 2014, the respondents each initiated two separate claims in the Supreme Court, in which they are seeking, among other things, damages for personal injuries they sustained in a motor vehicle accident, which occurred on 19 July 2008, in the parish of Saint Catherine. The respondents were standing together along the Brunswick Avenue in Spanish Town, Saint Catherine, when they were hit by a car, owned and being driven by the appellant. By order of K Anderson J on 19 October 2016, the two claims were consolidated.

[5] The appellant was served with the claim forms with particulars of claim along with other prescribed documents on 16 July 2015. This would have been more than 12 months after the issuance of the claim forms. At the time of service on the appellant, there was no order made by the court, extending the period for service of any of the claim forms.

[6] On 2 November 2015, the appellant filed acknowledgments of service in both claims. In those acknowledgments of service, he acknowledged receipt of the claims, indicated that he did not admit the claims in whole or in part but did not indicate whether or not he intended to defend them. He indicated, however, by an endorsement at the top of each form as follows:

> "**This Acknowledgment of Service is filed for the sole purpose of making an application to set aside service of the Claim Form and Particulars of Claim pursuant to rule 9.6 of the Civil Procedure Rules 2002**." (Emphasis added)

[7] At the time of filing the acknowledgments of service, the appellant also filed a notice of application for court orders in respect of each claim. They were supported by the affidavit of the appellant. The appellant sought these orders in both applications:

> "(1) That there be an extension of time for filing of the Acknowledgment of Service and that the Acknowledgment of Service filed out of time be allowed to stand.
>
> (2) That there be an extension of time for filing the application herein, to the date of the actual filing.
>
> (3) That the service of the Claim Form and the Particulars of Claim herein on the Defendant on the 16th July 2015 be set aside."

[8] The acknowledgments of service as well as the notices of application were not filed within the time limited by the CPR.

[9] On 19 October 2016, when the matter went before the judge, he granted an order extending time for the filing and serving of the notices of application for court orders and, on 25 November 2016, he extended the time for the filing of the acknowledgments of service. He ordered that all those documents were allowed to stand as if filed within time. He, however, refused to set aside the service of the claim forms and particulars of claim on the appellant.

[10] This court is not privy to any written reasons for the decision of the judge. Counsel for the appellant has advised that the reasons were orally delivered. This is not disputed by counsel for the respondent.

[11] The reasons, reportedly, given by the judge were that:

i. the appellant, by filing an acknowledgment of service to the claims, had waived any irregularity with the claim documents and could not now seek to set aside service; and

ii. the appellant, in the acknowledgments of service and notices of application for court orders, had not expressly sought to challenge the jurisdiction of the court to hear the claims and had not applied for a declaration to that effect, therefore, the order sought could not be granted.

The appeal

[12] The appellant, in 10 grounds of appeal listed in the notice of appeal filed on 14 July 2017, challenged the decision of the judge. The grounds are as follows:

> "(1) The learned judge erred in law when he failed to have regard to the contents of the Acknowledgement of Service which stated it was filed solely for the purpose of making an application to the court to strike out service of the Claim Form.
>
> (2) The learned judge erred in law in treating the Acknowledgement of Service as an unconditional response to the claim.
>
> (3) The learned judge acted in error when he treated the Acknowledgement of Service as a waiver of the irregularity with service.
>
> (4) That in coming to the decision that the [appellant] had not sought a declaration that the court had no jurisdiction to hear the claim, the learned judge disregarded the evidence presented to the court and submissions made.
>
> (5) That the judge gave precedence to formalities and the use of expressed language rather that [sic] considering the substance of the application in its widest sense.
>
> (6) The learned judge erred in finding that since there was no specific application for a declaration that the court had no jurisdiction to hear the claim he was barred from making an order setting aside the service of the Claim Forms, pursuant to rule 9.6 of the Civil Procedure Rules.
>
> (7) The learned judge disregarded the fact that both the Acknowledgement of Service and Notice of Application for Court Orders made specific reference to rule 9.6 of the Civil Procedure Rules which relate to challenges to the jurisdiction of the court.

(8) The learned judge disregarded the fact that the steps taken by the [appellant] in the claims were the procedural steps necessary to challenge the jurisdiction of the court and that no other step had been taken by the [appellant] in the proceedings.

(9) The learned judge failed to give due consideration to the fact that the Acknowledgements of Service were filed simultaneously with the Notices of Application to set aside service of the Claim Forms and as such the said Acknowledgements could not stand as an unconditional response to the claim.

(10) Failed to give the [appellant] leave to file Defence which he was mandated to do by rule 9.7 (a)."

Issues

[13] Despite the extensive grounds of appeal, it is observed that only two primary issues arise for the consideration of the court in determining the solitary question of whether the judge erred in law in refusing to set aside the service of the claim forms and particulars of claim on the appellant.

[14] Those issues are:

i. whether the acknowledgments of service were not in compliance with rule 9.6 of the CPR for challenging the jurisdiction of the court; and

ii. whether the judge erred when he held that the acknowledgments of service had waived any irregularity or nullity in the service of the claim forms with the particulars of claim.

Issue 1

Whether the acknowledgments of service were not in compliance with rule 9.6 of the CPR for challenging the jurisdiction of the court

[15] Rules 9.5 and 9.6 of the CPR provide as follows:

> "9.5 A defendant who files an acknowledgment of service does not by doing so lose any right to dispute the court's jurisdiction.
>
> **Procedure for disputing court's jurisdiction etc**
>
> 9.6 (1) A defendant who-
>
> (a) disputes the court's jurisdiction to try the claim; or
>
> (b) argues that the court should not exercise its jurisdiction, may apply to the court for a declaration to that effect.
>
> (2) A defendant who wishes to make an application under paragraph (1) must file an acknowledgment of service.
>
> (3) An application under this rule must be made within the period for filing a defence."
> (Emphasis as in original)

[16] One of the points raised by the respondents, in urging the court to dismiss the appeal, is that the appellant had failed to challenge the jurisdiction of the court within the time limited by rule 9.6(3), which is, within the period for filing the defence. The challenge raised by the respondents on this basis cannot succeed. Although the appellant was out of time with the filing of the applications, that procedural breach was remedied by the order of the judge, made on 19 October 2016, extending time for the

bringing of the application. The application must, therefore, be treated as having been brought within time for all intents and purposes.

A. *Whether the acknowledgments of service did not expressly indicate that the jurisdiction of the court was being challenged*

[17] Both acknowledgments of service carried an identical endorsement, which expressly states that they were, "filed for the sole purpose of making an application to set aside the service of the claim form and particulars of claim pursuant to rule 9.6 of the Civil Procedure Rules 2002".

[18] The appellant's application for the service of the claim forms to be set aside was grounded in rule 8.14(1) of the CPR, which stipulates that:

> "8.14(1) The general rule is that a claim form must be served within 12 months after the date when the claim was issued or the claim form ceases to be valid."

[19] Rule 8.15, however, makes provision for the court to extend the time for service of a claim form. This rule does not arise for consideration, however, as the respondents had not made an application for extension of time. It follows then that, by virtue of rule 8.14(1), the claim forms would have ceased to be valid after 12 months of the date of issuance. It is not disputed that they were invalid by the time they were served on the appellant.

[20] In the case **B & J Equipment Rental Limited v Joseph Nanco** [2013] JMCA Civ 2**,** which was relied on by both parties, the meaning of the term "jurisdiction" was examined by the judge at first instance as well as by this court. It was established that

an acceptable meaning of the term "jurisdiction" as used in rule 9.6 of the CPR is that explained by the UK Court of Appeal in **Hoddinott and others v Persimmon Homes (Wessex) Ltd** [2008] 1 WLR 806. There, the court opined that the term "jurisdiction" in rule 11 of the UK CPR (which is in pari materia with our rule 9) does not only denote "territorial jurisdiction", which is one sense in which the term is usually used in the CPR. The court noted that in rule 11.1 (UK) (which is the same as our rule 9.5), the word "jurisdiction" is also used in reference to the court's power or authority to try a claim. The meaning of the word, it opined, is not exhaustive and the breach of a rule of procedure provides the basis for an argument by a defendant that the court should not exercise its jurisdiction to try the claim brought against him.

[21] In this case, the appellant, having been served with invalid claim forms, acted on the premise that the court did not have the jurisdiction to try him or, alternatively, that it should not do so, given the breach of procedure relative to service. To approach the court to raise the point, he acknowledged the service of each claim on him but expressly indicated his reason and purpose for filing the acknowledgment of service. His purpose was limited in scope and effect as expressly and unambiguously stated by him.

[22] There is no question that the acknowledgment of service of each claim was limited to raising the issue of jurisdiction, pursuant to rule 9.6, for the purpose of having the service set aside. It was for no other purpose, as the appellant did not indicate any intention to defend the claim and neither did he admit the claim. He also refrained from taking any other step in the proceedings, beyond filing the

acknowledgments of service for the limited purpose he had expressed with an application to that effect. He was lawfully entitled to make such an application to the court in the way he did.

[23] Therefore, for the judge to have held that there was no indication that the appellant was objecting to the court exercising jurisdiction over him, he would have been plainly wrong.

B. *Whether the appellant's failure to apply for a declaration was fatal to his application*

[24] The respondents, in their effort to defend the judge's decision, also argued that the application must fail because the appellant did not apply for a declaration as stipulated by rule 9.6 and the judge was correct to so conclude. With all due respect, I cannot accept that proposition.

[25] The fact that the appellant did not apply in specific terms for a declaration to the effect that the court has no jurisdiction to try the claim or that it should not exercise its jurisdiction ought not to have been held to be fatal to his application. Implicit in the appellant's application, his affidavit evidence and his arguments before the court in support of that application, was his request for the court to make a formal order or declaration that the service of the expired claim forms on him was invalid and of no legal effect because the claims had ceased to be valid in law. The setting aside of the claims, which would have flowed from such a finding, would have been consequential in nature. The appellant's desire was plain and simple. His intention for filing the acknowledgments of service was unmistakable. He made his application pursuant to

rule 9.6, which empowers a defendant to approach the court concerning the exercise of its jurisdiction and to apply for a declaration to that effect. The fact that the appellant made explicit reference to rule 9.6 means that he was seeking to invoke the application of that rule to his situation. He ought not to be penalised for his failure to state in formalistic language that he was applying for a declaration.

[26] The claim forms were null and void on a literal and simple reading of the rules. The appellant, in these circumstances, would have been entitled to challenge their validity once they were served on him, which he did. This was more than just asking the court not to try the claim.

[27] The Judicature (Supreme Court) Act ("the Act") supercedes the rules of court and, in section 48, makes provisions as to the concurrent administration of law and equity. Section 48(g) provides that:

> "48. With respect to the concurrent administration of law and equity in civil causes and matters in the Supreme Court the following provisions shall apply-
>
> …
>
> (g) **The Supreme Court in the exercise of the jurisdiction vested in it by this Act in every cause or matter pending before it shall grant either absolutely or on such reasonable terms and conditions as to it seems just, all such remedies as any of the parties thereto appear to be entitled to in respect of any legal or equitable claim properly brought forward by them respectively in such cause or matter; so that as far as possible, all matters so in controversy between the said parties respectively may be completely and**

finally determined, and multiplicity of proceedings avoided." (Emphasis added)

[28] In section 2 of the Act, "cause" is defined as, "any suit or other original proceeding between a plaintiff and a defendant..." while it defines " matter" as including, "every proceeding in the Court not a cause...".

[29] In this case, the appellant had properly brought a legal challenge that the service on him was improper and ought to be set aside because the claim forms were nullities. Once it was established that he was entitled to that remedy, then, he ought to have been granted it, despite the omission to state in his application that he was applying for a declaration. That would have been in keeping with equity and fairness. The judge also could have made a declaration on the same basis, once the case was clear that the appellant was entitled to it.

[30] The appellant is correct in his contention that the judge, in coming to his decision that he had not sought a declaration that the court had no jurisdiction to hear the claims, had disregarded the evidence and submissions presented to him and had given "precedence to formalities and the use of expressed language rather than considering the substance of the application in its widest sense" (grounds of appeal (4) and (5)).

[31] There was no failure on the part of the appellant to comply with rule 9.6 of the CPR that would have been fatal to his application to have the service on him set aside by order of the court. In all the circumstances, the judge would have been plainly wrong to hold that since there was no specific application for a declaration, he was

barred from making an order setting aside the service of the claim forms, pursuant to rule 9.6 of the CPR. The judge's formalistic approach to the application before him was not in keeping with the overriding objective to deal with the case justly.

[32] The appellant succeeds on this issue.

Issue 2

Whether the judge erred when he held that the acknowledgments of service had waived any irregularity or nullity in the service of the claim forms with the particulars of claim

[33] The respondents' position is that this court ought not to be concerned with the issue of the service of the claim forms on the appellant because by filing the acknowledgments of service, he had waived any irregularity in service. They relied on the reasoning in **B & J Equipment Rental Limited v Joseph Nanco** in support of this proposition. The respondents' contention is, however, not accepted. The circumstances of this case are distinguishable from those which obtained in **B & J Equipment Rental Limited v Joseph Nanco**, and cannot be applied to produce the outcome contended for by the respondent.

[34] In **B & J Equipment Rental Limited v Joseph Nanco**, the defendant was served with a claim form by registered post. Accompanying the claim form were particulars of claim and a form of acknowledgment of service. However, a form of defence and the prescribed notes for defendants, required to be served with a claim form by rule 8.16(1)(b) and (c) of the CPR, were not served. The defendant's attorneys-at-law filed an acknowledgment of service, within time, in which they

indicated that the claim form and particulars of claim were received by the defendant and that it intended to defend the claim. The defendant failed to file a defence and the claimant obtained judgment in default of defence against it. Subsequently, the defendant's attorneys-at-law participated in a hearing for an order for interim payments against the defendant as well as the hearing of assessment of damages. Final judgment was entered and eventually served on the defendant. At no time did the defendant indicate to the court that he was taking issue with the exercise of the court's jurisdiction on account of the failure of the claimant to serve on him all the prescribed documents with the claim form.

[35] The defendant sought to have the judgment set aside on the basis that, among other things, the claim form was a nullity because it was served without the prescribed documents, pursuant to rule 8.16(1)(b) and (c) of the CPR. It was held in the Supreme Court that the non-service of the prescribed documents did not invalidate the claim but only rendered the service irregular, and that the irregularity in service could have been waived. It was found that the defendant had waived the irregularity in the service of the claim, by: (a) filing an acknowledgment of service, without indicating that it was raising a challenge to the exercise of the jurisdiction of the court on the basis of non compliance with the rules of court, pursuant to rule 9.6 of the CPR; (b) indicating an intention to defend the claim; and (c) participating, through its attorneys-at-law, in other hearings in the claim, without objection.

[36] The court concluded that the defendant had unconditionally surrendered to the jurisdiction of the court and responded to the claim. It was, therefore, not entitled to challenge the jurisdiction of the court. The claim form was also held to have remained valid. This decision was affirmed by Morrison JA (as he then was) in this court.

[37] In the instant case, service was not, simply, out of time or effected by the wrong method. There is also no complaint that the appellant was not served with all the relevant documents that were to accompany the claim form. The problem for the respondents is that the claim forms themselves were rendered invalid by operation of law. This notification was also expressly endorsed in bold writing on each claim form, under the heading "NOTICE TO THE DEFENDANTS":

> "**This Claim Form has no validity if it is not served within twelve months of the date below unless it is accompanied by an order extending the same. See Rule 8.14(1)**." (Emphasis as in original)

[38] In **B & J Equipment Rental Limited v Joseph Nanco**, Morrison JA referred to the case of **Sheldon v Brown Bayley's Steelworks Ltd and Another** [1953] 2 All ER 894, on which the respondents also seek to rely. The facts, in a nutshell, are as follows: a plaintiff in an action under the UK's Fatal Accidents Act, 1846, issued a writ against two defendants within 12 months of the death as required by the Act. However, he failed to effect service on them within the 12 months limited for service. The first defendant entered a conditional appearance and was successful in having the writ set aside. The second defendant, however, entered an unconditional appearance because they had not noticed that the writ was out of time. The second defendant was

unsuccessful in having service on him set aside. The court held that the failure to serve the writ within the prescribed time did not render it a nullity, but was an irregularity which had been waived by the second defendant's unconditional appearance and, therefore, service of the writ would not be set aside.

[39] The respondents contend on that premise that although the claim forms had expired, they were not nullities and, so, the appellant by acknowledging service of them, without indicating an intention to defend, and without seeking a declaration pursuant to rule 9.6, had waived the irregularity in service. They contend that the judge was correct in refusing to set aside the service. There are, however, patent flaws in the argument of the respondents, which render their position indefensible.

[40] Firstly, it should be noted that the relevant UK Rules of the Supreme Court ("RSC"), which were applicable to **Sheldon v Brown Bayley's Steelworks Ltd**, were markedly different from rules 8.14 and 8.15 of the CPR, which apply to this case. The position under the RSC, as pointed out by Singleton LJ at page 895 of the report (by reference to a note in the Annual Practice, 1953 at page 59) was that the writ was "...in force for the purpose of service for twelve months, not that the writ ceases to be efficacious for any purpose whatever". His Lordship then concluded at page 896 of the report:

> "**I do not regard it as strictly accurate to describe a writ which has not been served within twelve months as a nullity. It is not as though it had never been issued. <u>It is something which can be renewed. A nullity cannot be renewed</u>. The court can grant an application which results in making it just as**

> **effective as it was before the twelve months' period had elapsed… The position under Ord 8, r 1, is that the writ is not in force for the purpose of service after the twelve months' period had run. It is still a writ**." (Emphasis added)

[41] His Lordship concluded that, in those circumstances, the second defendant who had entered an unconditional appearance had waived the irregularity with regard to service.

[42] Denning LJ, in making his own contribution to the discussion of the issue, stated that the question whether the second defendant who had entered an unconditional appearance was entitled to have the service on him set aside depended on whether the service of the writ, after the 12 months permitted by the rule, was a nullity or an irregularity. He then stated at page 897:

> "If it was an irregularity, then the irregularity was waived by the unconditional appearance. **But if it was a nullity, then it could not be waived at all. It was not only bad, but incurably bad**." (Emphasis added)

[43] Denning LJ, in determining the question whether the writ was a nullity or an irregularity, took into account, as a material consideration, the fact that the writ could have been renewed although it had expired. Having done so, he concluded:

> "**Now, if a writ <u>can be renewed</u> after the twelve months' have expired, that must mean that it is not then a nullity**." (Emphasis added)

[44] Denning LJ, like Singleton LJ, also held that:

> "... When the rule says that after twelve months the writ is no longer in force, it only means that it is no longer in force

> for the purpose of service: ... the service of the writ after the twelve months was not a nullity but an irregularity which was waived by the unconditional appearance..."

[45] In this case, the claim forms had expired, without there being any extension of time applied for before the expiration of the 12 months' period. Rule 8.15 provides that an application for an extension of time, within which the claim form may be served, must be made **within** the period for serving the claim form specified by rule 8.14. If an extension of time had already been granted, then an application for further extension must be made **within** any period of subsequent extension permitted by the court. It means then that in our rules, once the claim form has expired, an application cannot be made after its expiration to extend time for it to be served or to renew it. An expired claim form, without there being in place an order extending it (as in this case), ceases to be valid. This renders the position under the CPR different from the provisions of the RSC that were applicable in **Sheldon v Brown Bayley's Steelworks Ltd**. It is also different from the regime for service of a claim form under the UK CPR, which permit applications for extension of time to be made **after** the expiration of the time for the service of the claim form, albeit subject to specified conditions.

[46] Following the path of reasoning of their lordships in **Sheldon v Brown Bayley's Steelworks Ltd**, it leads one to the inevitable conclusion that the expired claim forms in this case were null and void and of no legal effect for all purposes, including service on the appellant. It is settled law that while an irregularity can be waived, a nullity cannot be: see **The Gniezno; Owners of the Motor Vessel Popi v Owners of Steamship or Vessel Gniezno** [1967] 2 All ER 738. It follows then, that

the step taken by the appellant to file an acknowledgment of service (even if not in the terms he had done) could not have operated as a waiver of the invalidity of the claim forms because he could not have waived what was in law a nullity. On this basis alone, the appellant would have been entitled to an order setting aside the service of the claim forms on him.

[47] In any event, even if it is correct to say that the service of the expired claim forms was a mere irregularity and as such could have been waived, that could not avail the respondents because of the limited purpose of the acknowledgments of service filed by the appellant. The appellant's entry into the matter was akin to a conditional appearance under the previous procedural regime, which was limited to having the service on him set aside. Also, as already found, the appellant had taken no step in the proceedings beyond filing an acknowledgment of service in which he expressed the purpose for doing so. It was not to admit or defend the claim. The setting aside of the service on the appellant would have been a lawful order open to the judge to be made on the application before him as illustrated by the decision of the court in **Sheldon v Brown Bayley's Steelworks Ltd** in respect of the first defendant who had entered a conditional appearance to the writ and successfully applied for the service on him to be set aside.

[48] It is, therefore, not correct to hold, as the respondents have contended, that the appellant, by filing the acknowledgments of service, in the terms he did, had waived any irregularity in the service on him or had waived the invalidity of the claim forms.

The appellant had done nothing, and could not have done anything, to breathe back life in the claims to render the service on him valid in law.

[49] The judge was, therefore, plainly wrong when he treated the acknowledgments of service as a waiver of an irregularity in service and as an unconditional response to the claims.

[50] The appellant also succeeds on this issue.

Conclusion

[51] The appellant had properly raised the issue of the exercise of the jurisdiction of the court, pursuant to rule 9.6 of the CPR. His acknowledgments of service expressly indicated what would have amounted to a "conditional appearance" for the purpose of raising the issue of the invalidity of the service. The service of the expired claim forms was a nullity which could not have been waived; but, even if a nullity could have been waived or the service was a mere irregularity, there was no waiver by the appellant. He was entitled to have the service of the claim forms with particulars of claim set aside, notwithstanding that he had not explicitly applied for a declaration under rule 9.6 of the CPR. His application specifically stated that rule 9.6 of the CPR was a ground on which it was based.

[52] In the light of these findings, there is no need for this court to consider whether the judge ought to have granted leave to the appellant to file his defence as contended in ground of appeal (10). For obvious reasons, there would have been no need for a defence to be filed.

[53] The appellant succeeds on his appeal.

Disposition

[54] I conclude that the appellant is entitled to the orders he is seeking from this court as prayed in his notice of appeal. Accordingly, I would make these orders:

i. The appeal is allowed.

ii. The order of K Anderson J made on 25 November 2016, refusing to set aside the service of the claim forms and particulars of claim on the appellant, is set aside.

iii. The service of the claim forms and particulars of claim on the appellant on 16 July 2015 is set aside.

iv. Costs of the proceedings in the court below and of the appeal to the appellant to be agreed or taxed.

FOSTER-PUSEY JA

[55] I, too, have read in draft the judgment of McDonald-Bishop JA. I agree with her reasoning and conclusion and there is nothing that I can usefully add.

MORRISON P

ORDER

i. The appeal is allowed.

ii. The order of K Anderson J made on 25 November 2015, refusing to set aside the service of the claim forms and particulars of claim on the appellant, is set aside.

iii. The service of the claim forms and particulars of claim on the appellant on 16 July 2015 is set aside.

iv. Costs of the proceedings in the court below and of the appeal to the appellant to be agreed or taxed.