



**IN THE GRAND COURT OF THE CAYMAN ISLANDS  
CIVIL DIVISION**

**Cause No.: G 126 of 2019**

**BETWEEN**

**FIDELITY BANK (CAYMAN) LTD**

**Plaintiff**

**AND**

**BRODY ISAIAH THOMAS**

**Defendant**

**ON THE PAPERS**

**Hon. Mme Justice Margaret Ramsay-Hale**

**Date of Decision: 21 December 2020**

*Application to renew writ - discretion to renew writ after expiry of validity - successive renewals in one application not permitted Chappell v Cooper [1980] 1 WLR. 957 – when leave to amend required*

**RULING**

1. By *ex parte* summons filed on 6 November 2020, the Plaintiff, Fidelity Bank (Cayman) Ltd, seeks leave to amend their Writ of summons and Statement of Claim dated 31 July 2019 (together “the Writ”), pursuant to GCR Order 20 rule 5(2). They also seek to extend the validity of the Writ to expire four months from the date of the order of the Court pursuant to GCR Order 6 rule 8(2).
2. Campbells, who act for the Plaintiff, rely in support of their summons on the affidavit of Garrett Verling, an employee of the firm. His evidence is that a process server was instructed to serve the Writ and Statement of Claim on the Defendant, Mr. Thomas, on 31 July 2019. On 23 September 2019, Campbell’s contacted the process server to ascertain whether the documents had been served. The process server responded the same day and advised that the Defendant no longer lived at the address provided and he could not be contacted by phone, and they were, therefore, unable to effect service.

3. The Writ, which was valid under the Rules for 4 months to 30 November 2019, was served on the Defendant on 23 December 2019. The Defendant signed the cover letter acknowledging receipt of the documents but did not file an Acknowledgement of Service with the Court.
4. As the Writ was served after it had expired, it was invalid and its service on the Defendant ineffective to command his appearance at court.
5. The Plaintiff now seeks to renew the Writ pursuant to Order 6 rule 8 (2) which provides:

*“(2) Subject to paragraph (3), 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 4 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.”*

6. The effect of the rule is that the Court may only extend the validity of the Writ for 4 months on any application. Further, the renewed period of 4 months would begin on the day after the date on which it would expire, and not from the date of the order of the Court as sought by the Plaintiff in this application.
7. In this case, the extension would be to 1 April 2020, a date long past. To bring this Writ up to date, the Court would have to allow three renewals<sup>1</sup> in this application, which is not permitted. This is set out at note 6/8/2 of the **White Book**, where the learned authors state that *“the laxer practice of allowing two or more successive renewals to bring the Writ up to date is no longer available since Chappell v Cooper [1980] 1 WLR. 957.”*
8. The Rules also provide that the application to renew must be made before the expiry of the Writ. While the Court has the power to permit a later application, that later application

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<sup>1</sup> 1 December to 1 April, 2 April to 2 August, 3 August to 3 December



must be made within the appropriate period of the first expiry which, in this case, was before 1 April 2020.

9. The application is hopeless.
10. The Plaintiff also seeks leave to amend the Writ pursuant to Order 20 rule 5(2) which provides:

*“Where an application to the Court for leave to make the amendment mentioned in paragraph (3), (4) or (5) is made after any relevant period of limitation current at the date of issue of the writ has expired, the Court may nevertheless grant such leave in the circumstances mentioned in that paragraph if it thinks it just to do so.”*

11. I am not sure if the application to amend the Writ is intended to bring it up to date for the purposes of the application to renew but if it were, it would be misconceived as even if leave were granted, the date of the Writ would remain the same, that is to say 31 July 2019: *“When an amendment is made to the Writ, the amendment dates back to the date of the original issue of the Writ: **White Book** at Note 20/3/2.*
12. The applicable rule in this case where the Writ has not been served is GCR Order 20 r.1 (3) (c) which provides that leave is not required to amend a Writ which has not been served. The Plaintiff would be at liberty to amend the Writ without leave, had its validity not expired. As the Writ cannot now be renewed, the application to amend is redundant.
13. For the foregoing reasons, the Plaintiff’s *ex parte* summons is dismissed.



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**Hon Mme Justice Ramsay-Hale**  
**Judge of the Grand Court**