In The Supreme Court of Judicature of Jamaica

In The Commercial Division

Claim No. 2016 CD00363

Between	**Dr. Otegobola Ojo**	**Claimant**
And	**John Stannard**	**1st Defendant**
	Cynthia Stannard	**2nd Defendant**

Application to strike out – Claim served outside jurisdiction – Whether formalities in CPR Rules 7.5,7.6,11.15 and 11.16(3) are mandatory – Whether court has jurisdiction to put matters right pursuant to CPR 26.9 – Whether claim has any real prospect of success- Agreement for lease with option to buy- Lessee a Company no longer on register- Claimant paid for exercise of option –Whether corporate veil may be pierced-whether serious issue to be tried.

Kadene Dixon and Francine Derby instructed by Dixon & Associates for the Claimant

Dr. Lloyd Barnett and Weiden Daly instructed by Hart Muirhead,& Fatta for Defendant.

Heard: 6th October, 2017 & 20th October, 2017.

In Chambers

Coram: Batts J

1. Prior to the commencement of this matter I enquired of the parties whether one hour, being the time allotted, was sufficient. Each agreed it was and further agreed that their respective submissions would be no more than 30 minutes . It is fair to say those promises were fulfilled. An impressive accomplishment given the issues involved and the number of authorities cited.

2. The Defendants by Amended Notice of Application filed on the 20th September, 2017 seek the following orders –

1. A Declaration that the Court should not exercise jurisdiction in this claim pursuant to CPR 9.6.

2. Without prejudice to the said application for a Declaration an Order pursuant to CPR 26.3 (1) (b) and/or CPR 26.3(1) (c) and the court's inherent jurisdiction that the Fixed Date Claim Form herein be struck out, and in consequence thereof the whole of these proceedings be struck out.

3. Without prejudice to the paragraphs 1 and 2 above, an Order that paragraph 10 of the Claimant's Affidavit filed herein on 13th November 2016 in support of the Fixed Date Claim Form herein be struck out.

4. The order made herein on 12th January 2017 granting permission to serve the claim form out of the jurisdiction and service of the fixed date claim form herein, be set aside.

5. If necessary, the time within which to make this application be extended and that same shall stand.

3. The Defendants relied on skeleton submissions handed to me on the morning of the hearing. Dr. Lloyd Barnett, in his now well recognised style, ably spoke to the submissions with economy and clarity. I trust that I do those efforts no injustice by further summarising the points made as follows:

   a. The claim is brought against Defendants resident overseas. This required that the Claimants comply with the provisions of CPR 7.5, 7.6 and 11.15 and 11.16 (3). These involve stating in the Claim the period for filing of an Acknowledgement and Defence, as well as service, not just of the Claim, but the Order granting leave to serve outside the Jurisdiction. In this regard heavy reliance was placed on the judgment of Mangatal, J in ***Valley Slurry Seal (Caribbean Limited) v Valley Slurry Seal Company et al [2012]*** **JMCC Comm 18.**

   b. The Claim is brought by someone who has no *locus standi*. The contract on which the claim is premised was entered

into between a corporate entity and the Defendants. The Claimant was only a guarantor of the performance of the contract and not therefore entitled to enforce it. Dr. Barnett also asserts that the Company has now been struck from the Register. At best, the Claimant who it seems paid money in purported exercise of the option, would be entitled to restitution. He has never made such a claim. When asked whether estoppels or acquiescence applied, Dr. Barnett indicated that the letters written by the Defendants were due to ignorance of the law and/or facts and did not support the contention that the Claimant is entitled to enforce an option granted by contract to a company.

c. The Claimant is asking the court to order the Defendants to transfer the property to a third party to whom the Claimant is or has purported to sell it. This is asking the court to participate in tax evasion.

4. Mrs. Dixon for the Claimant responded with oral submissions. She urged that as the Defendants filed an Acknowledgement of Service which did not indicate an intent to challenge jurisdiction, they are now precluded from so doing. Reliance was place on ***B & J Equipment Rental Ltd. v. Nanco [2013] JMCA Civ 2 (*** unreported 15th February 2013) *and* ***Hoddinott v Persimmon Homes (Wessex) Ltd.*** **[2007] EWCA Civ 1203**. When asked whether Rule 26 might be preyed in aid, the response was in the negative because the irregularities had been waived.

5. With respect to the alleged irregularities in service of process overseas Mrs. Dixon submitted that the relevant documents were served and the Fixed Date Claim had a date stipulated for the filing. In any event, on a true construction of Rule 7.6 the word "elsewhere" cannot be looked at in isolation. Taken in context Costa Rica should be seen as falling within the Caribbean and not elsewhere. The time stated was therefore correct, and the Defendant's application is out of time.

6. On the substantive argument, Mrs. Dixon submitted that there were issues of fact for trial. The Claimant has pleaded that he paid money to exercise the option and that he was put in possession. The issue for trial is, was there a contract between the Claimant and the Defendants?. There is alleged a course of dealings and it is a serious issue to be tried given the conduct of the Defendants and certain letters written by them. These reflect an acknowledgement of the Claimant's interest.

7. Both sides cited several authorities. Some were handed up without specific discussion. I do not intend to reference each but the parties are to rest assured that I have read all of them. It suffices, I think, to quote from and possibly distinguish those I think most germane.

8. The application is expressed to be pursuant to Section 9.6 of the Civil Procedure Rules (2002) (hereinafter referred to as the CPR.) The provision is as follows:

> **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 first file an acknowledgement of service.**
>
> **(3) An application under this rule must be made within the period for filing a defence (Rule 10.3 sets out the period for filing a defence).**
>
> **(4) An application under this rule must be supported by evidence on affidavit.**
>
> **(5) A Defendant who**
>
> **a. files an acknowledgement of service; and**

b. **does not make an application under this rule within the period for filing a defence, is treated as having accepted that the court has jurisdiction to try the claim.**

(6) **Any order under this rule may also –**

a. **strike out the particulars of claim**
b. **Set aside service of the claim form**
c. **Discharge any order made before the claim was commenced or the claim form served;**
d. **Stay the proceedings,**

(7) **Where on application under this rule the court does not make a declaration, it –**

a. **Must make an Order as to the period for filing a defence and**
b. **May –**
   i. **Treat the hearing of the application as a case management conference**
   ii. **Fix a date for a case management conference**

(Part 26 sets out powers which the court may exercise on a Case Management Conference).

(8) **Where a Defendant makes an application under this rule, the period for filing a defence is extended until the time specified by the court under paragraph 7 (a) and such period may be extended only by an order of the court.**

(Rule 10.3 (3) deals with an application to stay proceedings where there is a binding agreement to arbitrate).

9. The Claimant complains that the application has not been made within the time limited for filing a defence, nor had the acknowledgement filed indicated that a jurisdictional issue was to be taken. Dealing with the latter point first, there is no rule requiring that an Acknowledgement specifies that a jurisdictional point will be

taken. It suffices that there is an indication of an intent to contest the Claim. In the old days, and under the rules as they existed prior to the Civil Procedure Rules 2002, a Defendant who intended to take a jurisdictional point or a point of non-or bad service was required to file a Conditional Appearance. The CPR has clearly abandoned that approach. We have not adopted the box ticking format for the Acknowledgment of Service which has as an option "jurisdictional challenge". There is therefore no merit in the submission that the Defendant is precluded from making a jurisdictional challenge. ***B & J Equipment Rental Ltd. v. Nanco [2013] JMCA Civ 2,*** on which the Claimant relies, is a case in which an Acknowledgement was entered but no application to challenge jurisdiction filed. It does not assist.

10. Insofar as the matter of time within which to make the jurisdictional challenge is concerned, we need to consider the provisions of CPR 10.3 to which Rule 9.(3) makes express reference. Rule 10.3 (1)-

> ***"The general rule is that the period for filing a defence is the period of 42 days after the date of service of the Claim form." (this general rule is by rule 10.3(4) made subject to rules providing for service outside the jurisdiction.)***

This case concerns service of a Claim outside the jurisdiction. With respect to such a claim the relevant time periods are to be found in Rule 7.5 (5).

> ***"The general rule is that an acknowledgement of service or defence must be filed within the following periods after service of the claim form –***

Place of Service	***Time for Service of Acknowledgment***	***Time for Service of A Defence***
USA, Canada and Caribbean states	28 days	56 days
Europe (not including Russia)	42 days	70 days
Elsewhere	56 days	84 days

Rule 7.5 (6) be it noted recognises that the court may direct that some other period applies.

11. In this matter, no time period for the filing of Acknowledgement or Defence was specified in the order granting permission to serve process outside the jurisdiction. Mrs. Dixon argued that Costa Rica was to be regarded as a Caribbean state for the purpose of the rule. She submitted that the Defendant ought to have made the application within 56 days of the date they were served. I disagree. I see no reason to give the words anything other than their ordinary meaning. Caribbean states must mean states within the Caribbean. We all know who they are; they consist of the Greater and Lesser Antilles. An argument may one day be mounted that Guyana and Belize, although located on the mainland of South America, by history, tradition and practice ought, for the purpose of this rule to be regarded as Caribbean states. Save to acknowledge the possibility of such a contention, I express no final view. It does not arise because to my mind Costa Rica geographically, historically and culturally is clearly not a Caribbean state. Therefore legally and as far as the rules go there is neither rhyme nor reason to treat that country as a Caribbean state.

12. It therefore means that the Defendant had 84 days from the date of Service of the Claim to make this application. The Claim was served on the 25th April 2017. The application to strike out was filed on the 10th July 2017, and was therefore within the time stipulated by Rule 9.6(3).

13. Is there however merit to the application? Dr. Barnett stated that when serving the Claim outside the jurisdiction the Claimant omitted to comply with certain required formalities. These impacted directly the right of the Defendant to respond to the Claim and are as follows:

    a. Failure to ensure that the Order giving permission to serve outside the jurisdiction stated the period for

filing Acknowledgement and Defence, contrary to CPR 7.5(4).

b. Failing to amend the Claim Form to state the relevant periods of service, contrary to Rule 7.6.

c. Failing to serve a copy of the application to serve outside the jurisdiction and all evidence in support, as well as the Order made ex parte with a statement that the Defendant had a right to set it aside or vary, contrary to CPR Rules 11.15 and 11.16(3).

14. It is now I believe well established that the above stated formalities are mandatory, see ***Dorothy Vendryes v Dr. Richard Keane et al [2011] JMCA Civ 15*** *(Unreported* 15 April 2011). That case concerned Rule 8.16 requirements for serving a claim. However the principle and approach can be adapted to the Rule 7.5(4) requirements. I asked Dr. Barnett whether in a case such as this a court ought not to consider the exercise of its power to put things right under CPR Rule 26.9. That Rule states,

> **(1) "This rule applies only where the consequence of failure to comply with a rule, practice direction or court order has not been specified by any rule, practice direction or court order.**
>
> **(2) An error of procedure or failure to comply with a rule, practice direction or court order does not invalidate any steps taken in the proceedings, unless the court so orders.**
>
> **(3) Where there has been an error of procedure or failure to comply with a rule practice direction court order or direction, the court may make an order to put matters right.**
>
> **(4) The Court may make such order on or without an application by a party."**

15. In ***Vendreyes (cited above)*** the Court at paragraph 34 of the judgment stated,

> ***"The general words of rule 26.9 cannot be extended to allow the learned judge to do that which would not have been possible. A judge can only apply a rule so far as he is permitted. The claim form was a nullity. It cannot be restored by an order of the court. The service of the requisite documents accompanying the claim form is a mandatory requirement. The amended pleadings must be served before any further steps can be taken in the proceedings."***

The statement was made in the context of a judgment in default entered irregularly. The Court of Appeal has placed that dicta in its proper context in subsequent decisions. In ***Bupa Insurance Limited (trading as Bupa Global) v Roger Hunter*** **[2017] JMCA Civ, 3** the Court stated at para 53 of the judgment-

> ***"Having reviewed the nature of the breach in this matter and the clear terms of rule 26.9 I am propelled to reject the arguments advanced by Bupa that Rule 26.9 has no application to this case, once the rule in question is worded in mandatory terms. Vendryes cannot be taken as laying down any such principle of wide and universal application in the face of the unambiguous wording of rule 26.9."***

Having reviewed authorities the court went on to state the correct principle at para 55:

> ***"On the basis of the pronouncement of this court in Rohan Smith, it means that Vendryes cannot be taken as proper authority for the proposition that improper service due to a breach of rules 11.5 and 11.16 (3) means that all steps taken in the proceedings are to be invalidated. It is clear to me, in the light of rule 26.9 that the framers of the CPR did not intend for every breach of the rules to be taken as invalidating the proceedings and that would be so whether or not the particular rule that is engaged is stated in mandatory terms. Once the consequence for the breach of the rule is not provided for by the CPR or otherwise, then consideration must be given to the provisions of Rule 26.9 in determining the way forward in the proceedings."***

16. The decision in the BUPA case is particularly relevant as it also involved service outside the jurisdiction and procedural irregularities. In that case, however the Defendant applied outside the time allowed for the taking of jurisdictional points. This leads then to a consideration of Dr. Barnett's jurisdictional point. He relied on the decision of Mangatal, J in ***Valley Slurry Seal Caribbean et al v Valley Slurry Seal Company et al [2012) JMCC Comm 18***. In that matter, the Claimant's application for injunctive and other orders was met with the Defendant's application that the court decline jurisdiction because when serving the claim outside the jurisdiction the Claimants had failed to comply with formalities stipulated by rule 11.15. The court was also urged to decline jurisdiction because the formalities necessary for the bringing of a derivative action had not been complied with. It is in this context that Justice Mangatal declared at Paragraph 15 of her judgment.

> ***"In this case the Claimants have not satisfied these conditions precedent and have therefore not passed the threshold to access the court's jurisdiction. In my judgment on this basis the court has no jurisdiction to entertain this claim or any application by the Claimant against those defendants."***

There is, be it noted, no reference anywhere in the judgment of the court to an application pursuant to CPR 26.9 for the court to put matters right. It is in any event, and I say this with respect, a little fanciful to say that the court has "no jurisdiction" in circumstances where Defendants have entered Acknowledgements of service and have themselves made applications. The Defendants were served albeit with defective documentation. The court always has jurisdiction when applications are made to it. The jurisdiction ends if and when the court declines to exercise that jurisdiction, just as the process becomes a nullity when the court declares it is a nullity. (See Rule 26.9 (2) quoted at paragraph 14 above.). The limited scope of the decision in **Valley Slurry** is also I

think made clear by the learned Judge who was at pains to point out in Para 19 of her judgment:

> **"I also wish to make it clear that the principal basis upon which I have struck out the Claim is that it is commenced in beach of the statutory requirements of section 212 of the Companies Act."**

17. The other case of relevance on this matter of nullity and jurisdiction is **B & J Equipment Rental Ltd. v Nanco [2013] JMCA Civ 2** (unreported judgment 15 February 2013). There the Court of Appeal clearly stated that a claim served in non-compliance with the rules was not a nullity, see Paras. 36, 37 and 38 of the leading judgment.

18. Section 26.9 powers were not considered by Mangatal J in the **Valley Slurry** case discussed at paragraph 16 above.. The learned judge was correct on the issue before her, that is, until and unless there was service outside the jurisdiction in accordance with the rules, there was no jurisdiction to entertain the Claimant's application for injunctive relief. Rule 26.9 is however designed to address a situation, as is the case now before me, where the Claim has in fact been served. The Defendants acknowledged service. The time to file defence and acknowledgment are incorrectly stated in the Claim and are not stated in the order granting permission to serve. However the relevant time periods are stated in the rules. Anyone served has access to that information. The Claim and the Order granting permission to serve are valid until and unless set aside, see the modern approach to the question of nullity per Lord Phillips ***Mussell Jamaica Ltd. v. Office of Utilities Regulations 2010 UKPC***

> ***"The Board would reject too the suggested analogy between Ministerial Directions and the orders of superior courts which, it is well established (see for example Isaac v Robertson [1985] AC 97) must always be obeyed, whatever their defects, until set aside."***

19. It seems to me that a Section 26.9 Order is perfectly suited for this scenario. The cost to effect service out of the jurisdiction is not inconsequential. The difficulty of locating process servers in a foreign jurisdiction and then of locating individuals to serve are other factors. Then there is the possibility that once alerted to the existence of suits, the Defendants may, if this act of service is set aside, make themselves scarce. The defects in service have not caused any prejudice such that costs or an appropriate order extending time, may not ameliorate. In all the circumstances of this case I would if necessary make an Order, of my own volition pursuant to Section 26.9, to put matters right.

20. That is not however the end of the matter. Dr. Barnett contends that the claim is to be set aside or struck out because it is unsustainable. If it is, and if there really is no realist prospect of it succeeding, I would decline to make a Section 26 Order and would in any event strike out the Claim. In order to treat with this question it is now necessary to look in some detail at the allegations made in the Claim and such evidence as there is before me to support it.

21. The Fixed Date Claim and Affidavit served are attached as exhibits to the affidavit of Tracy Ann Long dated 26th September 2017. The Claim is brought by Dr. Otegobola Ojo for orders that:

> "
>
> 1) That the Claimant wholly owns the property at Lot 4 part of Harmony Hall formerly of part of Tower Hill, in the parish of St. Mary, comprised in the Certificate of Titles registered at Volume 1499 Folio 947;
> 2) That the said property be transferred to any willing, and able purchaser of the Claimant's choice at the determination of the suit;
> 3) That the Defendants pay all fees, taxes and Attorneys costs to effect the transfer to the said property;

4) That the Defendants shall execute a transfer to pass the legal and equitable interest in the property to any purchaser of the Claimant's choice within 30 days of an order that the Claimant wholly owns the legal and beneficial interest in the said property.
5) That the Defendants be responsible for the modifications of any restrictive covenant(s) endorsed on the title and the fees, costs and expenses associated with same.
6) The Registrar of the Supreme Court to be empowered to sign any agreement, transfer or other document necessary to effect the transfer of the said property should the Defendants neglect, refuse or are unable to sign;
7) That the Registrar of the Supreme Court be empowered to sign any and all documents to make effective any and all orders of this Honourable Court if either party neglects, refuses or is unable to sign;
8) That the Defendants pay the Claimant's attorney at law costs, fees and taxes for lodging caveat against the property to prevent the Defendants from dealing with said property in any way adverse to the Claimant;
9) Liberty to apply
10) Costs to the Claimant's costs;
11) Such other orders and/or relief as this Honourable court deems just.

22. The Affidavit supporting the Fixed Date Claim is sworn to by the Claimant. He says he is the beneficial owner of the property in question. In paragraph 4 he states that in February 1988, "acting in my personal capacity and as Director of Atlantis Medical Healthcare Group Jamaica Ltd. since defunct," he signed a lease to purchase agreement. He states further that in October 1998 he lodged a caveat on the property "to protect my interest." This because he had started making payment in order to exercise,

"my option as per the lease agreement."

He attaches the lease, and the caveat to his affidavit.

23. At Para 7 he asserts,

> **"That by November 2003 all the payment provisions of the lease to purchase agreement were fulfilled which included a new agreement between myself and the Defendants for a period of acceleration whereby the mortgage repayments were fulfilled by me in five years at the request of the Defendants as opposed to a 25 year amortization period (as stated at Paragraph 4(8) of the lease agreement)on account that the Defendants had relocated to Costa Rica sometime between the period of 2001 – 2003)."**

In paragraph 9, he explains that although the full payment was made the transfer was not completed due to changes in legal representation and absence of the Defendants and himself from Jamaica. His payments of US$350,000.00 for realty and US$50,000 for chattels was acknowledged by the Defendants through their attorneys and he references a letter dated 8th August, 2016. The Claimant asserts that since payments were made he has had exclusive possession of the property. He has leased the premises to one Peter Mansfield who in turn now seeks to exercise an option to purchase. The Claimant complains that the Defendants refuse to comply with his demand that a transfer be made to Peter Mansfield.

24. The Claimant asserts, and exhibits by way of proof, undated instructions to attorneys that the Defendants release title to him. At Paragraph 15 of his affidavit he states,

"All parties involved understood that the Defendants would hold title in trust but no beneficial interest in the subject property until the title was fully transferred for my benefit. A sworn statement to that effect was witnessed and notarised by the Defendants at the British High Commission in San Jose Costa Rica on the 23rd February 2007. A copy of the said sworn statement is attached hereto and marked "006" for identification. My beneficial interest has never been disputed by the Defendants."

25. He now has a purchaser for the property. The agreed price is US$1,100,000.00. He is concerned that unless the Defendants cooperate and execute the Transfer he will lose this purchaser. At paragraph 24 of his affidavit, he says,

"that the said title should be transferred into my name and not the name of the company Atlantis Caribbean Healthcare (Group) Jamaica Ltd. as the company is no longer registered and defunct and furthermore it is I as guarantor out of my own monies who paid all of the purchase monies for 'Villa Viento' including the sum for chattels although when the company was in existence I was acting in the capacity of secretary. A certificate of resolution was produced in April 2001 granting me the authority to obtain loans as necessary to pay down the "mortgage loan on the property to the Defendants. A copy of this resolution is attached hereto as Exhibit 007."

26. Having considered this affidavit and in particular its attachments I agree with Dr. Barnett that an action in this form on behalf of the Claimant is unsustainable. The Claim as filed is bound to fail. It is manifest that the lease agreement was entered into by the company. The Claimant guaranteed performance by the Company. The Caveat lodged in 1998 was expressed to be in respect of the Company's interest. The resolution of 2006 was also issued by the Company and authorised the Claimant to cause the caveat to be removed. The Defendants wrote letters of authorisation to their attorneys but it is important to note they say,

> **"We do hereby instruct that Dr. Otegobola Ojo in nominee is the *beneficial owner of the said Villa Viento."***

This suggests that he has been nominated by someone possibly the owner. No evidence of an assignment is before me. As regards, the letter dated 8th April 2016 from Hart Muirhead and Fatta to the Claimant's attorney the first observation is that the letter is written "without prejudice." In its second paragraph it describes the Claimant as one who

> "Claims an equitable interest."

The letter says the Defendants do not dispute that the Claimant has an equitable interest in the premises, and acknowledges receipt of the full purchase price. The Defendants then indicate the conditions under which a transfer would be executed and these include indemnities in relation to costs and taxes. It is a letter of negotiation and will not be admissible evidence in a subsequent trial, see ***Leroy Roy Clarke v Life of Jamaica SCCA 59/SCCA* 2008** (Unreported judgement of 12 August 2008).

27. I agree with Dr. Barnett that admissions, such as they are, in that context do not bind the Defendants or preclude them from articulating the true legal position. That is that as between the Claimant and the company it is to the latter that the Defendants have an obligation. This is because all payments made in exercise of the option were made by or on behalf of the company. The Claimant was not

a party to the lease agreement which granted an option to buy. There is no evidence of a new agreement being entered into. Indeed the Claimant acknowledges, and this is important, that the company was still in existence at the time he made the payments in exercise of the option. An option to which the company was entitled.

28. It is not alleged that the company had lawfully assigned the benefit of the option to the Claimant. It is therefore the company which has a legal right to enforce this agreement. The Defendants are not alleged to have made any representation of fact pursuant to which the Claimant acted to his detriment. Indeed, it appears that the representation as to the Claimant's interest may have been made to the Defendants, in consequence of which they gave certain instructions to their attorneys.

29. Dr. Barnett urged other positions as well. He submitted that the documents exhibited and relied upon had not been stamped and as such could not be relied upon. I do not think that such a point is fatal to the claim. If necessary the approach of Sykes J in ***Harry Abrikian et al v Arthur Wright CLA 083/1984*** (unreported 16th June 2005) commends itself.

30. Dr. Barnett urged also that insofar as the Claimant seeks to have the court order a direct transfer to the person to whom he intends to sell, the claim is unenforceable. This is because the result will be to evade payment of taxes, see ***Azucena v de Molina [1991] 50 WIR 85.*** I agree. However, insofar as this was only one remedy and did not form the pith or substance of the claim I would have declined to strike out the claim in its entirety on this ground alone.

31. Finally, some time was spent on the question of the corporate veil. It is only for me to indicate, and it is implicit in all I have said before , that there is no warrant for the piercing of the corporate veil. The Claimant at all material times elected, no doubt for reasons then beneficial to himself, to conduct his affairs utilising a limited liability company. The company has been struck from the register. This

court has no way of knowing whether there are in existence creditors of the company or other persons with an interest in the company or its assets. There is every reason therefore to say, as it is the law, that it is for the company to enforce the contract it entered into. This is not a case of property being held on trust by a company for someone else ***Prest v Petrodel Resources Ltd. [2013] AC 415;*** or a case where there has been an abuse of the company's separate legal personality "for the purpose of some relevant wrongdoing," See ***International Hotels Ja. Ltd. v Proprietors Strata Plan No. 461 [2013] JMCA Civ 45*** *(unreported* 4th December, 2013) per Lord President Panton at Para 65 of his judgment. There is no reason demonstrated on the facts or in law to pierce the corporate veil and to treat the Claimant as the alter ego of the company.

32. In summary therefore, given the tenuous nature of the claim as constituted I would not be minded to exercise my discretion pursuant to Section 26.9 and put right errors made in the service of process overseas. It appears to me that the Fixed Date Claim must be dismissed as disclosing no cause of action with a reasonable or real prospect of success. The Claimant has no *locus standi* to bring the claim as framed.

33. The Claim is therefore struck out. Costs to the Defendants to be taxed if not agreed.

BATTS J
PUISNE JUDGE