

**IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2021] SGHC 237

Suit No 117 of 2021 (Summons No 4004 of 2021)

Between

Glenville, Chantell

... Plaintiff

And

- (1) Quek Swee Chong
- (2) ASC Clinic for Women Pte
Ltd

... Defendants

GROUNDS OF DECISION

[Civil Procedure] — [Delay]
[Civil Procedure] — [Service]
[Civil Procedure] — [Writ of summons]

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Glenville, Chantell
v
Quek Swee Chong and another

[2021] SGHC 237

General Division of the High Court — Suit No 117 of 2021 (Summons No 4004 of 2021)
Kwek Mean Luck JC
24 September 2021

26 October 2021

Kwek Mean Luck JC:

Introduction

1 Where the six-month validity of a Writ of Summons expires on a Saturday, is it validly served if done so by the next working day, on the following Monday? This was the question in Summons No 4004 of 2021 (“SUM 4004”). I held that by virtue of O 3 r 3 of the Rules of Court (2014 Rev Ed) (“ROC”), the Writ of Summons had not expired when served on the following Monday. As there does not appear to be any local decision on this point, I set out my reasons below.

Facts

2 The material facts are not disputed. The first defendant, Dr Quek Swee Chong (“Dr Quek”) is a Senior Consultant Obstetrician and Gynaecologist with the second defendant, ASC Clinic for Women Pte Ltd (the “Clinic”). The plaintiff, Ms Chantell Glenville (“Ms Glenville”) was a patient of Dr Quek and the Clinic.

3 Ms Glenville alleged that Dr Quek and/or the Clinic breached their contractual duties and/or were negligent in the medical examination, diagnosis, advice, treatment and care rendered to her. She therefore applied for a Writ of Summons (the “Writ”), which was issued on 1 February 2021.

4 On 29 July 2021, Ms Glenville’s lawyers, Braddell Brothers LLP (“BB”) informed the defendants’ lawyers, Dentons Rodyk & Davidson LLP (“Dentons”) that Ms Glenville had commenced Suit No 117 of 2021 against the defendants, and asked Dentons to confirm if Dentons had instructions to accept service of the Writ on behalf of either or both of the defendants.¹ BB did not state a deadline for Dentons to respond.

5 On 30 July 2021, BB requested Dentons to confirm by 12 noon on Monday, 2 August 2021, if Dentons had instructions to accept service of the Writ on behalf of either or both of the defendants. BB further stated that if Dentons did not reply by the above deadline, BB would have to serve the Writ directly on the defendants on 2 August 2021. BB stated that 2 August 2021 was “the last day for service of the Writ”.²

¹ Toh Cher Han’s affidavit dated 26 August 2021 (“Toh’s affidavit”) at para 4 and p 8.

² Toh’s affidavit at para 5 and p 7.

6 On 2 August 2021, Dentons responded to BB, confirming that it had instructions to accept service of the Writ on behalf of both defendants.³ The Writ was served less than an hour later.⁴ Appearance was entered for both defendants on that same day.

7 In SUM 4004, the first and second defendants applied for a declaration that the plaintiff’s Writ filed on 1 February 2021 had expired by the time it was served on the defendants on 2 August 2021.

Whether O 3 r 3 of the Rules of Court applied to extend the validity of the Writ

8 Under O 6 r 4(1)(b) of the ROC, a writ of summons that is to be served within the jurisdiction has a validity of six months, beginning with the date of its issue. The Writ was issued on 1 February 2021. Six months from that date would be 31 July 2021. The Writ was served on 2 August 2021.

9 31 July 2021 is a Saturday and is not a “working day” as defined by O 1 r 4(1) of the ROC. The plaintiff submitted that by virtue of O 3 r 3 of the ROC, the Writ would only expire on the next working day, *ie*, Monday, 2 August 2021. The defendants contended that O 3 r 3 of the ROC did not apply to extend the validity of the Writ.

10 The defendants’ case rested on three planks:

- (a) First, O 3 r 3 of the ROC does not apply based on a plain reading of the rule.

³ Toh’s affidavit at para 6 and p 7.

⁴ Toh’s affidavit at para 8 and pp 13–14.

(b) Second, the legal regime relating to the validity and renewal of a writ of summons under O 6 r 4 of the ROC excludes the operation of O 3 r 3 of the ROC.

(c) Finally, the history of the amendments to O 3 r 3 of the ROC supports the view that it does not apply to deem a writ of summons that had expired on a non-working day to be valid for service on the next working day.

11 I will address these arguments in turn.

Plain reading of O 3 r 3 of the Rules of Court

12 Order 3 r 3 of the ROC reads:

Time expires on a day other than working day (O. 3, r. 3)

3. Where the time prescribed by these Rules, or by any judgment, order or direction, for doing any act expires on a day other than a working day, the act shall be in time if done on the next working day.

13 The defendants contended that O 3 r 3 of the ROC does not state that if the validity of a writ of summons expires on a non-working day, the writ of summons would be deemed unexpired and valid for the purposes of service on the next working day.⁵

14 Further, for O 3 r 3 of the ROC to apply, three requirements must be satisfied:⁶

(a) an act needs to be done;

⁵ Defendants' submissions at para 26.

⁶ Defendants' submissions at para 28.

- (b) there must be a time prescribed by the ROC, or by any judgment, order or direction for the doing of that act; and
- (c) the time for doing that act expires on a day other than a working day.

15 The defendants argued that the “act” in the present case was the service of the Writ. As such, the second requirement was not satisfied as the ROC does not prescribe a time by which a writ of summons has to be served. There was also no judgment, order or direction in this case that required the plaintiff to serve the Writ by 31 July 2021.⁷ They submitted that while a writ of summons (that is issued for service within the jurisdiction) should be served within six months beginning with the date of its issue, this is not because there is any provision in the ROC that prescribes that a plaintiff *must* serve the writ of summons within six months. Instead, this is but a logical consequence of the fact that: (a) a writ of summons must be served on each defendant (O 10 r 1(1) of the ROC); and (b) for the purposes of service (within jurisdiction), a writ of summons is only for a period of six months at first instance (O 6 r 4(1)(b) of the ROC).⁸

16 The plaintiff cited O 6 r 4 of the ROC, which reads:

Duration and renewal of writ (O. 6, r. 4)

4.—(1) Subject to the other provisions of these Rules, for the purposes of service, a writ is valid in the first instance —

[...]

(b) in any other case, for 6 months,
beginning with the date of its issue.

⁷ Defendants’ submissions at paras 29–30.

⁸ Defendants’ submissions at para 31.

17 The plaintiff emphasised that O 6 r 4(1) of the ROC begins with the words “[s]ubject to other provisions of these Rules”.⁹ The plaintiff submitted that O 3 r 3 of the ROC was one such rule to which O 6 r 4 of the ROC was subject to.

18 I was unable to agree with the defendants that the ROC does not prescribe a time by which a writ of summons must be served.

19 Order 6 r 4(1)(b) of the ROC states that the validity period of six months in the first instance for a writ is “for the purposes of service”. In other words, the ROC prescribes that for the purposes of service, a writ *must* be served within six months in order to be valid. The thrust of the defendants’ submission was that there is no explicit language that the plaintiff “must” serve the Writ within six months. However, O 6 r 4(1)(b) of the ROC effectively requires that. It was, after all, the basis on which the defendants objected to the plaintiff’s failure to serve the Writ by 31 July 2021.

20 Let me take another provision of the ROC as an example. Order 12 r 4(a) of the ROC states that in the case of a writ served within jurisdiction, “the time limited for appearing” is “[eight] days after service of the writ”. That provision does not use the explicit phrasing that the defendant “must” appear within eight days after the service of the writ, but it is clear from O 12 r 4(a) of the ROC that if the defendant wants to appear, he *must* do so within eight days after the service of the writ. The defendants acknowledged that O 3 r 3 of the ROC could apply to O 12 r 4(a) of the ROC. But there is little material difference between O 12 r 4(a) of the ROC and O 6 r 4(1)(b) of the ROC. Both contain a specified

⁹ Plaintiff’s submissions at paras 6–7.

period for an action, without explicitly mandating that a certain act *must* be done within a certain time.

21 Further, *Singapore Civil Procedure 2021* vol 1 (Cavinder Bull gen ed) (Sweet & Maxwell, 2021), at para 3/3/2 (which relates to O 3 r 3 of the ROC) recognises that “[i]f a period of limitation expires on a day which is not a working day, a writ issued on the next available working day will still be in time and within the relevant limitation period”.

22 That same paragraph also cites *Pritam Kaur v S. Russell & Sons Ltd* [1973] QB 336 (“*Pritam Kaur*”). The question there, before the English Court of Appeal, was whether the writ was issued within the time required by s 2 (1) of the Limitation Act 1939 (c 21) (UK) (“Limitation Act 1939”), which states: “The following actions shall not be brought after the expiration of three years from the date on which the cause of action accrued ...” The limitation period there expired on a non-working day and the writ was served on the next working day in the court offices. The court thus had to decide whether the writ was validly served. Whilst the court was concerned with the Limitation Act 1939, it drew a parallel with the English Rules of Court. At p 349, Lord Denning said:

The nearest parallel is the case where a time is prescribed by the Rules of Court for doing any act. The rule prescribed in both the county court and the High Court is this: If the time expires on a Sunday or any other day on which the court office is closed, the act is done in time if it is done on the next day on which the court office is open. I think we should apply a similar rule when the time is prescribed by statute. By so doing, we make the law consistent in itself: and we avoid confusion to practitioners. So I am prepared to hold that when a time is prescribed by statute for doing any act, and that act can only be done if the court office is open on the day when the time expires, then, if it turns out in any particular case that the day is a Sunday or other dies non, the time is extended until the next day on which the court office is open.

23 The limitation period in *Pritam Kaur* should have expired on 5 September 1970, which was a Saturday. However, Lord Denning held that the plaintiff had until 7 September 1970 (a Monday) to issue her writ and so the issuance of the writ on 7 September 1970 was valid. The other judges agreed with Lord Denning.

24 The court in *Pritam Kaur* was concerned with the *validity* of the writ, because after the limitation period expires, there is no cause of action open to the plaintiff. In the present case, we are also concerned with the *validity* of the writ, albeit in relation to the six-month validity period under O 6 r 4 of the ROC. For all material purposes, there is no difference between the two situations. If anything, the willingness of the court in *Pritam Kaur* to treat the writ as valid when served on the next working day, thereby avoiding the expiry of the limitation period, when there was no such saving provision in the Limitation Act 1939, reinforces the argument here that where there is O 3 r 3 of the ROC, O 3 r 3 of the ROC should operate to allow the validity of the writ to similarly be preserved for the purposes of O 6 r 4(1)(b) of the ROC, for service on the next working day.

25 Accordingly, my view is that on a plain reading of O 3 r 3 of the ROC, the validity of the Writ would have been extended to Monday, 2 August 2021.

Legal regime relating to the validity and renewal of a writ of summons under O 6 r 4 of the ROC

26 The defendants' second argument was that O 6 r 4(2) of the ROC sets out a regime whereby the six-month validity period is absolute and does not countenance the operation of O 3 r 3 of the ROC. Order 6 r 4(2) of the ROC reads:

(2) Subject to paragraph (2A), where a writ has not been served on a defendant, the Court may by order extend the validity of the writ from time to time for such period, not exceeding 6 months at any one time, beginning with the day next following that on which it would otherwise expire, as may be specified in the order, if an application for extension is made to the Court before that day or such later day (if any), as the Court may allow.

27 The defendants submitted that under O 6 r 4(2) of the ROC, even if the writ expires on a Saturday, the writ must be renewed so as to remain valid from the next day, *ie*, Sunday.¹⁰ They also argued that a writ of summons can be served on a non-working day, including Saturday and Sunday. Therefore, if a plaintiff cannot serve the writ on the Saturday on which the writ expires, he has to renew the writ.¹¹

28 However, there is nothing in the language of O 6 r 4 of the ROC that excludes the operation of other provisions of the ROC. There is nothing in the language that suggests that O 6 r 4 of the ROC creates an “absolute” regime. Indeed, O 6 r 4(1)(b) starts by stating that it is “[s]ubject to the other provisions of these Rules”.

29 There is also nothing in the language of O 3 r 3 of the ROC that so limits it. Nor does the operation of O 3 r 3 of the ROC undermine the legal regime set out in O 6 r 4 of the ROC. The effect of O 3 r 3 of the ROC is that where the validity of the writ expires on a Saturday, which is a non-working day, it can be validly served on the next working day, which is the following Monday. But in situations where the writ expires and O 3 r 3 of the ROC is unable to assist, a plaintiff would need to seek extension of the validity of the writ as provided for under O 6 r 4(2) of the ROC.

¹⁰ Defendant’s submissions at para 35.

¹¹ Defendant’s submissions at para 38.

30 Accordingly, my view is that the legal regime under O 6 r 4 of the ROC does not exclude the operation of O 3 r 3 of the ROC.

History of the amendments to O 3 r 3 of the ROC

31 The defendants’ third argument was that under the old ROC (Rules of Court (1997 Rev Ed)), the previous version of O 3 r 3 of the ROC would not have applied to writs of summons because the service of the writ need not be done at the Registry. The previous version of O 3 r 3 of the ROC, prior to the June 2001 amendments), reads:

Where the time prescribed by these Rules, or by any judgment, order or direction, for doing any act at the Registry expires on a Sunday *or other day on which the Registry is closed*, and by reason thereof that act cannot be done on that day, the act shall be in time if done on the next day on which the Registry is open.

[emphasis added]

32 The defendants submitted that under the previous version of O 3 r 3 of the ROC, a writ that expired on a non-working day would have ceased to be valid after that non-working day.¹² A defendant’s right to rely on the defence of limitation would also accrue on that same day. If the current O 3 r 3 of the ROC were to now apply to extend the validity of writs of summons which expired on a non-working day, it would significantly alter a defendant’s legal right, as the defendant can now only rely on the defence of limitation on the next working day. The Rules Committee that proposed the amendments would surely have expressly made it clear if it intended to do so. That the Rules Committee was silent on the amendments to O 3 r 3 of the ROC would therefore strongly suggest

¹² Defendants’ submissions at paras 40–43.

that a defendant’s right to rely on the defence of limitation did not change after the amendments to the ROC.¹³

33 I was unable to agree with this. First, unlike the old O 3 r 3, the current O 3 r 3 of the ROC clearly does not contain any language limiting its application to acts to be done *at the Registry* – rather, the current O 3 r 3 applies to “any act” for which a certain time has been prescribed by the ROC or by any judgment, order, or direction. Second, unlike the old O 3 r 3, which only concerned days when the Registry was closed, the current O 3 r 3 clearly does not contain any language limiting it to Registry closures. The courts have also applied the current O 3 r 3 without such constraints. For example, in *CSR South East Asia Pte Ltd (formerly known as CSR Bradford Insulation (S) Pte Ltd) v Sunrise Insulation Pte Ltd* [2002] 1 SLR(R) 1079, the court applied the current O 3 r 3 of the ROC in relation to the defendants’ obligation to make payment to the plaintiffs directly following a consent order (at [4], [11]). This does not involve the Registry. Similarly, there is no prohibition against applying the current O 3 r 3 of the ROC to extend the validity of a writ, a situation which also does not involve the Registry.

34 It would also be onerous to expect a Rules Committee to state all the potential legal implications arising from an amendment, failing which it does not extend into that legal area, even if the plain language of that provision allows for it.

35 Accordingly, my view is that the history of the amendments of O 3 r 3 of the ROC does not support the argument that O 3 r 3 of the ROC does not

¹³ Defendant’s submissions at para 48.

have the effect of deeming a writ that has expired on a Saturday to be valid for service on the next working day.

Conclusion

36 For the reasons given above, I dismissed SUM 4004 and found the Writ to have been validly served on 2 August 2021. I heard the parties on costs and awarded costs to the plaintiff of \$5,000 inclusive of disbursements.

Kwek Mean Luck
Judicial Commissioner

Kronenburg Edmund Jerome, Wu Guolin Colin, Tammie Khor and
Luen Ka Fai Joseph (Braddell Brothers LLP) for the plaintiff;
Lek Siang Pheng, Toh Cher Han, Ng Cheng Mun Clara
(Dentons Rodyk & Davidson LLP) for the defendants.
