

Practice — service of writ — court's exercise of discretion to grant extension of time

QUEEN'S BENCH DIVISION

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Amerada Hess and Others v Rome and Others

Before Mr Justice Colman

Judgment January 19, 2000

Where a plaintiff had conscientiously tried to effect service of a writ or claim form within the time limit but that service had been ineffective, the court would exercise its discretion to grant an extension of time for service.

Mr Justice Colman so held in the Commercial Court of the Queen's Bench Division when

(i) allowing an application by the defendants, C. W. Rome and 109 others, all insurers, for (a) a declaration under rule 11.1(b) of the Civil Procedure Rules that the service of a writ by the plaintiffs, Amerada Hess and others, a North Sea oil and gas consortium, on the defendants was ineffective and (b) an order setting aside service on the ground that it was not effected within the period of validity of service;

(ii) dismissing a counter-application by the plaintiffs under rule 3.10 for an order remedying any error in service, including service after expiration of validity of the writ and

(iii) allowing an application by the plaintiffs under Order 20, rule 5(5) of the Rules of the Supreme Court for permission to amend the points of claim after expiry of the limitation period.

Mr Christopher Butcher for the plaintiffs; Mr Steven Berry for the defendants.

MR JUSTICE COLMAN said that while service could be effected on a company under section 725(1) of the Companies Act 1985 by leaving the writ at or sending it by post to the company's registered office, where there were managing agents who did not exercise their discretionary power to accept service, leaving writs or claim forms with the receptionist or security guard was not effective service.

The plaintiff effected service ineffectively before expiration of the period of validity for service under rule 7.5 of the Civil Procedure Rules and after that period applied to remedy that error of procedure under rule 3.10.

His Lordship said the court should exercise its discretion to grant what was in substance and effect an extension of time for service by reference to the considerations in rule 7.6(3).

On an application for permission to amend a claim out of time under Order 20, rule 5(5) of the Rules of the Supreme Court so as to raise a new cause of action which arose out of the same facts or substantially the same facts as the cause of action in respect of which relief was already claimed in the action, the additional facts permitted were confined to those directly and closely connected with and ancillary to the facts originally relied on.

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