2023 JMSC Civ. 125

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2016 HCV 00328

BETWEEN	**DERRICK HOILETT**	**CLAIMANT**
AND	**LEIGHTON ANDREW CHIN-HING**	**DEFENDANT**

Ms Jacqueline Cummings and Mr Matthew Palmer instructed by Archer Cummings and Co Attorneys-at-Law for the Claimant/Respondent

Mr Mark-Paul Cowan instructed by Nunes Scholefield DeLeon and Co Attorneys-at-law for the Applicant

May 19, 2023 and July 7, 2023

Application to correct the Court's record – Acknowledgment of Service- Whether limited for the purpose of injunction only- Whether service of Claim Form valid-

JUSTICE T MOTT TULLOCH-REID

1. The firm of Nunes Scholefield DeLeon and Co (hereinafter "NSD") has applied to the Court for the Court's record to be corrected. Mr Cowan has made it clear that the application is not to have NSD's name removed from the record for it is not, nor never was, on the record for the Defendant in the claim. The firm, says Mr Cowan, was on record solely for the purpose of defending an application for injunction on behalf of the Defendant. NSD did not enter an acknowledgment of service on record on behalf of the Defendant and it cannot properly do so as it was not retained by the Defendant for that purpose. By continuing to have NSD on the

record for the Defendant in the claim, the Registrar has erred and NSD is now wanting to correct that error.

2. The Claimant opposes the application. This is not surprising. The fact that NSD is saying that it does not act for the Defendant in the claim will have dire consequences on the Claimant's claim for the Claimant had served the claim form and particulars of claim on NSD and not personally on the Defendant. This means that the default judgment which was entered in favour of the Claimant is in jeopardy and if it is set aside as being irregularly entered, the Claimant will have no recourse against the Defendant as the limitation period has expired and the limitation defence will arise.

3. NSD's application can be likened to a two edged sword. If its application is successful, it will have the effect of removing the firm from the record as attorneys-at-law for the Defendant. It will also bring an end to the Claimant's claim against the Defendant if an application is made to set aside the Default Judgment.

Applicant's case

4. NSD's application is supported by the affidavit of Monroe Wisdom, Attorney-at-law. In it, Mr Wisdom asserts that the Defendant retained NSD in February 2016 for the purpose of representing him in an application for interim injunction brought against him by the Claimant. The only documents NSD had sight of at the time were the application for injunction and affidavit which supported it. An Acknowledgment of Service was filed to indicate NSD's appearance on the record for the Defendant in respect of the application for interim injunction. He gives details of the content of the Acknowledgment of Service, which I will not go into now as I will have to consider the document in detail in my analysis of the evidence and law. At the hearing of the application for interim injunction, the Court found in favour of the Defendant and the application for interim injunction was refused.

5. Following that hearing the parties, through their attorneys, negotiated the removal of items owned by the Claimant from the Defendant's premises. During those negotiations, the Claimant's attorneys-at-law, through Mr Clifford Campbell, wrote to Mr Wisdom seeking confirmation as to whether or not NSD was authorised to accept service of the initiating documents. The email correspondence was exhibited. Mr Wisdom did not respond to the request as according to him he had no instructions from his client. This was post the hearing of the injunction and the delivery of the judgment. At paragraph 12 of the affidavit, Mr Wisdom states:

   > *"Further, it was always understood and subsequently communicated to Mr Clifton Campbell that our representation of Mr Chin-Hing was limited to the application for interim injunction."*

   There is nothing in the documentary evidence before me which would indicate when this subsequent communication was supposed to have taken place.

6. Mr Wisdom's evidence is that after the Claimant's property was removed from the Defendant's premises, the retainer between NSD and the Defendant ended and the Defendant ceased to be NSD's client.

7. Approximately one year after the alleged termination of the retainer, in June 2017, the Claim Form and Particulars of Claim were served on the NSD. The documents were accepted by NSD and the ADMIT stamp affixed. Mr Wisdom explains this away as the normal administrative process of the firm. The ADMIT stamp on the document, he says, does not confirm acceptance of service. The documents were instead viewed by NSD as merely courtesy copies which were being sent to them by the Claimant's attorneys-at-law.

8. In May 2020 a default judgment was served on NSD and this document was also "ADMITTED" presumably as part of the administrative process and was seen by

Mr Wisdom as merely a courtesy copy being sent to NSD by the Claimant's attorneys.

9. Note that the words "courtesy copy" do not appear on any of the documents which were admitted by NSD.

10. In January 2022, staff from the Civil Registry contacted NSD to inform it of a Case Management Conference. It was that call which, that Mr Wisdom says alerted him to the fact that the Court's records had NSD noted as attorneys-at-law on record for the Defendant. He attended the Case Management Conference to inform the Court of its error but to no avail as the Case Management Conference which was scheduled was adjourned.

11. Mr Wisdom then made checks of the file in the Civil Registry and was able to see the history of how the claim had proceeded. It was based on his reading of the file that led him to the view that NSD was served only because attempts to serve the Defendant personally had failed. He again insists that the firm was not authorised to accept service of the initiating documents and any service of the claim form on it for the Defendant would be irregular as NSD had no instructions from the Defendant to accept service of documents on his behalf. He said that NSD had not certified to the Claimant's attorneys-at-law that it was authorised to accept service of the claim form on behalf of the Defendant.

Respondent's case

12. Mr Clifton Campbell's affidavit contains the evidence on which the Respondent based its response. I will pick up from paragraph 9 wherein he states that on February 5, 2016 NSD filed an Acknowledgment of Service in which it was stated that the Defendant intended to defend the whole claim and that the Defendant's address for service was that of NSD, his attorneys-at-law. He said the

Acknowledgment of Service did not limit the appearance of NSD to the application for the interim injunction. He goes further to say:

> *"We verily believe that the Defendant's Attorneys-at-law were aware that even if the matter was commenced by an application for an injunction it would have to be grounded by a substantive claim."*

13. Mr Campbell also made reference to the fact that when Ms Jacqueline Cummings wrote to Mr Wisdom, concerning the Defendant in the lower courts and, whether NSD represented the Defendant. Mr Wisdom answered that question promptly but failed to answer his question when he made a similar inquiry concerning this matter. He said that at no time did Mr Wisdom say NSD did not act for the Defendant in the claim against him in the Supreme Court.

14. He says instructions to personally serve the Defendant, in the face of an Acknowledgment of Service putting NSD on the record in the claim as attorneys-at-law for the Defendant, were given in error. Mr Campbell further states that the documents served on NSD were not courtesy copies but were served on NSD because they had "*unreservedly stated that they represented Mr Chin-Hing"*. He says further that if NSD did not represent the Defendant, it should have removed its name from the record rather than accept service of the documents and retain them.

15. Other allegations were made in the Affidavit, which I will deal with in my analysis of the issues that have come up before me.

Applicant's Submissions

16. The Applicant's submissions are contained in its written submissions filed April 26, 2023. The main argument is that NSD did not have the Defendant's authorisation

to accept service of the Claim Form on his behalf. Reference was made to CPR 5.6 which deals with service on attorneys-at-law.

17. Mr Cowan states that the issues that are to be considered are:
    a. Whether the Applicant was authorised to accept service of the claim form on behalf of the Defendant; and
    b. Whether the Applicant notified the Claimant in writing that he or she is authorised to accept the claim form.

18. Mr Cowan argues that an attorney-at-law can only be served when he is authorised to accept service of the claim form and has notified the claimant in writing that he is so authorised. He says the test as set out in CPR 5.6(1) is mandatory and so if the attorney was not authorised and did not notify the claimant that he was so authorised, service of the claim form on the attorney cannot be considered service on the defendant. Let me say here that it is not the notification in writing that is mandatory but rather the service of the claim form on the attorney that is mandatory when the attorney has notified the claimant that he is authorised to accept service of the claim form.

19. Mr Cowan also argues that NSD had no instructions to accept service of the initiating documents on the Defendant's behalf. He says that this is something that was clear to counsel for the Claimant otherwise they would not have inquired of him whether NSD had been authorised to accept service on behalf of the Defendant. He says Mr Wisdom had informed Mr Campbell that NSD was not so authorised and further, and in any event, the Defendant is not under any duty to warn the Claimants that their attempts to serve were flawed. He referred to the case of **Eastern Caribbean Fertiliser Company (Barbados) Limited v Christopher Sambrano and anor CV No 756 of 2018** to support this submission. He argues further that the failure to respond to the query, which is not admitted,

and the failure to return the documents did not shift the Claimant's duty to validly serve the Claim Form on the Defendant.

20. Mr Cowan takes note of the fact that NSD was only served when attempts to personally serve the Defendant proved futile. Also of note is the fact that the Claimant's Affidavit of Service does not reference the Acknowledgment of Service but just the Admit stamp on the copies received by NSD. He states further that if NSD was authorised to accept service of the documents on the Defendant's behalf it would have been improper to serve the Defendant personally (see CPR 5.6(1)(b)). There would be no reason to apply for an extension of the validity of the claim form, and file an amended application, if NSD could have been served. Attempts to personally serve the Defendant were consistent with the Claimant's knowledge that NSD needed to be authorised to accept service of the initiating documents before they could be served on it.

21. The last argument put forward by NSD was the issue concerning the construction of the Acknowledgment and the meaning that is to be placed on the answers given therein. Mr Cowan relies on the cases of **Investors Compensation Scheme Limited v West Bromwich Building Society [1998] 1 All ER 98, 114-115**, **Chartbrook Ltd and anor v Persimmon Homes Ltd and anor [2009] UKHL 38, paragraph 14**, **Homborg Houtimport BV v Agrosin Private Ltd, The Starsin [1999] 2 All ER (Comm 591)** and **Baumwoll Manufactur Von Carl Scheibler v Furness [1893] AC 8** to support this submission. Mr Cowan quotes from each decision to bolster his submission that the Acknowledgment of Service should only be construed as being limited to the interim injunction. The Claim Form, though filed at the same time as the Notice of Application for interim injunction, had not yet been served on NSD and NSD had no knowledge of it when the Acknowledgment of Service was filed. Therefore, NSD could not have had it in its

contemplation when completing the form. The form he argues is a 'standard form' and cannot be adjusted readily.

22. He points out that when asked if the Claim Form was received the answer was no and an indication made that just the application for interim injunction and affidavit in support had been received. The fact that the heading of the document references a claim form should be ignored. Given that neither the Defendant nor NSD knew of the claim, the answers given in the Acknowledgment of Service could only refer to the application for interim injunction and nothing else. He also argues that the reference to the Defendant at paragraph 5 of the Acknowledgment of Service could only be interpreted as being a reference to the application since the Defendant could not be defending or making reference to a document which he did not know existed, let alone know if his name was spelt correctly on the said document.

23. Mr Cowan further argues that referencing defending the whole claim should be understood in light of the claim for injunctive relief. He says it would be absurd to import to the Defendant or his words, an intention to communicate a desire to defend the whole claim in circumstances where the Defendant did not know one existed. References to "service" in the document, he says, should be construed as referring to service of the application for injunctive relief which is the only claim the Defendant would have been aware of at the time when the Acknowledgment of Service was filed and served.

24. Finally, and of importance, is Mr Cowan's argument that the Default Judgment is in Default of Acknowledgment of Service in circumstances where the Claimant wishes to rely on the Acknowledgment of Service filed by the Defendant to say that NSD was on record for the Claimant and could therefore have been served.

Respondent's submissions

25. The issue which the Respondent has highlighted is whether NSD should be allowed to have the record amended after such a long period of delay or whether its name should just be removed from the record as the attorneys-at-law for the Defendant. The Claimant has spoken to the prejudice he will suffer if NSD is allowed to have its way and highlights the fact that the Defendant has to date remained silent and queries whether or not the default judgment should be set aside.

26. Mrs Cummings argues that CPR 5.6 is referring to instances where there is no Acknowledgment of Service. Where there is an Acknowledgment of Service this stands as the notification required by CPR 5.6. She further argues that the Acknowledgment of Services gives NSD's address as the Defendant's address for service and as such when the Claim Form was served there, it was properly served. The fact that NSD on behalf of the Defendant indicated that it was going to defend the claim as a whole is also important especially in circumstances where it must have known that a claim existed since the application for the interim injunction had to be grounded in a substantive claim. It was also argued in paragraph 15 of the written submissions filed on May 3, 2023 that "*there was ample indication that there was a substantive claim before the Acknowledgment".* The "ample indication" were the pleadings in the application for interim injunction which referred to the fact that a claim was filed, that there were serious issues to be tried and the Claimant had a reasonable prospect of successfully bringing the claim. She argues that the Defendant's affidavit in response to the application for interim injunction also referred to the fact that the Claimant was not entitled to damages for breach of contract etc and that Justice Laing (as he then was) when delivering the judgment stated that the claim was rooted in damages and that there was no evidence that the Defendant would be unable to satisfy a claim in damages.

27. **Kingston Telecom Limited v Zion Dahari et al 2003 HCV 2433** was used to support the submission. In that case, an Acknowledgment of Service was filed in which the Defendant said he intended to defend the claim. I will go on to say that that was not the end of the matter as the Defendant also said that he had retained counsel to watch proceedings on his behalf and a letter from counsel for the Defendant was written to the Claimant informing him that he acted for the Defendant in an application for freezing order and specifically asked that all documents that were to be served on his client be sent to him. I will say immediately that I believe that this case is distinguishable from the case at bar because NSD sent no such notification to the Claimant's attorneys-at-law.

28. The Claimant's attorneys also say that NSD's submissions that documents served were courtesy copies should be rejected. They further argue that if the Applicant no longer acted for the Defendant it should have applied to remove its name from the record in a timely manner. It has not done so. Further, relying on the case of **Rayan Hunter v Shantell Richards and Stephanie Richards [2020] JMCA Civ 17**, Ms Cummings argues that in a case where the Court's jurisdiction was called into question, the Applicant filed an Acknowledgment of Service and in it expressly stated his reason and purpose for filing the acknowledgment and did not indicate any intention to defend the claim nor did he admit the claim in whole or part. These things were different from what NSD did because the Acknowledgment of Service that was filed did not expressly state that it was limited to the hearing of the application for interim injunction but it also indicated that the Defendant did not admit the claim and that he intended to defend the entire claim.

29. In also relying on the case of **Investors Compensation Scheme Ltd,** Ms Cummings agreed that the interpretation of a document is a question of what a reasonable person with all the background knowledge would have understood the clause or document to mean. Ms Cummings argues that "*a reasonable man would*

have taken the Acknowledgment and its words to mean that the Applicant unreservedly represented the Defendant." That is the clear meaning. There is no evidence that something went wrong with the language contained therein which would require any interpretation outside the clear meaning.

Analysis

30. CPR 5.6(1) provides that when an attorney-at-law is authorised to accept service of a claim form on behalf of a party and has notified the claimant of that, the claim form must be served on attorney-at-law and personal service is not required. CPR 5.6(2) provides that:

> "*Where a claim form is sent to a party's attorney-at-law who certifies that he or she accepts service on behalf of the defendant, the claim is deemed to have been served on the date on which the attorney-at-law certifies that he or she accepts it.*"

CPR 5.6(3) further provides that:

> *"Where an attorney-at-law*
>
> *(a) has given notice to the claimant under paragraph (1)(b) of this rule:*
> *(b) has been duly served with the claim form; and*
> *(c) fails to file an acknowledgment of service within the time limited by Rule 9.3, the claim form is deemed to have been served on the defendant on the date of which that defendant's attorney-at-law was served.*

31. The CPR does not say specifically what form the "certification" or "written notification" by the defendant's attorney-at-law must take. What appears to be necessary is some form of notification. The Acknowledgment of Service is the usual form that is used to say that an attorney appears on the record for a

defendant. It will set out in detail how the defendant intends to treat with the claim. It will say whether or not it admits all or part of the claim and whether or not it intends to defend all or part of the claim. This is however usually done when the claim form is already served. In the case before me, the defendant had not been served with the claim form. He had only had sight of the Notice of Application for an injunction. Mr Cowan makes a big deal about this in his written and oral submissions and submits on the issue that the fact that they did not know about the claim should mean that the questions were being answered only as it relates to the application for an injunction. He also argued that the Acknowledgment of Service Form is a standard form that could not be customised precisely and so the Court should construe the responses given on the Acknowledgment of Service as being limited to the application for injunction only.

32. It is true that the Acknowledgment of Service Form is standard. It is however not true that it cannot be completed to fit what is to be dealt with. When a party wishes to file an application to dispute the jurisdiction of the Court, it is required to file an Acknowledgment of Service. The Acknowledgement of Service plays the role of putting the counsel on the record as well as to indicate to the Court the purpose of appearing before the Court. It is not intended that the defendant will complete any other part of the form to say whether it wishes to admit the claim or defend it. It is usually the case that the statement will read, "*the document is filed for the purpose only of disputing the jurisdiction of the Court*." Likewise, it is not uncommon for the document to state that the Defendant's counsel did not receive the claim form or particulars of claim. All the other questions would then be left unanswered because the note on the Acknowledgment of Service Form would be that the document is filed for the purposes of dealing with the application disputing the jurisdiction of the court only. NSD did not do this. It said it did not receive the initiating documents, but that it received the Notice of Application for Injunction and Affidavit in Support. It did not stop there, it went on to say the Defendant intended to defend the whole

claim, that it intended to defend the whole claim not only as to the amount of damages, that it did not admit the whole claim for an unspecified sum of money or for a specified sum of money.

33. Given that NSD is one of the most experienced law firms in Jamaica, I would say that they knew or ought to have known that a claim form existed or was coming into existence since an injunction is a remedy that must get its life from a claim. It means then that the firm, in answering all the questions, was notifying/certifying to the Claimant's attorney that it intended to act for the Defendant in the claim in its entirety. In the Privy Council decision of **Warsaw and ors v Drew (1990) 38 WIR 221, 227a** Lord Brandon said

> *"It is well established that it is open to a defendant in an action to enter an appearance in it voluntarily, even though the writ has not been served on him, and that by doing so he waives such service."*

That, I believe, was the finding of the Court in the case in **Rayan Hunter v Shantell Richards and Stephanie Richards [2020] JMCA Civ 17**. The difference between the **Hunter case** and the case at bar is that in the case before me, the claim form had not been served but in the **Hunter case** it had been. What is also interesting in the **Hunter case** is that the applicant expressly indicated his reason for filing the acknowledgment of service. It was merely to challenge the jurisdiction of the court. This is the approach which NSD should have taken if its instructions were limited to defending the application for injunction.

34. It is clear to me that both the Claimant's attorneys-at-law and NSD made some mistakes in this matter. NSD in not being careful in completing the Acknowledgment of Service form and the Claimant's attorneys-at-law in not being careful with respect to serving the Claim Form and Requesting the Default Judgment. The lack of care is what has caused us to meet.

35. For the Claimant's part, it is strange to me that they should say that the Acknowledgment of Service proved that the initiating documents were served on the Defendant when they were accepted by NSD but then in another breath say that the Defendant failed to file an Acknowledgment of Service with respect to the claim form and particulars of claim and as such default judgment should be entered against the Defendant. The Claimant cannot have his cake and eat it too. If the Acknowledgment of Service filed by the NSD was enough to put them on the record for the Defendant and made NSD a proper person to be served with the Claim Form and Particulars of Claim, then the Acknowledgment of Service was properly filed and the Default Judgment ought not to have been entered for failure to file Acknowledgment of Service. In my opinion, if the Claimant is saying that he served the Claim Form and Particulars of Claim on NSD because NSD in the Acknowledgment of Service notified him that it was accepting service of all other documents on behalf of the Defendant, why would an additional Acknowledgment of Service be needed when the Claim Form was served? The only information that would be needed was the date of service of the Claim Form, which would be obvious from the ADMIT copy stamped on the documents by NSD.

The Case Law

36. Mr Cowan relies on the case of **Eastern Caribbean Fertilizer Company (Barbados) Limited (in Receivership) and Christopher Sambrano (Acting as the duly appointed Receiver and Manager of the First Claimant) and Uplands Cotton Inc CV 756 of 2018** in support of his position that the Defendant has no duty to warn a claimant about a failure to validly serve a claim form (see paragraph 34-35 of the judgment). I will say that the decision of the learned Judge is not binding on me. While there may be no duty to warn, CPR 1.3 imposes a duty on the parties to help the Court to further the overriding objective. The overriding objective is to do justice. To help the Court to do justice would entail answering queries with a yay or nay as to whether the firm was permitted to accept initiating

documents. Informing counsel that you did not act for the Defendant when documents were being served on you, would be assisting the court in ensuring justice was done because it would mean that the Claimant, being armed with the information, could take the steps that needed to be taken to prosecute the claim. In fact, if the Claimant failed to do what was necessary after the responses to queries were received, the Defendant's position in this application would have been stronger.

37. It is strange to me that document after document that were being served on NSD, were being accepted and never returned even in the face of queries from the Claimant's attorney as to whether NSD had received instructions to accept the initiating documents. Having not answered the question and then having accepted the documents, even if they were thought to be courtesy copies, could only lead the Claimant's attorneys-at-law to one conclusion and that is that NSD was authorised to accept service of documents relating to the claim on the Defendant's behalf.

38. In the case of **Investors Compensation Scheme Ltd v West Bromwich Building Society, Investors Compensation Scheme Ltd v Hopkin & Sons (a firm) and ors, Alford v West Bromwich Building Society and ors, Armitage v West Bromwich Building Society and ors [1998] 1 All ER 98** the House of Lords was asked to consider the meaning of a contract. Mr Cowan relies on this case to substantiate his argument that in order to properly interpret a document, the Court must consider the background knowledge which would have been reasonably available to the parties in the situation when the document was being formulated. Again the House of Lords decision is persuasive only, and not binding on me. I am in this situation more in agreement with the dissenting views set out by Lord Lloyd of Berbick.

39. There is no “obscurity of language” in the drafting of the Acknowledgment of Service. Any person who took up the document and read it would have been clear as to its meaning even knowing the background and even knowing that an interim injunction can only be born out of a valid claim. What is before me is a case of “slovenly drafting”. The rules of legal drafting state that words in documents are to be given their plain meaning. When the meaning is unclear, we look to the intention of the draftsman. There is no ambiguity in the meaning of the documents. Mr Wisdom adjusted the Acknowledgment of Service when asked if the claim form and particulars of claim were received to say no they were not and only the application for injunction and the affidavit in support were received. When asked if he intended to defend the claim, what would have stopped him from saying that only the application for injunction would be defended? There is in my view no need to look behind the clear words that are stated in the form.

40. Having not clearly stated in the Acknowledgment of Service that NSD’s appearance was limited to the hearing of the application for the injunction and in the face of a document which categorically states on more than one occasion that the claim is not admitted and the claim is defended in its entirety, the Registrar cannot be faulted for being of the view, as is this Court, that NSD’s role was not limited to just the hearing of the application for injunction but extended to the defence of the claim. If it were otherwise, the Acknowledgment of Service should have said so or an application made to remove NSD’s name from the record.

41. Prior to the application being heard, I made an order for the Defendant to be present at the hearing. He attended but gave no evidence. This court cannot, of course, compel a party to disclose communication with his attorneys. There is therefore no evidence from him as to what his instructions to NSD were or what was the extent of his retainer. That evidence however would not have been

particularly relevant given that the critical issue is what did NSD represent to the Claimant about its authority and not what in fact that authority was.

42. The Claimant filed an application seeking orders to extend the validity of the Claim Form for the purpose of serving it on the Defendant. It is after personal service could not be achieved that the documents were served on NSD. This course of action suggests to me that the Claimant's attorneys-at-law were doubtful initially that the documents could be served on NSD and were to be served personally on the Defendant. In fact, Mr Campbell's email correspondence to Mr Wisdom asks whether or not NSD was permitted to accept service of the document. Why would Mr Campbell be making this inquiry if he was satisfied that the Acknowledgment of Service form as filed was sufficient to put NSD on the record for the Defendant? Mr Campbell's evidence is that the attempts to serve personally were done in error and were unnecessary given the content of the Acknowledgment of Service.

43. Ms Cummings has submitted that settlement discussions were taking place between Mr Campbell and Mr Wisdom for some time after the order was made refusing the injunction to support her position that even after the hearing of the injunction had passed, NSD was still acting on behalf of the Defendant. There is very little evidence to support this submission and therefore it will not be considered.

44. The problem with the Claimant's case, as I have mentioned before, is that the Request for the Default Judgment was made for failing to acknowledge service. Was there an expectation that an Acknowledgment of Service should again be filed once the Claim Form and Particulars of Claim were served? If the answer is yes then that, in my view, would be an unreasonable expectation.

Concluding remarks

45. I am satisfied that at the time the Claim Form was served on NSD they were acting for the Defendant. I am of the view that the notice given in the Acknowledgment of Service of the Defendant's intention to defend the entire claim filed by NSD and, which stated that his address for service was that of his attorneys-at-law would cause a reasonable man to conclude that even the initiating documents could be served on NSD. I hold this view, notwithstanding the attempts of the Claimant to serve the documents personally, as I accept that this was an oversight on the part of the Claimant's attorneys-at-law.

46. I am also of the view that the fact that NSD made this application, only after the limitation period had passed, having ignored the Claimant who served it with documents first in July 18, 2017 (when the initiating documents were served) and then on May 5, 2020 (when the Default Judgment was served) is an abuse of the process of the Court. Up to May 5, 2020, the limitation period had not yet expired and the Claimant could then have filed a new claim. In waiting until that time had passed to respond to the Claimant's attorneys and to make this application NSD has not acted in accordance with the overriding objective. Indeed, they by their silence, misled the Claimant's attorneys into thinking the service was accepted and therefore valid. Attorneys-at-law have a duty to either return documents improperly served or to respond positively stating an objection to such service. In any event, the overriding objective includes matters being dealt with in a timely manner. Timely manner is not just in relation to when the Court gets the matter for actioning but also includes the parties themselves bringing matters or applications to Court in a timely manner.

47. Further, it is also my opinion that the Registrar was not in error in listing NSD as being on the record for the Defendant. If that was or is no longer the status quo,

then NSD is required to file an application to remove its name from the record pursuant to CPR 63.6.

48. The Defendant, having already filed an Acknowledgment of Service, the Default Judgment ought not to have been entered for failure to acknowledge service, but rather for failure to file a Defence. In my view, this would be an instance in which the defence should be filed and served 14 days after service of the claim form (i.e. within the time an acknowledgment of service should be filed and served). Proof of service as contained in an Affidavit of Service would of course be necessary to convince the Registrar that the initiating documents had been served but the request for default judgment should indicate that an Acknowledgment of Service had already been filed but no defence to the claim had been filed within the relevant period.

49. The consequence will be that the default judgment as entered is irregular on its face and should be set aside. The Defendant, therefore even now, can apply to the Registrar to file his Defence out of time. However, in the interest of justice and in keeping with the overriding objective, I will extend time by 14 days from the date of this order for the Defendant so to do. The Claimant, if no Defence is filed within the time ordered by this Court, will have the opportunity to file a new Request for Default Judgment.

50. My orders are as follows:
    a. The Applicant, NSD's application to amend and/or correct the Court's record by removing the firm Nunes Scholefield DeLeon and Co from the record as attorneys-at-law for and on behalf of the Defendant is refused.
    b. The Default Judgment dated April 21, 2020 in Judgment Binder No 775 Folio 21 is set aside.

c. The Defendant is to file and serve his defence to the claim on or before July 24, 2023 failing which Judgment in Default of Defence is to be entered against him.
d. The Applicant is to pay the Claimant costs in the application which are to be taxed if not agreed.
e. The Applicant's (NSD) application for leave to appeal is granted.
f. The Claimant's attorneys-at-law are to file and serve the Formal Order.