



IN THE SUPREME COURT
TURKS AND CAICOS ISLANDS

ACTION NOS. CL 101/22
CL 31/23
CL 70/22

BETWEEN:

CL 101/22

ASCENDENCY TCI LIMITED

Plaintiff

-and-

MELVA OLAINÉ WILLIAMS

Defendant

BETWEEN:

CL 31/23

(1) TIPPERARY T&C
MANAGEMENT LTD

(2) THE PALMS RESORT LTD

PLAINTIFFS

-and-

EULON STUBBS

DEFENDANT

BETWEEN:

CL 70/22

MICHAEL SAUNDERS

Plaintiff

-and-

MEGALIE BELLIARD

Defendant

RULING



Before: The Hon. Mr Justice Anthony S. Gruchot

Appearances: In CL 101/22 Ms Devon McLean of Stanbrook Prudhoe for the Plaintiff
In CL 31/23 Mr Murray Snider of Griffiths & Partners for the Plaintiff
In CL 70/22 Dr Finbar Grant of Finbar Grant and Associates for the Plaintiff

Hearing Dates: CL 101/22 – 7th & 9th June and 14th July 2023
CL 31/23 – 8th June 2023 and 12th July 2023
CL 70/22 – 12th July 2023

Venue: Court 5, Graceway Plaza, Providenciales.

To be Handed Down: on 31 July 2023 at 4:00 p.m.

Introduction

1. These three matters all involve *ex parte* applications for substituted service of originating process and provide an opportunity to review the relevant authorities for granting such orders, particularly with the emergence of alternate service methods by email, messaging applications and social media platforms, etc.

Background

CL 101/22

2. This action was started by way of originating summons issued on 3 October 2022. The Defendant is the joint registered proprietor of parcel 50402/175, Kew Township, North Caicos, Turks and Caicos Islands ('TCI'), together with Bernice Augusta Been.
3. The application is supported by an affidavit of Genaro Pimentel Loria, a director of

the Plaintiff. It is Mr Loria's evidence¹ that the Plaintiff was advised informally that Ms Been is deceased.

4. The property is subject to a charge originally to Scotiabank (Turks and Caicos) Ltd registered on 9th July 2012 as instrument number 807/12 to secure the sum of US\$130,000.00, which charge was transferred to the Plaintiff on 12th March 2020. The transfer of charge was registered on 16th March 2020 as instrument number 776/20. On 10th December 2021, a default notice pursuant to section 72 of the Registered Land Ordinance (Cap. 9.01) ('RLO') was served on the Defendant personally, with the Defendant signing an acknowledgement of service receipt. The default notice was served on the Defendant at the property.
5. No payment to the loan account has been made since 31st March 2015. The Plaintiff is seeking the sanction of the Court to rely on variations to sections 72 and 75 of the RLO as permitted by section 77 of the RLO. The Plaintiff is requesting an order to allow it to take possession of the property and sell the same private treaty.
6. The application for substituted service was commenced by way of summons filed on 6th May 2023 supported by the second affidavit of Mr Loria in which he states that he has been advised by Alana Alexander, a paralegal with his attorney's law firm, that a Sergeant Allan Scipio of the Royal Turks and Caicos Islands police force (who also undertakes process service) advised Ms Alexander that the Defendant had left the jurisdiction and moved permanently to the USA. The Plaintiff subsequently arranged for a skip trace search to be carried out but this only revealed information with respect to the TCI. Mr Loria also states that the Defendant's former employer has been contacted but the Defendant is no longer in its employ.
7. The Plaintiff seeks an order of substituted service by leaving a copy of the documents at the property and by way of a notice published in two consecutive editions of the *Gazette*, or alternatively, by publication in two consecutive editions of the TCI

¹ At paragraph 5 of his [first] affidavit.

Weekly News[paper].

CL 31/23

8. On 1st March 2023 Plaintiffs issued a specially endorsed writ of summons against the Defendant in respect of an alleged fraud committed by the Defendant during her employment with the Plaintiffs as an accounts payable clerk. The claim alleges the Defendant orchestrated a scheme based on the issuance of fraudulent cheques to 3rd parties resulting in losses in excess of US\$900,000.00, which sum is claimed by the Plaintiffs.
9. The Defendant was arrested on suspicion of criminal fraud and money-laundering related offences in or around March 2017 and released on police bail. The Defendant failed to report to the Royal to Caicos Islands police on 8th May 2017 in accordance with the grant of bail.
10. It is believed that the Defendant has left the jurisdiction. An extradition request has been sent to the authorities in the USA but efforts to locate the Defendant have been unsuccessful.
11. The Defendant is the registered proprietor of parcel 61112/68, Long Bay Hills, Providenciales, TCI. The property is subject to a Restraint Order in favour of the Financial Crimes Unit.
12. On 6th May 2023 the Plaintiffs issued an *ex parte* summons seeking *inter alia*²:
 - 1) An Order for substituted service under O.65 r.4 of the Writ and Statement of Claim on the Defendant by the publication of the Writ of Summons and Statement of Claim in the TCI *Gazette*.
13. The application was supported by an affidavit of Glenn Peel, the Group Internal

² The Plaintiff also seeks: 2) an order restraining the defendant from removing or transferring any assets from the TCI; and 3) inhibition against dealing with the Property, pursuant to section 124 of the Registered Land Ordinance (Cap. 9:01).

Auditor with The Hartling Group, of which the Plaintiffs form part, sworn on 5th May 2023 in which he suggests the application is also in support of an order for leave to serve out of jurisdiction, but that application has not been not pursued.

CL 70/22

14. This is an action for damages arising from a road traffic accident in which it is alleged the Plaintiff's vehicle was damaged beyond repair together with consequential losses.
15. A generally endorsed writ was filed on 21st July 2022 together with a statement of claim wrongly entitled 'particulars of claim'. The statement of claim was never stamped as filed as it was attached to the back of a blank acknowledgement of service form, which itself was attached to the generally endorsed writ and understandably was overlooked by the Registry.
16. An amended writ together with amended particulars of claim were filed on 31st of August 2022, presumably amended pursuant to O.20 r.1 but not so endorsed, correcting the surname of the Defendant and adding additional claims of interest and costs into the prayer in the writ.
17. The matter came before me on 7th December 2022 on an application for summary judgment filed on 2nd November 2022 supported by an undated affidavit of the Plaintiff, but filed on the same day, together with an affidavit of service dated 18th October 2022 filed on 9th October 2022 sworn by Dr Finbar Grant who also appeared as advocate in the matter on behalf of the Plaintiff. The affidavit sought to suggest that the Defendant had been served by posting the writ of summons and statement of claim (sic) on the Defendant's Facebook page, no leave for substituted service having been sought. The application for summary judgment was dismissed.
18. The matter came back before me on 12th July 2023 on an application for substituted

service of the particulars of claim³ (sic) by way of:

- a) leaving the same at the Defendant's last known address;
- b) serving the documents on the Defendant's insurer, Heritage Insurance Company (Caribbean) Limited; and
- c) serving the documents electronically by posting the same on the Defendant's Facebook page.

19. This application was commenced by way of a document filed on 15th June 2023 entitled "Application for Substituted Service". The application was supported by a further undated affidavit of the Plaintiff, filed on 22nd May 2023 largely in the same terms as that referred to at paragraph 17 above. Further undated affidavits were filed on the same day from Jacqueline Morris and Leila⁴ Rodney both in detailing the efforts to which these individuals had gone to try and serve the Defendant. Ms Rodney also states that she had engaged the services of a third party who had also made efforts to locate the Defendant without success. Additionally, there is a further undated affidavit, again filed on 22nd May 2023, from Dr Grant.

20. The filed affidavits, with the exception of that of Dr. Grant which I refused to accept⁵, provide details of numerous efforts made to contact the Defendant, both by telephone, attendance at her place of employment and attendance at her place of residence. Both Ms Rodney and Ms Morris state that their enquiries revealed that the Defendant no longer is no longer with the known employer. Ms Morris also states that she had made enquiries of the Defendant's neighbours who confirmed she still resided at her residence in Five Cays, Providenciales, although all efforts to locate her there have failed.

³ I infer the application to be, leave to serve the amended writ and wrongly entitled amended particulars of claim.

⁴ Or Lena Rodney. The name is different in the body of the affidavit.

⁵ The Code of Professional Conduct provides:

"33. An attorney shall not in any proceedings in which he is appearing as an advocate express his personal opinion or beliefs as to facts ...

34. An attorney shall endeavour always to maintain his position as an advocate and shall not ... in argument to the court ... [assert] his personal knowledge as to any of the facts involved in the matter under investigation."

Discussion

21. I would make the observation that there appears to have grown a practice in the TCI with respect to bringing *ex parte* interlocutory applications by filing with the Court an interlocutory ‘*ex parte* summons’; alternatively, as can be seen above, an interlocutory ‘summons’ or a general ‘application’. This is an incorrect procedure.
22. O.32 r.1 provides “*Except as provided by Order 25, rule 7, every application in Chambers not made **ex parte** must be made by summons.*” Note 32/6/2⁶ states that “*Rule 1 determines the modes in which applications Chambers may be made, namely, one of three ways, **ex parte**, or **by summons**, or **by notice under the summons for directions** (O.25 r.7).* (Emphasis added)
23. Note 32/6/5 sets out a list of applications that are made **without a summons** and includes an application for substituted service of a writ and other proceedings under O.65 r.4⁷.
24. Each of the above applications is made pursuant to O.65 r.4 which provides:
- “4- (1) If, in the case of any document which by virtue of any provision of these rules is required to be served personally or is a document to which Order 10 rule 1, applies, it appears to the Court that it is impractical for any reason to serve that document in the manner prescribed, the Court may make an order for substituted service of that document.*
- (2) An application for an order for substituted service **may be made by an affidavit** stating the facts on which the application is founded.*
- (3) Substituted service of the document, in relation to which an order made under this rule, is effected by taking such steps as the Court may direct to bring the document to the notice of the person to be served.”* (Emphasis added)

⁶ The Supreme Court Practice 1999 – England and Wales – ‘The White Book’

⁷ Note 32/6/5 – “To the Master” at paragraph (w)

25. Mr Snider directed me to note 65/4/2 *per* Lord Reading CJ in **Porter -v- Freudenberg**⁸ which states:

“The terms of this rule are of very wide application, and give very wide discretion which the Court is not inclined to limit”⁹

26. Further consideration of the rules on substituted service is required. Note 65/4/6 provides:

“Substituted service can only be had in cases in which (if there were no difficulties in the way) personal service [...]”¹⁰ could be had.”

27. In **Porter**, which considered in detail the circumstances in which substituted service could be ordered, Lord Reading CJ said:

“The general rule is that an order for substituted service writ of summons within the jurisdiction cannot be made in any case in which, at the time of the issue of the writ, there could not be at law a good personal service of the writ because the defendant is not within the jurisdiction.”¹¹

28. In **Jay v Budd**¹² Collins LJ said:

“If the writ had not been issued until after the defendant had left this country, the only way in which the defendant could have been properly served would have been by proceeding under the practice as to writs for

⁸ [1915] 1 K.B. 857

⁹ At p. 888.

¹⁰ Note 65/4/6 makes reference to O.10 r.1(2) which deals with alternative permitted methods of service, is omitted from the Civil Rules 2000. As such, personal service must be effected.

¹¹ At p. 887.

¹² [1898] 1 Q.B. 12 at p. 19.

service out of the jurisdiction¹³.¹⁴

29. Again, in **Porter**:

"This general rule is not applied where the Court is satisfied that the defendant went outside the jurisdiction before the issue of the writ in order to evade the service of the writ within it."¹⁵ (Emphasis in the original).

30. The question for the Court in deciding whether to make an order for substituted service is whether it would be practicable to serve the writ in the manner prescribed in the rules. If not then substituted service can be ordered but, if the writ is not likely to come to the attention of the Defendant, nor come to his knowledge then substituted service should not be ordered¹⁶. *Per* Lord Reading CJ in **Porter**:

"In order that substituted service may be permitted, it must be clearly shown that the plaintiff is in fact unable to effect personal service and that the writ is likely to reach the defendant or come to his knowledge if the method of substituted service which is asked for by the plaintiff is adopted."

31. The application of the above with respect to substituted service out of the jurisdiction, given the amendments to the Rules in England & Wales to 1999 and the provisions of the Civil Procedure Rules 2000¹⁷, requires that leave must first be obtained to serve out of the jurisdiction and then an application for substituted service can be made if efforts to serve personally have failed or that the Court is

¹³ Under the Rules of the Supreme Court 1883 (applicable at the date of **Porter**), Order II r.4 provides "No writ of summons for service out of the jurisdiction, or which notice is to be given out jurisdiction, shall be issued without leave of the court or a judge." *c.f.* O. 6 r.7 The Supreme Court Practice 1999 – specifically omitted from the Supreme Court Rules 2000 (TCI). As such the need to issue a concurrent writ for service out of the jurisdiction is unnecessary.

¹⁴ See also: Lord Esher MR and Lopes LJ in **Worcester City and County Banking Co. -v- Firbank** [1894] 1 Q.B. at pp.788, 790 *"There cannot be a good substituted service where personal service would not be legally possible."*; And Davey LJ at p. 792 *"The rule established by the decisions on the subject, such as Fry v. Moore 23 Q.B.D. 83 and Wilding v. Bean [1881] 1 Q.B. 100, is that there cannot be substituted service on a person on whom personal service could not be validly effected."*

¹⁵ See *In re Urquhart* 24 Q.B.D.723; *Watt -v- Barnett* (1898) 3 Q.B.D. 183

¹⁶ See note 65/4/6

¹⁷ There is no distinction in the TCI of a writ issued for service within or without the jurisdiction.

satisfied that such service is impracticable for some reason.

Methods of Substituted Service

32. Again, citing Lord Reading CJ in **Porter**:

“Our English procedure has hitherto been laudably superior to the Continental in not permitting that which may be called “constructive service,” such as, e.g. by public notices or advertisements, whereby defendant may be condemned unheard because he has no knowledge of the proceedings against him.”

33. He went on, after dealing with the issue of service out of the jurisdiction being cured by way of the issue of a concurrent writ, to state:

“The proper order to make in the circumstances in this case ... is to give the leave to make the substituted service and to refer ... back to chambers the directions as to the mode of effecting it ... and such farther terms should be imposed in chambers upon the plaintiff as to advertisement or other means of communication and as to the period to be given to the defendant for appearance as may seem proper.”

34. Note 65/4/16 provides:

“Service by advertisement may be ordered, but only where there is some reason for believing that it will come to the defendant's knowledge. This method of service is sometimes necessary, ... where the defendant's residence is not known, and where there is no reason to believe that he is keeping out of the way to evade service, and it is not possible to name any person, service on whom in substitution would probably be effective in reaching the defendant. In practice, an order for service by advertisement will not be made save in an exceptional case where there is good reason to believe that the

advertisement will be seen by the defendant.”¹⁸

35. In both CL 31/23 and CL 101/22 I am invited to make substituted service orders by way of advertisements. What is clear from the above is that I should only do so in exceptional circumstances and when there is good reason to believe that the advertisement will come to the attention of the respective Defendants.
36. In CL 70/22 I am also invited to make an order by way of substituted service via Facebook or [perhaps] Facebook Messenger. In CL 101/22 Ms McLean renewed/amended her application (to which see below) to seek an order for service via email, and through the ‘LinkedIn’ social media application.
37. Ms McLean referred me to the of Simons J in **Meridian Mortgage Corporation Ltd -v- Jon Michael Hayes Shibley**¹⁹ in which he granted leave to serve via ‘Whatsapp’ messenger attached to the Defendant’s last know telephone number and by email to his last know email address. This was successful in bringing the Defendant before the Court.
38. In **Pirtek (UK) Ltd -v- Jackson**²⁰ Warby J recorded that:

“On 31 July 2017 Master McLeod granted Pirtek’s application, giving the company permission to serve the Amended Claim Form, Particulars of Claim and “all further documents that may be required to be served during the course of the proceedings” by any of three means: by first class post to an address in Hitchen that appeared to belong to Mr Jackson’s daughter (“the Hitchen address”); to the BT email address: via a section of the Website called “contact Bob”. The order made provision for the deemed date of service of the Claim Form and Particulars of Claim, depending on which method of service was adopted. It gave Mr Jackson 14 days after deemed service of the claim

¹⁸ See **Cook -v- Day** (1876) 2 Ch.D 218.

¹⁹ An unreported decision but see (CL 110 of 2021) [2022] TCASC 37 (18 October 2022).

²⁰ [2017] EWCH 2834 (QB) at para. 13

form in which to file an acknowledgement of service, file admission or file a defence.”

39. In **CMOC Sales & Marketing Ltd -v- Persons Unknown and 30 others**²¹ Judge Waksman QC (sitting as judge of the High Court) observed in his preliminary observations:

“Thirdly, there have been a number of innovative features of this case which I’m going to refer at the end of the judgment in some supplemental observations, but I should say that so far as service is concerned, these include alternative service by way of Facebook Messenger and Whatsapp. There have been numerous applications before me to ensure the method of service that is proposed is authorised by the court, and I have received throughout these proceedings updates on how the service has in fact been effected.”

He went on²²:

“These days it is not uncommon where alternative modes of service are justified to find examples of service by posting the relevant materials on a public Facebook platform. But here what was used was the Facebook Messenger service, which is a private service channel. In addition, on 11 May 2018, Mr Justice Knowles permitted service by WhatsApp messenger. This has had the particular virtue that the service will show the sender of the message when the message has been sent by (sic) the addressee and when it has been read by the addressee. As the judge noted on that occasion, he was not setting any precedent, but the short point, in my view, is the court will consider proactively different forms of alternative service where they can be justified in a particular case.”

²¹ [2018] EWCH 2230 (Comm)

²² At para. 190

40. Mr Snider also directed me to a first-instance Canadian decision in **Brisette -v- City-Wide Taxi Limited and Boyd**²³. In that matter, issue was taken in respect of an application for substituted service on the basis that there was nothing in the material filed in support of the application that suggested that any type of substituted service would bring notice of the action to the attention of the Defendant.
41. The evidence cited the efforts made to find the defendant and concluded:
- 1) that he was no longer employed with the known employer and that this employer had no idea of his whereabouts;
 - 2) that checks with the Registrar of Motor Vehicles had shown that the defendant's driving licence of not been renewed and that no address of the defendant was available;
 - 3) that the defendant had left the province and gone to live in Vancouver, BC. Further checks in Vancouver revealed that no information could be obtained as to the whereabouts of the defendant.
42. The above are circumstances not dissimilar to the instant case.
43. The senior master went on to note:
- "There is nothing in this material to indicate that substituted service of any kind will probably bring notice of this action to the attention of the defendant."*
44. After citing further authorities, he held that the court should not order substituted service without a reasonable ground to suppose that the action will come to the notice of the person to be served, in dismissing the application he went on to state:
- "Where by the refusal of an order for substituted service the plaintiff would be deprived of the right to relief that he could not obtain except by action,*

²³ 152 CarswellOnt 293; [1952] O.W.N 501

*the Court may relax this rule to some extent, and where the material indicates there is a **possibility** of the substituted service reaching the defendant it may make an order therefore. This may be done, for example, in actions for the recovery of land ... Ordinarily, however, the material should indicate that if service is made in the manner suggested therein there is a **reasonable likelihood** of its coming to the attention or knowledge the defendant.” (Emphasis added)*

45. Similar commentary is provided at note 65/4/8:

“If the writ is not likely to reach the defendant nor come to his knowledge if service is substituted, then as a general rule substituted service should not be ordered. It is not, however, essentially all cases to show that it will do so, e.g. in actions by a landlord for the recovery of land.”

Application / Analysis

46. In CL 101/22 the leave was sought to serve the Defendant by leaving the documents at the property and by advertising the same by way of notice in *The Gazette* or alternatively, by advertising the notice in the TCI Weekly News. The matter came before me on 7th June 2023 at which time I was minded [erroneously] to make the order sought on the alternative basis of advertising the notice in the TCI Weekly News.
47. On 8th June 2023, matter CL 31/23 came before me, Mr Snider having provided a bundle of authorities and a skeleton argument. Mr Snider has included a full report of the **Porter** case, which I had read prior to his application. He submitted that **Porter** had been referred to simply in support of his submissions that the rule for ordering substituted service was of wide application and gave the Court a wide discretion, but on a full reading, its application is not so narrow and it is authority as to when substituted service may be ordered.
48. The evidence in this matter was that the Defendant had left the jurisdiction having

failed to surrender to police bail. Investigations in the USA had been fruitless. I raised concerns that I was doubtful that publishing a notice of the proceedings in *The Gazette* would come to the attention or knowledge of the Defendant, access to *The Gazette* requiring a subscription²⁴. I did not consider without more, that it was likely that someone who had failed to surrender to bail and instead had decided to flee the country would be someone who would have such a subscription or would be likely to be checking the publication on a regular basis.

49. Mr Snider requested an adjournment to research the position further, which I granted. I also granted his application for an inhibition to be registered on the title to the property until further order of the Court.
50. In light of the above, I recalled CL 101/22, the order not having been perfected, and adjourned that application also, to give an opportunity to Ms McLean to address my concerns as to whether advertising notice of the proceedings in a local newspaper would with any degree of certainty be likely to come to the attention of a Defendant who was no longer in the jurisdiction.

CL 101/22

51. On 14th July 2023 the Plaintiff filed an amended summons seeking additionally, service out of the jurisdiction under O. 11 r.1 and alternative methods of substituted service by way of email to the Defendant's last known email addresses and/or via the Defendant's LinkedIn account.
52. The amended application is supported by an affidavit of the aforementioned Alana Alexandra, who states that she is engaged full-time in the Plaintiff's affairs and as such could give further first-hand evidence. Additionally, on 11th July 2023, an affidavit was filed by Sergeant Scipio confirming his efforts to contact the Defendant and in which he states "*When I attended the property, I noticed that it is noticeably abandoned. The yard is overgrown with wild plants and trees which I believe to have*

²⁴ The present subscription fee is \$200.00 per annum.

been struck down by the hurricane in September 22 remain down. There were no vehicles or any other indication that the property was occupied.” Sergeant Scipio also states that he believes the Defendant now resides in the USA.

53. Given the above, I am persuaded that on the balance of probabilities, the Defendant is no longer residing in the TCI. I must therefore give consideration to the application for leave to serve the process out of the jurisdiction. For the reasons set out in paragraphs 28 and 29 above and the footnotes thereto, I do not need to be concerned as to whether the Defendant was in the jurisdiction when the writ was issued.
54. In consideration of whether to grant leave to serve out of the jurisdiction, Ms Mclean referred me to the recent decision in **Sebastian Holdings Inc. and ors. v Sarek Holdings Ltd. and ors.**²⁵ in which the Learned Registrar sets out in detail the requirements for the grant of leave. I do not need to rehearse the same again here. The claim clearly falls within the jurisdictional gateways, it concerning the sale by private treaty of a property within the jurisdiction as a result of a breach of contract made within the jurisdiction. The claim satisfies O.11 r. 1(d), (e), (g), (h) and (i) and as such is an action where service out of the jurisdiction is permissible.
55. The Defendant is a proper party to the action, being the sole surviving co-proprietor²⁶ and there is an issue that is properly before the Court. The Supreme Court of the TCI is the only Court that can grant the relief sought and therefore satisfies the *forum conveniens* test.
56. In all the circumstances I would grant leave to serve out of the jurisdiction.
57. What then about substituted service? This is more problematic, given the whereabouts of the Defendant are unknown.

²⁵ (CL 78 of 2022) [2023] TCASC 69 (11 July 2023)

²⁶ Ms McLean provided the Court with a copy affidavit of Jabrina Gardiner filed on 24th May 2016 in action CL 89/16, which was a similar action for order for sale by private treaty brought by Scotiabank. In that affidavit, Ms Gardiner states that she is aware that Bernice Augusta Been passed away on 22nd September 2014.

58. For the reasons set out in paragraphs 47 to 50 I am not of the view that leaving copies of the documents at the premises of the Defendant is likely to bring them to her attention in light of the evidence presented. I believe the idea of leaving documents prominently displayed at the premises arises from the provision for service of notices under the Registered Land Ordinance (Cap. 9.01) which provides at section 151 (d):

"If service cannot be effective in one of the above-mentioned ways, [service shall be deemed] by displaying it in a prominent place on the land affected and by publishing it in three consecutive issues of the Gazette".

59. That provision relates only to the service of notices under the Registered Land Ordinance and not to proceedings in the Supreme Court and would be contrary to all that is set out in the foregoing paragraphs.

60. The authorities are clear that the method of substituted service ordered by the Court must be one which in all reasonable probability, if not certainty, will be effective in bringing knowledge of the writ or the notice of the writ (as the case may be) to the Defendant²⁷.

61. The evidence before me is that the last time that the Plaintiff can be sure the Defendant was in the TCI was on 10th December 2021 when she was served with the section 72 notice. Her whereabouts are unknown and whilst Sergeant Scipio states he believes that she has moved permanently to the USA, he does not say why he has such belief.

62. For similar reasons, I am not in the circumstances, persuaded without more that publishing notice of the proceedings in the local newspapers has a reasonable probability that the proceedings will be brought to the attention of a Defendant.

63. In the alternative Ms McLean suggests that service could be affected by way of email

²⁷ Note 65/4/17

to the last two email addresses known to the Plaintiff. Ms Alexander exhibits correspondence from Scotiabank to those email addresses (albeit back in 2017). She also advises that she has recently sent emails to those addresses and exhibits automatically generated delivery receipts which Ms Alexander suggests that the email accounts are still active. I have no reason to believe that she is incorrect.

64. Ms Alexander also advises that from an internet search, she has managed to track down a LinkedIn profile, a printout of which is also exhibited to her affidavit. Whilst that profile has not been updated with any new employment details, the account is still active, and substituted service is suggested through that media.
65. Having regard to the nature of the application in that it seeks possession of land, in circumstances where the Plaintiff is entitled to sell the land under the terms of the charge by public auction in any event, and also taking into account that the property has been abandoned, I am of the view that this application falls within similar circumstances as envisaged at paragraphs 44 and 45 above and that service via the email addresses and through LinkedIn has a possibility of bringing the proceedings to the attention of the Defendant. I would therefore give leave for substituted service by those methods.

CL 31/23

66. This application is based on the premise that it is impracticable for the Plaintiffs to serve the Defendant as the Defendant's whereabouts are unknown. Mr Snider in his supplementary skeleton argument suggests that when the matter came before me on 26th June 2023 the request for leave was refused. That is not correct. The matter came before me on 8th June 2023 at which time, as noted in paragraphs 47 to 49 I raised certain concerns and adjourned the matter for further consideration.
67. The salient facts of this application are set out in paragraphs 8 to 13 above.
68. There is no application in this matter for leave to serve the proceedings out of the jurisdiction. The evidence before the Court is that the best indication of when the

Defendant fled the TCI was before 8 May 2017 based on an email from Detective Inspector Nemours dated 9 May 2017 which he states *"I would also like to inform you that Mrs Eulton Stubbs was scheduled to return to the station yesterday according to her bail condition, however she DID NOT show up. The surety was contacted and all indications given is that she is not on island as he have (sic) been trying to find her for the past two weeks and have (sic) not been able to."*

69. The writ was issued after the Defendant had left the jurisdiction. Service of that writ therefore could not have been lawfully effected within the jurisdiction and as such substituted service should not be ordered²⁸. There is no suggestion that the Defendant left the TCI in order to evade the service of the writ such that the application of the general rule could be avoided.
70. In the circumstances the application for substituted service is refused and I do not need to deal in detail with consideration of the proposed methods of substituted service but trust that this exposition of the law in respect of the same is of sufficient guidance in the event any fresh application is made and is an indication of the reasons why I would have refused the same.

CL 70/22

71. This matter is less complicated in that there is no indication that the Defendant is out of the jurisdiction, to the contrary there is evidence that the Defendant is in the jurisdiction and a suggestion that she is actively evading service.
72. As noted above, the application seeks substituted service by:
- a) leaving the same at the Defendant's last known address;
 - b) serving the documents of the Defendant's insurer, Heritage Insurance Company (Caribbean) Limited; and
 - c) serving the documents electronically by posting the same on the

²⁸ See paragraphs 26 to 28 above.

Defendant's Facebook page.

73. I am somewhat perplexed by the suggestion that the Defendant still resides at the same address but that the process servers have been unable to track the Defendant down, as one would have thought an early morning or late evening call would have produced results, but the evidence is what it is.
74. I refer to the affidavit of the Plaintiff in which he details his interaction with the Defendant's insurer and its attorneys. Note 65/4/8 and to paragraphs 44 and 45 above which deal with the circumstances in which the rule that the substituted service must most likely if not certainly come to the attention of the Defendant can be relaxed. Note 65/4/8 provides:

"In personal injury actions arising out of road accidents, if the defendant cannot be traced, the affidavit evidence must show that all reasonable efforts have been made to trace him and to effect personal service of the writ of summons on him, and if the Master is so satisfied, then ... in cases where the defendant is insured and the identity of the insurers is known, the Master may make an order for substituted service on the defendant at the address of the insurers."

75. There is no good reason to limit the above to personal injury actions and in my view, the same applies to other damages arising from a road traffic accident.
76. Dr Grant provided me with a letter from the Defendant's insurer dated 10 February 2022 to himself as the attorney for the Plaintiff. The correspondence appears to be open correspondence and states *"After further review of the claim and the new information being presented to us, we will agree to settle the claim with your client on the basis of the total loss as follows: ..."* Whilst the terms of offer of settlement were not agreed and later withdrawn by the insurers attorneys²⁹ it seems that liability in

²⁹ Griffiths and Partners wrote on 16 March 2022 repeating the offer made in the letter of 10th February 2022 stating that it would be withdrawn if it was not accepted within 14 days.

this matter is not at issue although, I make it clear I make no such finding.

77. I am of the view that the appropriate order to make in this matter is that the Plaintiff shall have to leave to serve the writ of summons and ancillary papers on the Defendant's insurer, Heritage Insurance Company (Caribbean) Limited at their office of business in Providenciales, TCI and it is unnecessary to venture into the less certain arena of service via Facebook.
78. I note that the writ was issued on 21st July 2021 and will therefore have expired before this decision can be handed down and service can be effected. I, therefore, Order that the validity of the writ is extended for a period of 3 months from 21st July 2023 pursuant to O.6 r.2. Dr Grant should attend at the Registry to have the writ so endorsed and stamped before service.

Dispositions

CL 101/22

79. The Plaintiff has leave to serve the Defendant out of the jurisdiction.
80. The Plaintiff also has leave to serve the Defendant by substituted service to the two last email addresses known to the Plaintiff and through the personal messaging facility within the LinkedIn application.
81. The Defendant has 28 days to acknowledge service.
82. Costs of the application be costs in the cause.

CL 31/23

83. The application for substituted service is dismissed with no order as to costs.
84. I shall hear Mr Snider with respect to what is to happen regarding the inhibition over parcel 61112/68 which I ordered on 8th June 2023.

CL 70/22

85. The writ is extended for service for 3 months from 20th July 2023.

86. The Plaintiff has leave to serve the Writ of Summons and Statement of Claim by substituted service on the Defendant's insurers, Heritage Insurance Company (Caribbean) Limited at their office of business in Providenciales, TCI.

87. The Defendant has 14 days to acknowledge service.

88. Costs of the application be costs in the cause.

31st July 2023

The Hon. Justice Anthony S. Gruchot
Judge of the Supreme Court

