

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 HOLDEN AT GEORGE TOWN, GRAND CAYMAN

Cause No. G322 OF 2013

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6 BETWEEN:

7 ROBERT DOUGLAS JOSEPH
8 (Widower)
9 (as Personal Representative of the Estate of Tanya Edith Joseph, Deceased)

PLAINTIFF

10
11 AND:

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13 P.M.C. LTD
14 (t/a CHRISIE TOMLINSON MEMORIAL HOSPITAL)

DEFENDANT

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16
17 In Chambers on 2 and 3 September 2014

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19 Before the Honourable Justice Seymour Panton



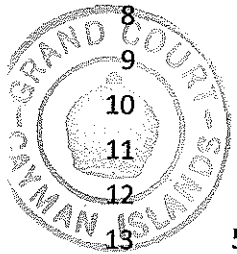
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22 **APPEARANCES:**

Mr. Richard Annette of Stuarts Walker Hersant for the Plaintiff

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24 Mr. Stephen Symons and Mrs Peta-Gaye Golaub-Symons of Bodden & Bodden
25 for the Defendant

26
27 **RULING**

- 28 1. Before me is a summons dated 9 June 2014 seeking extension of time to serve a
29 statement of claim. The plaintiff is the widower of Tanya Edith Joseph who died on 25
30 September 2010 following surgery performed on her at the Chrissie Tomlinson
31 Memorial Hospital in Grand Cayman.
32
- 33 2. On 20 September 2013, the plaintiff, as the personal representative of the deceased,
34 issued a writ of summons against the defendant in respect of a claim for damages under
35 the Torts (Reform) Law (1996 Revision) and the Estate Proceedings Law (1995 Revision).
36 The writ was served in January 2014, and on 29 January 2014, the defendant's
37 acknowledgment of service was filed with the Clerk of Courts.
38



- 1 3. According to the general indorsement on the writ, the claim is on the basis that the
2 defendant was negligent and breached its duties in conducting the post-surgical care of
3 the deceased who died in its care.
4
- 5 4. Oder 18 r.1 of the Grand Court Rules requires that a statement of claim be served on a
6 defendant before the expiration of 14 days after the defendant has given notice of
7 intention to defend. In the instant case, therefore, the statement of claim ought to have
8 been served by 16 February 2014. This was not done. However, Order 3 r. 5(1)
9 authorizes the court, on such terms as it thinks just, to extend the time for the plaintiff
10 to effect service. An order of the court is not necessary if the plaintiff is able to secure
11 the written consent of the defendant: Order 3 r. 5(3).
12
- 13 5. The defendant has not consented to the plaintiff's request for an extension. However,
14 the defendant had given its consent on two earlier occasions and the plaintiff failed to
15 seize the opportunity to regularize the situation. The last such consent expired on 23
16 May 2014.
17
- 18 6. In support of his application, the plaintiff filed an affidavit on 1 September 2014, in
19 which he said that in order to prepare his statement of claim, it was necessary for the
20 estate to first obtain expert evidence in respect of the treatment received by the
21 deceased. The estate also had to secure copies of all medical records that the
22 defendant has relating to the deceased, and to dispatch same to the United Kingdom for
23 expert opinion. The estate's attorneys are now in possession of an interim report from
24 the expert suggesting that the deceased had "suffered from a very serious lack of care".
25 Further documents have been requested of the defendant but it has refused the
26 request.
27
- 28 7. A statement of claim was prepared and served on 23 July 2014.
29
- 30 8. In his submissions, Mr. Richard Annette said that the case cannot be described as an
31 insignificant one. It is a complicated medical matter which requires expert evidence to
32 proceed. There was no deliberate intention on the part of the plaintiff to ignore or flout
33 the rules; nor has there been a cavalier approach by the plaintiff to his responsibilities.
34 The case is actively progressing, he said, and the delay so far has been due to the
35 plaintiff's effort to avoid having to amend the statement of claim later. In any event,
36 said Mr. Annette, there has been no discernible prejudice to the defendant. He said

1 further that the case is generally important due to the nature of the medical facility and
2 its procedures in a wider context.

3
4 9. Mr. Annette concedes that the plaintiff may have gone about the matter in an
5 undesirable manner, that is, by filing the writ first and then looking to see what grounds
6 are available. However, he submitted that in order to prevent the granting of an
7 extension the defendant needs to show that there are exceptional circumstances to
8 warrant the refusal. He referred to the cases Costellow v Somerset County Council
9 [1993] 1 ALL ER 952, and Streeter and K Coast Development v Immigration Board and
10 Governor-in-Council [1999] CILR 264, delivered on 25 May 1999.

11
12 10. Mr. Stephen Symons, in response, said that the plaintiff has been persistent in delaying
13 the service of the statement of claim. He submitted that the plaintiff had exposed
14 himself to an accusation of procedural abuse by the use of questionable tactics. The
15 claim, he said, should have been put in order before the writ was filed. In this regard,
16 he referred to Hytrac Conveyors Limited v Conveyors International Limited [1982] 3 ALL
17 ER 415.

18 In Mr. Symons' view, the plaintiff has totally disregarded time requirements and limits,
19 and has not put forward any substantial reasons for the delay.

20 11. In Costellow v Somerset County Council, the plaintiff issued a writ claiming damages for
21 personal injuries suffered when he slipped on loose gravel thrown onto a pavement
22 during road resurfacing works. He was tardy in serving a statement of claim as well as a
23 medical report or schedule of loss, as required by the rules. The defendant issued a
24 summons to dismiss the action, one hundred and eleven days after the statement of
25 claim should have been served.

26
27 12. The lower court made the order sought by the defendant. An application by the
28 plaintiff to serve the statement of claim out of time was also refused. On appeal to the
29 Court of Appeal of England, it was held that in the ordinary way and in the absence of
30 special circumstances, such as procedural abuse, questionable tactics, contumelious and
31 intentional default or where a default was repeated or persisted in after a peremptory
32 order, the court should not exercise its inherent jurisdiction to dismiss a plaintiff's action
33 for want of prosecution. An action may not be dismissed unless the delay complained
34 of after the issue of the proceedings has caused at least a real risk of prejudice to the
35 defendant.

1 13. *Costellow* was followed in *Finnegan v Parkside Health Authority* [1998] 1 ALL ER 595. In
2 that case, the plaintiff served a notice of appeal fifty seven days after the time for doing
3 so had passed, and applied for leave to appeal out of time. The judge dismissed the
4 application on the ground that in the absence of an explanation for the delay, the court
5 could not exercise its discretion in the plaintiff's favour. On appeal, it was held that
6 when considering an application for extension of time for complying with the procedural
7 requirements, the court had the widest measure of discretion. Accordingly, the absence
8 of a good reason for any delay was not in itself sufficient to justify the court in refusing
9 to exercise its discretion to grant an extension, but the court was required to look at all
10 the circumstances of the case and recognize the overriding principle that justice had to
11 be done.

12
13 14. In determining the present application, I have taken into consideration the fact that the
14 English procedural rules are similar to those of the Cayman Islands. The principles by
15 which I am guided, are the same as in England. The interests of justice take priority over
16 everything else. The circumstances resulting in the death of Tanya Edith Joseph are
17 most unfortunate. It is very important that the plaintiff be allowed to put evidence
18 before the court with a view to determining whether there has been negligence on the
19 part of the defendant institution. No evidence has been forthcoming to indicate that
20 the delay of a few weeks has caused, or will cause, any inconvenience or prejudice to
21 the defendant.

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23 In the circumstances, I have no hesitation in granting the application.

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25 **ORDER**

26 The application is granted. Time is extended to 5 September 2014 for the plaintiff to
27 serve the statement of claim on the defendant. Costs of this application are awarded to
28 the defendant.

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31 Dated 10TH September 2014

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35 The Hon Justice Seymour Panton
36 JUDGE OF THE GRAND COURT (Actg)

