

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

3
4 **Cause No. 129 of 2011**

5
6 **BETWEEN:**

- 7
8 (1) **GEORGE DAVIDSON**
9 (2) **MAUREEN DAVIDSON**
10 (3) **ALLENDALE LIMITED**

11 **Plaintiffs**

12
13 **AND:**

- 14
15 (1) **KHALDOUN MOUALEM**
16 (2) **STARMOUNT SECURITIES LIMITED**
17 (3) **MARTIN SLOWE ESTATES LIMITED**
18 (4) **MARTIN SLOWE**
19 (5) **FINER HOMES LIMITED**

20 **Defendants**
21

22
23 **Appearances:** **Mr. Sam Dawson of Solomon Harris instructed**
24 **Mr. Peter Jervis, Q.C. for the Plaintiffs/Respondents**

25
26 **Ms. Laura Clemens of Bodden & Bodden instructed**
27 **Mr. Tom Lowe, Q.C. for the Defendants/Applicants**

28
29
30 **Before:** **Hon. Justice Henderson**

31
32 **Heard:** **August 28 & 29, 2012**
33
34
35



36 **JUDGMENT**

37
38 This *inter partes* review of my earlier *ex parte* order extending the period of validity of
39 the Writ of Summons presents two issues:

- 1) should the *ex parte* order be set aside on the ground that the extension deprives the Defendants of a limitation period defence and there was no good reason for the extension?
- 2) should the *ex parte* order be set aside on the ground that one of the plaintiffs had been removed from the register before the Writ was issued and, by the time it was restored to the register, the limitation period had passed?

Nature of the Claim

1. The Statement of Claim in the present proceeding (“the Cayman Pleading”) says that the Plaintiff Maureen Davidson (“Mrs Davidson”) is the sole shareholder and beneficial owner of the Plaintiff Allendale Limited (“Allendale”). Allendale was incorporated in the Isle of Man in 1979. For many years, the Davidson’s lived in Carlisle, England and owned property there.
2. In the late 1980s Allendale assembled a small commercial land assembly in central Carlisle. These properties were held in a partnership called “Portland Properties” (“Portland”) in which Allendale owned a 25% interest. The Plaintiff George Davidson (“Mr. Davidson”) owned 50% of Portland as a “bare trust trustee”, an interest he held in trust for his wife. The remaining 25% interest was owned by the Defendant Khaldoun Moualem (“Mr. Moualem”).

- 1 3. The properties, which were well situated for commercial and retail development,
2 were contiguous and located in the Botchergate area in the heart of Carlisle. In
3 addition to the Portland Properties, Mr. and Mrs. Davidson owned other
4 properties in Carlisle. The Botchergate and other properties had been obtained
5 with financing provided through a credit facility from Barclays Bank. Tenants in
6 these properties were paying rent which amounted to approximately GBP 600,000
7 per year; the rental income was used to finance the borrowing from Barclays
8 which was in excess of GBP 3 million by 1996.
- 9
- 10 4. Portland and the Davidsons had decided to seek planning approval for a 160,000
11 sq. ft. redevelopment of the Botchergate properties for a mixed retail and
12 commercial use. By 1996, the Davidsons were residing permanently in the
13 Cayman Islands. Because they were only in England periodically, they provided
14 the 25% partnership interest in Portland to Mr. Moualem in exchange for his
15 agreement to manage the Botchergate properties and their other business interests
16 in their absence.
- 17
- 18 5. In December 1996 the plaintiffs were approached by the Defendant Martin Slowe
19 (“Mr Slowe”) on behalf of the corporate entities which are the second, third and
20 fifth defendants (collectively the “Starmount Companies”). Mr. Slowe
21 represented to the plaintiffs that the Starmount Companies were experienced
22 commercial and retail property developers. The Starmount Companies and Mr.

1 Slowe (together the “Starmount Defendants”) owned other commercial properties
2 in Botchergate which could be combined with the Botchergate properties to form
3 a much larger and potentially more lucrative commercial land assembly upon re-
4 development.

5
6 6. A joint venture agreement (the “Joint Venture Agreement”) was entered into in
7 December 1996 for the combination of all these properties into one land
8 assembly. It was agreed that the Starmount Companies would finance the
9 acquisition of certain additional commercial properties over which both the
10 plaintiffs and the Starmount Companies had options. The Joint Venture
11 Agreement provided that the Starmount Defendants would assume responsibility
12 for paying the monthly financing costs incurred by Portland and owed to
13 Barclays. Planning approval for a 160,000 sq. ft. mixed use commercial and retail
14 development would be requested. With planning approval in hand, the properties
15 were to be sold by tender to the highest available bidder. A formula was agreed
16 upon under which the Davidsons and Allendale would receive through Portland a
17 minimum of GBP 5 million plus a GBP 1 million payment upon signing the Joint
18 Venture Agreement. The agreement guaranteed Portland a pro-rata share of any
19 sale proceeds in excess of GBP 8 million. An important provision of the Joint
20 Venture Agreement was a put option (the “Portland Notice”) which allowed
21 Portland to require its interest to be purchased by the Starmount Companies if an

1 offer was made for the properties which exceeded GBP 8 million but which was
2 not accepted.

3
4 7. The Joint Venture Agreement included a term by which the Starmount
5 Defendants agreed to act with “utmost good faith” towards the plaintiffs and by
6 which they agreed to try to maximise the return on the investment for both sets of
7 parties. The parties also pledged to make full disclosure to each other of all
8 relevant information about the progress of the joint venture.

9
10 8. During most of 1997, Mr. and Mrs. Davidson were distracted by a significant
11 family difficulty. It is said that they were not in any event experienced property
12 developers and for these reasons were “vulnerable” to the machinations of the
13 Defendants, who were aware of their vulnerability and exploited it.

14
15 9. Planning approval was received in June 1997. By that time the joint venture
16 partners had received two offers to purchase the freehold (but not the leasehold)
17 interest “subject to certain reasonable and standard conditions” from two
18 experienced commercial developers in the amounts of GBP 9.5 million and GBP
19 11 million respectively.

20
21 10. In about February 1997 Messrs. Moualem and Slowe agreed to vary the Joint
22 Venture Agreement. Mr. Moualem agreed to substantial variations at Mr.

1 Slowe's request which were contrary to the interests of the plaintiffs and would
2 reduce substantially their share of the proceeds of sale. The minimum sum of
3 GBP 5 million which was payable to Portland was now said to be GBP 5 million
4 less certain expenses (in the amount of about GBP 1 million) incurred by the
5 Starmount Companies and less the interest payments made by the Starmount
6 Companies to Barclays Bank on behalf of Portland. In addition, it is alleged that
7 Messrs Slowe and Moualem and the Starmount Companies entered into a
8 "supplemental agreement" which provided that Starmount's minimum share of
9 the sale proceeds would be increased.

10
11 11. It is said that these amendments to the Joint Venture Agreement were not
12 disclosed "fully or at all" to Mr. and Mrs. Davidson. On August 5, 1997 Mr.
13 Moualem sent a Deed of Variation to Mr. Davidson "without explanation" and
14 requested that he sign it. At this point the Cayman Pleading is unclear. There
15 may have been some conversation between the two men about the changes
16 because it is alleged that Mr. Moualem sent the document while "purporting to
17 make minor changes". It is said that Mr. Davidson was not given "any full or
18 adequate disclosure" about the changes.

19
20 12. It is also alleged that Mr. Slowe and the Starmount Companies made a secret
21 agreement with Mr. Moualem in the summer of 1997. They agreed to pay to Mr.
22 Moualem and his wife the sum of GBP 50,000 in exchange for his agreement to

1 ensure that Portland did not exercise the Portland Notice put option. The two
2 offers which had already been received could have triggered the delivery of the
3 Portland Notice and thus the put option.
4

5 13. It is alleged that there were additional financial benefits bestowed upon Mr.
6 Moualem by the Starmount Defendants “as part of an agreement to secure his
7 allegiance”. Mr. Moualem was induced by Mr. Slowe to terminate the tenancies
8 of the Botchergate properties. Messrs. Slowe and Moualem agreed not to advise
9 the Davidsons that the income of the partnership had dropped accordingly and
10 that Barclays were no longer being paid.
11

12 14. The defendants proceeded to put the properties up for sale by tender in the fall of
13 1997. It is said that Mr. Slowe caused the tendering process to be conducted in a
14 commercially unreasonable manner. He stipulated that no tender could be made
15 unless the tendering party bid for both the freehold and the leasehold interests at
16 equivalent values. This discouraged anyone with an interest in acquiring the
17 freehold alone from tendering at all. Mr. Slowe also insisted that no offers could
18 be made which were “subject to contract”. It is said that this stipulation precluded
19 any “serious” commercial property developer from bidding. The plaintiffs were
20 not told of these conditions.
21

- 1 15. Although there were twenty-four commercial developers with an interest in
2 tendering, not one did so. They were discouraged from tendering by the
3 unrealistic terms and conditions.
4
- 5 16. The tendering process ended unsuccessfully on December 8, 1997. Mr. Slowe
6 then declared that the Joint Venture Agreement had been frustrated and was
7 terminated.
8
- 9 17. For several months, the Starmount Defendants paid the monthly interest charges
10 to Barclays as they had agreed. When the Starmount Defendants and Mr.
11 Moualem terminated all the tenancies on the Botchergate properties (without
12 telling the plaintiffs they had done so) they stopped making payments on the
13 Barclays Bank loan facility. By December 1997 the tendering process had ended
14 without any offer having been received and the Barclays credit facility was in
15 default.
16
- 17 18. Around December 1997 Mr. Davidson returned to Carlisle. He discovered some
18 documents which suggested to him “some form of agreement” between Messrs.
19 Moualem and Slowe about the variation of the Joint Venture Agreement. It is
20 alleged that when he confronted Mr. Moualem about this, the latter agreed that he
21 had been acting on behalf of Mr. Slowe and the Starmount Defendants.
22

1 Mr. Davidson demanded that the Starmount Defendants honour their contractual
2 obligation to pay the monthly interest charges (which were five months in arrears)
3 but the latter refused. Mr. Davidson tried and failed to sell the Botchergate
4 properties in order to discharge the debt to Barclays. He alleges that the
5 Defendants interfered and “frustrated” that.

6
7 19. In February 1998 Barclays appointed an Administrative Receiver (the “Receiver”)
8 over the assets of Portland including the Botchergate properties and the other
9 properties owned by the plaintiffs. It is alleged that the Defendants “persuaded”
10 Barclays to do that. It is also said that the Starmount Defendants interfered with
11 the Receiver’s attempts to sell these properties and in essence convinced the
12 receiver that they were the only viable purchasers. In the result, the Starmount
13 Defendants acquired the Botchergate properties for GBP 2.9 million, less than
14 half of the minimum price they had agreed to pay for the plaintiffs’ interest, from
15 the Receiver. The Defendants then proceeded to carry out the development for
16 which planning approval had been obtained and have profited substantially from
17 that.

18
19 The result was virtual financial ruin for the plaintiffs.

20
21 20. On these allegations, the plaintiffs seek damages for conspiracy, intentional
22 interference with economic relations, misrepresentation and bad faith negotiation,

1 breach of duty of confidence, and breach of duty of good faith. They also seek a
2 declaration that the defendants have been unjustly enriched to the detriment of the
3 plaintiffs and an order for restitution. In the alternative, they ask for an
4 accounting of the profits and an order requiring those profits to be paid to the
5 plaintiffs.

6
7 **Procedural History**

8
9 20. On August 27, 2003, Allendale and Mr. Davidson (but not Mrs Davidson)
10 commenced an action against Messrs Moualem and Slowe, the Starmount
11 Companies, Portland itself, and a law firm in the Carlisle District Registry,
12 Queen's Bench Division in the High Court of Justice. At the time, although
13 convinced they had been defrauded, the plaintiffs say they knew little of the
14 circumstances.

15
16 21. In June 2004 the plaintiffs requested and obtained limited disclosure of certain
17 documents. Apparently, the plaintiffs needed these in order to plead.

18
19 22. A Statement of Particulars of Claim was filed in the summer of 2004 alleging as
20 much of the claim as was understood at that time. This pleading has not been
21 provided to me.

1 23. The Starmount Defendants filed their Defence on September 16, 2004. Mr.
2 Moualem filed a Defence and then an Amended Defence on February 8, 2005.
3

4 24. I have in evidence an unsigned draft copy of an Amended Particulars of Claim
5 (“the Amendment”). The document is undated but contains at the end a reference
6 to “this [blank] day of [blank] 2004”. Mr. Robin Henry Ledgard Shaw, an
7 English solicitor who represented the Starmount Defendants, has said in his
8 affidavit (at para. 9) that the Amendment was “served in that action in 2004”.
9

10 25. From this document, it is possible to infer the content of the original Particulars of
11 Claim (to which I will refer as the “Original UK Pleading”) and to examine the
12 allegations added to it in the Amendment. For the most part, the allegations in the
13 Original UK Pleading mirror those in the Cayman Pleading. Added to the
14 Original UK Pleading was an allegation that Mr. Slowe instructed the English law
15 firm to require a tendering party to submit an unconditional offer for three
16 separate interests: the freehold and two leasehold interests. He also instructed
17 them that the vendors “might disregard” a tender which did not include an offer at
18 the “proper value” for each of the three interests. Thus, the Amendment clarifies
19 the manner in which the plaintiffs were alleging that the tendering process had
20 been sabotaged.
21

1 26. It was also alleged for the first time in the Amendment that the secret agreement
2 between Messrs Moualem and Slowe included an agreement that the former
3 would not challenge the tendering process (by invoking an arbitration clause) and
4 would not allow Portland to dispose of its properties “in any other way” if the
5 tendering process was (as envisaged) unsuccessful. Some new particulars about
6 how Mr. Slowe and the Starmount Defendants interfered with the attempts of the
7 Receiver to sell the properties were included as well.

8
9 27. On February 10, 2005 a Deputy Master ordered the plaintiffs to pay substantial
10 security for costs, the first instalment to be paid by February 18, 2005 and the
11 second by June 1, 2005 (later changed to June 15, 2005). A number of case
12 management directions were given. The parties were ordered to make standard
13 disclosure by list by April 15, 2005 (later changed to April 29) with inspection of
14 documents seven days later; I am told by Counsel that inspection occurred on
15 May 13, 2005. Witness statements were to be exchanged by June 3, 2005 (later
16 changed to June 17, 2005).

17
18 28. The Defendants in England delivered their standard disclosure list of documents
19 to the plaintiffs on April 28, 2005. Supplemental lists were delivered several
20 months later.

21

- 1 29. The Davidsons and Allendale were unable to comply with the order for security
2 for costs so the action was dismissed in December 2005.
3
- 4 30. At some time after the dismissal, Mr. Davidson made a complaint to the Cumbria
5 police asserting that he had been defrauded. He says that he “followed up
6 regularly with the Cumbria authorities from 2007 to 2009”. (There is no mention
7 of 2006 in his evidence.) At some time in 2009 the police advised Mr. Davidson
8 that they would not prosecute the Defendants. Mr. Davidson then “appealed this
9 decision to higher police authorities in the United Kingdom in 2009 and 2010”.
10 His appeal was not successful.
11
- 12 31. In 2009 Mr. Davidson “consulted” (vol. 1 p. 505) Mr. Jervis about the possibility
13 of launching an action against the Defendants in the Cayman Islands. Mr. Jervis
14 obtained the pleadings and witness statements filed in the UK action. For reasons
15 which are not fully explained, Mr. Davidson did not at that time begin
16 proceedings.
17
- 18 32. In 2011 Mr. Davidson “retained” (vol. 1 p. 504) Mr. Jervis to commence an action
19 against the Defendants in the Cayman Islands. The Writ in the present action was
20 filed April 7, 2011. Mr. Jervis wrote by email to the English solicitors to the
21 plaintiffs on June 30, 2011 to say he had been retained. He observed that his
22 client had provided him with a “substantial” number of documents but doubted

1 that he had a “full set”. He requested all of the documents and particulars as to
2 when the various documents had been disclosed to the English firm.

3
4 33. It was not until the end of August 2011 that Mr. Jervis received the additional
5 material he requested from the UK law firm. The Statement of Claim was filed
6 on October 5, 2011. The Writ, which was valid for 6 months (until October 6,
7 2011) as leave to serve it out of the jurisdiction was required, had not yet been
8 served. Leave to do so had not yet been obtained.

9
10 34. On October 5, 2011 the plaintiffs filed an application to extend the validity of the
11 Writ for an additional four months and for leave to serve the Writ outside the
12 Cayman Islands. The applications were heard on an *ex parte* basis by me on
13 November 29 and 30, 2011 and adjourned generally to allow the plaintiffs to
14 prepare and present further argument. On December 29, 2011 I granted a four-
15 month extension of the validity of the Writ and granted leave to serve the
16 Defendants outside the country. The present application is an *inter partes* review
17 of both orders.

18
19
20 **Extension of the Validity of the Writ**
21

22
23 35. The *ex parte* order extending the validity of the Writ was made pursuant to *Order*
24 *6 Rule 8* of the *Grand Court Rules*, which reads as follows:
25

1 8. (1) *For the purpose of service, a writ (other than an office copy of a writ)*
2 *is valid in the first instance –*

3
4 (a) *where leave to serve the writ out of the jurisdiction is required*
5 *under Order 11, for 6 months; and*

6
7 (b) *in any other case, for 4 months,*

8
9 *beginning with the date of its issue and an office copy of a writ is*
10 *valid in the first instance for the period of validity of the original*
11 *writ which is unexpired at the date of issue of the office copy.*

12
13 (2) *Subject to paragraph (3), where a writ has not been served on a*
14 *defendant, the Court may by order extend the validity of the writ from time*
15 *to time for such period, not exceeding 4 months at any one time, beginning*
16 *with the day next following that on which it would otherwise expire, as*
17 *may be specified in the order, if an application for extension is made to*
18 *the Court before that day or such later day (if any) as the Court may*
19 *allow.*

20
21 (3) *Where the Court is satisfied on an application under paragraph (2) that,*
22 *despite the making of all reasonable efforts, it may not be possible to serve*
23 *the writ within 4 months, the Court may, if it thinks fit, extend the validity*
24 *of the writ for such period, not exceeding 12 months, as the Court may*
25 *specify.*

26
27 36. The Writ was issued on April 7, 2011 but no attempt was made to serve the Writ
28 during its initial period of validity which lasted until October 6, 2011. The Writ
29 was valid for a period of 6 months as leave to serve the Defendants outside the
30 jurisdiction was needed.

31
32 37. The Defendants say that the failure to make any attempt to serve the Writ within
33 its initial period of validity is fatal to any request to extend the period of validity.
34 In my view, the proposition is defeated by the wording of the Rule which, except
35 for the first 4 words (“Subject to paragraph (3)”) admits of no ambiguity and

1 should be given its plain and ordinary meaning. When a plaintiff wishes to
2 extend the validity of a writ for a period in excess of 4 months but not exceeding
3 12 months, the application is made under Rules 8(2) and 8(3). In such a case the
4 court must be satisfied that it “may” not be possible to serve within 4 months
5 despite all reasonable efforts. To reach that conclusion, the court will consider
6 the circumstances of any unsuccessful attempt to serve the writ as they will
7 ordinarily be suggestive of how much time will be needed to achieve service.
8 Rules 8(2) and 8(3) are interrelated because the possibility of an extension for as
9 long as 12 months under Rule 8(3) may arise during an application under Rule
10 8(2). The opening words of Rule 8(2) – “Subject to paragraph (3)” – are simply a
11 reminder to the reader that on some Rule 8(2) applications it will be necessary to
12 have regard to the terms of Rule 8(3).

13
14 38. However, an application to extend the validity of a writ for 4 months or less is
15 made under Rule 8(2) alone, a rule which contains no reference to possible
16 service problems. The *ex parte* application in the case at bar sought an extension
17 of just 4 months so the entitlement to the order depended only upon the terms of
18 Rule 8(2). The court had no need to consider the terms of Rule 8(3), a
19 circumstance which was not altered by the opening words of Rule 8(2).

20
21 39. Of what must the court be satisfied before granting a 4-month extension? Rule
22 8(2) itself provides no guidance.

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40. The question was examined in depth by the House of Lords in *Kleinwort Benson Ltd. v. Barbrak Ltd. & others* [1987] 1 AC 597, a decision also known as “*The Myrto*”. At the time of the decision, the UK counterpart of our Order 6 rule 8(2) was a provision (also O. 6 r. 8(2)) in identical terms except that the maximum period of extension in the UK version is 12 months not four. Lord Brandon (with whom the other Law Lords agreed) concluded that “there must be implied in [the rule], as a matter of construction, a condition that the power to extend shall only be exercised for good reason” (at p. 622). He said that “it is not possible to define or circumscribe” the scope of the expression “good reason”. The court must consider all of the circumstances and is entitled to have regard to the balance of hardship which includes any prejudice to a defendant (see p. 623).

41. *Kleinwort* has been applied twice in the Cayman Islands. In *Powell v. Port Authority and Attorney General* 2009 CILR 169, Foster, J of this Court held that the Plaintiff’s alleged difficulty in obtaining legal aid was not, in all the circumstances, a good reason to extend the validity of the Writ. The limitation period had already expired so the Plaintiff lost her cause of action. Subsequently, in *Masri and Manning v. Consolidated Contractors International Co.* 2010 (1) CILR 265, Jones, J of this Court found that the plaintiffs’ attorneys had failed to exercise sufficient diligence in relation to service and had consequently been

1 unable to establish a good reason. Thus, it is well established that *Kleinwort*
2 defines the test I must apply.

3
4 42. The only additional authority cited to me on this branch of the argument is the
5 decision of the Court of Appeal in *Bayat and others v. Cecil and others [2011]*
6 *EWCA Civ 135*. The action was described as a “substantial” claim for damages
7 for breach of contract, fraudulent misrepresentation and conspiracy coupled with
8 some claims for alternative remedies. It was unclear when the various causes of
9 action arose; the appeal and the proceedings below were conducted on the basis
10 that the extension of the validity of the Writ (which was granted at first instance)
11 “arguably” permitted service after the limitation period (or periods) had passed.

12
13 43. The action was commenced originally in New York. After two years had passed
14 the claim was dismissed without any evidence having been heard. An appeal was
15 taken but dismissed after a further 14 months. An unsuccessful attempt to appeal
16 the dismissal to the US Supreme Court occupied another year.

17
18 44. Sixteen months after the latter dismissal the plaintiffs commenced an action in
19 London. Their Claim Form was marked “Not for service out of the jurisdiction”.
20 Four months after issuing their Claim Form the plaintiffs asked for a 6-month
21 extension of the time for service but did not request leave to serve outside the
22 jurisdiction.

1

2 45. The delay was caused by the plaintiffs' search for funding for the litigation, which
3 had been conducted over some 2 and ½ years but had not (yet) borne fruit. They
4 were successful in obtaining the requested extension and two further extensions
5 for what were apparently shorter periods.

6

7 46. The Court held (at para. 42 ff.) that the unsuccessful search for funding for the
8 entire litigation was no good reason to delay service of the Claim Form although
9 it might justify an extension of time for service of the Particulars of Claim or even
10 a stay of proceedings until funding had been obtained. Any difficulty in meeting
11 deadlines after service of the Claim Form should have been the subject of case
12 management by the court.

13

14 47. The Court of Appeal found support for its position in *Glass v. Surrendran*, one of
15 the appeals which had been before it in *Collier v. Williams* [2006] EWCA Civ 20;
16 and further support in *City & General (Holborn) Ltd. v. Structure Tone Ltd. and
17 another* [2009] EWHC 2139 (TCC). In *Glass*, the only reason advanced for not
18 serving the Claim Form was that the Claimant was waiting for an accountant's
19 report (*Bayat*, para. 45). That would have justified an extension of time for
20 serving the Particulars of Claim but was not a good reason for delay in service of
21 the Claim Form. In *City & General*, the desirability of postponing production of
22 the Particulars of Claim was held not to justify an extension of time to serve the

1 Claim Form (*ibid.*). The seemingly conflicting decision in *Steele v. Mooney*
2 [2005] EWCA Civ 96 was distinguished on the basis that the expert report for
3 which the Plaintiff was waiting had been delayed by the failure of a defendant to
4 produce some clinical notes (*Bayat*, para. 46).

5
6 48. The reason for the marked distinction between a deadline for service of initiating
7 process and a deadline for some subsequent procedural step is obvious: it is the
8 former which places the defendant on notice of the existence of the claim. Once a
9 limitation period has passed and the additional 4 or 6 months within which service
10 is to be effected have also elapsed, a defendant has a right to assume that he is no
11 longer in jeopardy of legal action. This is an important right which underpins the
12 rationale for limitation periods. In making this point the Court quoted (at para 48)
13 the following passage from the judgment of Rix, LJ in *Aktas v. Adepta* [2010]
14 EWCA Civ 1170:

15 *"91 The reason why failure to serve in time has always been dealt with*
16 *strictly (even if CPR 7.6(3) represents a still further tightening of the rules*
17 *where a retrospective request for an extension is made out of time) is in*
18 *my judgment bound up with the fact that in England, unlike (all or most)*
19 *civil law jurisdictions, proceedings are commenced when issued and not*
20 *when served. However, it is not until service that a defendant has been*
21 *given proper notice of the proceedings in question. Therefore, the*
22 *additional time between issue and service is, in a way, an extension of the*
23 *limitation period. A Claimant can issue proceedings on the last day of the*
24 *limitation period and can still, whatever risks he takes in doing so, enjoy a*
25 *further four month period until service, and his proceedings will still be in*
26 *time. In such a system, it is important therefore that the courts strictly*
27 *regulate the period granted for service. If it were otherwise, the statutory*
28 *limitation period could be made elastic at the whim or sloppiness of the*
29 *Claimant or his solicitors. For the same reason, the argument that if late*
30 *service were not permitted, the Claimant would lose his claim, because it*

1 would become time barred, becomes a barren excuse. But even where the
2 Claimant is well within the limitation period despite his delay in serving,
3 there is a clear public interest in the rules and the courts curtailing the
4 efficacy of a claim form which, because it has not been served, is not very
5 different from an unposted letter. Therefore, the strictness with which the
6 time for service is supervised has entirely valid public interest
7 underpinnings which are quite separate from the doctrine of abuse of
8 process. It is sufficient for the rules to provide for service within a
9 specified time and for the courts to require Claimants to adhere strictly to
10 that time limit or else timeously provide a good reason for some
11 dispensation”
12

13 49. Regarding the effect of the lack of certainty about whether a limitation period had
14 or would soon expire, the Court quoted (at para 53) with approval the following
15 passage from *City & General (Holborn) Ltd v. Royal and Sun Alliance plc [2010]*
16 *EWCA Civ 911*:

17 “7 ...It is well-settled that when debatable issues of limitation arise, it is
18 inappropriate to attempt to decide them on an interlocutory application
19 for an extension of time for service of a claim form. If the Claimants’
20 argument that the claims are not time-barred is correct, they can always
21 begin a fresh action in which, if a time-bar is asserted, it can be
22 adjudicated upon. It is enough for a defendant to show that he might be
23 deprived of a defence of limitation if time for service of a claim form is
24 extended; if he can show that, an extension should not be granted or, if
25 granted without notice, such extension should be set aside, see *Hashtroodi*
26 *v Hancock [2004] 1 WLR 3206 (paragraph 18)* and *Hoddinott v*
27 *Persimmon Homes (Wessex) Ltd [2008] 1WLR 806 (paragraph 52)”*.
28

29 Finally, the court held at para. 54-55:

30 [54] In para 181 of his judgment, when considering the balance of
31 hardship, the judge referred to the Claimants’ loss of their claim, but did
32 not refer to the Defendants’ loss of their limitation defence, other than to
33 say that the extension in question was “only just outside the extended
34 period”. But in the law of limitation, a miss is as good as a mile.
35 Furthermore, the primary question in a case where limitation is engaged
36 is not whether the Defendants could or could not assume that the claim
37 was no longer being pursued (to which the judge did refer). The primary

1 question is whether, if an extension of time is granted, the defendant will
2 or may be deprived of a limitation defence.
3

4 [55] It is of course relevant that the effect of a refusal to extend time for
5 service of the claim form will deprive the Claimant of what may be a good
6 claim. But the stronger the claim, the more important is the defendant's
7 limitation defence, which should not be circumvented by an extension of
8 time for serving a claim form save in exceptional circumstances.
9

10 50. As can be seen from some of the terminology used above, *Bayat* was a decision
11 arising from a CPR application. Nothing turns on that. The imperatives
12 addressed in strong terms in the two judgments of the Court – the marked
13 distinction between a deadline for service of originating process and subsequent
14 procedural deadlines, and the “primary question” of whether an extension of time
15 will or arguably might deprive a defendant of a limitation defence – are equally
16 compelling considerations under our *Rules*.

17
18 51. In summary, I take the following from the decision in *Bayat*:

- 19 1) the applicant must satisfy the court that there is a “good reason” for an
20 extension;
21 2) there are many reasons for delay, such as difficulty in obtaining funding
22 or in obtaining an expert’s report, which may well provide a good reason
23 to postpone the delivery of a statement of claim or other procedural step
24 subsequent to service but which will not amount to a good reason to
25 extend the validity of the writ;

- 1 3) the primary question is whether the defendant will or may be deprived of a
2 limitation defence;
- 3 4) if the facts relevant to a limitation defence are unclear, the court should
4 resist any invitation to embark upon an extended trial of the issue; it is
5 enough for a defendant to show that he might be deprived of a limitation
6 defence by an extension;
- 7 5) if the defendant might be deprived of a limitation defence, an extension
8 should be granted only in exceptional circumstances.

9
10 I turn now to consider the application of these principles to the present dispute.

11
12 **Limitation Periods**

13
14 52. The claims advanced by the plaintiffs are: conspiracy, intentional interference
15 with economic relations, misrepresentation, “bad faith negotiation”, breach of
16 duty of confidence, breach of duty of good faith, unjust enrichment and
17 restitution. They also request an accounting of the profits.

18
19 53. Conspiracy, intentional interference with economic relations, and
20 misrepresentation are torts. The ordinary time limit for actions in tort (or
21 contract) in the Cayman Islands is six years from the date on which the cause of
22 action accrued: *Limitation Law (1996 Revision) ss. 4(1) & 7*. That six year period
23 would have expired by the middle of 2004. Insofar as the claims are equitable

1 claims for which no period of limitation is prescribed, the Court will (at least
2 arguably) apply the rule that where the claim is only for damages and not for any
3 equitable proprietary relief the Court will apply the comparable time limits at law
4 by analogy: *Tritton Development Fund Ltd. v. Fortis Bank (Cayman) Ltd. &*
5 *others* 2006 CILR 268 (Grand Court); *Paragon Finance plc v. D B Thackerer &*
6 *Co.* [1999] 1 All ER 400 (Court of Appeal (Civil Division)); and see Goff &
7 Jones, *The Law of Restitution*, London, 2007, para. 43-1 ff. Section 29 is also
8 material:

9 *29. An action for an account shall not be brought after the expiration of*
10 *any time limit under this Law which is applicable to the claim which is the*
11 *basis of the duty to account.*
12

13 54. The claim for restitution (unjust enrichment) may be a special case but does not
14 require individual consideration on this application because the question is not
15 whether the Defendants have arguably been deprived of a limitation defence on
16 each and every cause of action but whether they have arguably been deprived of a
17 defence on one or more causes of action.

18
19 55. The essence of the claims is an allegation of fraud. In resisting any limitation
20 period defence the plaintiffs wish to rely upon the power of extension found in s.
21 37(1), which reads:

22 *37(1) Subject to subsection (3), where in the case of any action for which*
23 *a period of limitation is prescribed by this Law, either –*

24
25 *(a) the action is based upon the fraud of the defendant;*
26

1 (b) any fact relevant to the plaintiff's right of action has been
2 deliberately concealed from him by the defendant; or

3
4 (c) the action is for relief from the consequences of a mistake,

5
6 the period of limitation does not begin to run until the plaintiff has
7 discovered, or could with reasonable diligence have discovered, the fraud,
8 concealment or mistake. References in this subsection to the defendant
9 include references to the defendant's agent, and to any person through
10 whom the defendant claims, and his agent.

11
12 (2) For the purposes of subsection (1), deliberate commission of a breach
13 of duty in circumstances in which it is unlikely to be discovered for
14 some time amounts to deliberate concealment of the facts involved in
15 that breach of duty.
16
17

18 56. The question, then, is by what date can it be said that the plaintiffs had
19 discovered, or could with reasonable diligence have discovered, the facts
20 demonstrating they had been defrauded. The relevant limitation period would
21 (again, arguably) expire 6 years after that date. The plaintiffs have asserted in
22 argument that they "only learned these facts after they received the substantial
23 disclosure of documents from their former partners after April 29, 2005".

24
25 57. Mr. Davidson's first affidavit asserts that

26
27 32. *It was only after the Carlisle action was over that we had the opportunity*
28 *of reviewing the substantial documents which had been provided to our*
29 *solicitors in the summer and fall of 2005, and which were subsequently*
30 *provided to us. We then learned about the full nature and particulars of*
31 *the extent of the Defendants' conduct which is pleaded in this litigation.*

32
33 33. *In particular, while we know some elements, as described in the Statement*
34 *of Particulars attached to this affidavit, we did not know many critical*
35 *facts such as the manner in which Martin Slowe, with the knowledge of*

1 Moualem, had deliberately frustrated the tendering process in the fall of
2 1997, and the extent to which he had worked with Drivers Jonas, our real
3 estate agents, but then ignored their advice to ensure that tendering
4 process had adopted a commercially unreasonable and non-viable
5 approach.
6

7 34. We had been advised that there were 24 developers interested in the
8 property assembly prior to the tender. Two of those parties had submitted
9 offers to me worth £9.5 million and ultimately £11 million respectively
10 earlier in 1997. We were therefore stunned when, after the completion of
11 the tendering process in early December 1997, there had not been a single
12 tender offer. It was only when I received the substantial documents
13 disclosed by the Defendants, my partners, after the summer of 2005, in the
14 Carlisle litigation that I understood how this had occurred.
15

16 35. We did not know the details in which Slowe and Moualem had worked in
17 conjunction to ensure that there were no offers for the Botchergate
18 Property which were made during the period of tendering in the joint
19 venture, nor why there were not any offers which could be made to us in
20 January 1998 or to Barclays when they attempted to sell the properties in
21 the spring of 1998. This was because, as we discovered when we reviewed
22 the documents produced in 2005, Slowe and Moualem had, without our
23 knowledge advised Drivers Jonas, Barclays, and the Receiver in 1998,
24 that they would not consent to any sale or development of the Botchergate
25 Properties owned by Portland Properties on a stand alone basis.
26

27 36. We also did not know all of the facts relating to the agreement between
28 Moualem and Slowe to ensure that we could not exercise the Portland
29 Notice in the summer and fall of 1997, that our tenancies would be
30 terminated, and the Barclays credit facility be put into default deliberately
31 by Slowe in circumstances that would certainly cause the insolvency of
32 Portland Properties in late 1997 and allow Starmount and the other
33 Starmount Defendants to acquire the property for a fraction of its
34 commercial value. We only learned all of the facts related to this after
35 receipt of the full documentary disclosure in the period following April
36 2005.
37

38 37. We also did not understand the extent to which Moualem and Slowe
39 continued to conspire to work against our interest in the critical period
40 from February 1998 through the summer of 1998 when they prevented me
41 from selling the Portland Properties Botchergate Properties
42 independently of the joint venture, prior to the appointment of a Receiver.
43

1 38. *Slowe also worked against our interests after the appointment of the*
2 *Receiver, by taking the position that he would not agree to a joint*
3 *development of the entire Botchergate assembly (involving both the*
4 *Botchergate and Starmount Properties) with any other parties, thus*
5 *ensuring that there were other serious bidders for the Botchergate*
6 *Properties from the Administrative Receiver. This caused serious injury*
7 *to the Plaintiffs.*

8
9 39. *During the summer and fall of 2005 we received witness statements in the*
10 *Carlisle claim. A copy of the witness statements which were received are*
11 *attached as Exhibit GD9. We believe that the documents produced in*
12 *2005 disclose facts which prove that the Defendants' statements are*
13 *materially inaccurate.*
14

15 58. Mr. Davidson's reference to documents received "in the summer and fall of 2005"
16 (para. 32) is regrettably imprecise. In any event, it seems to be accepted that
17 inspection of these documents occurred on May 13, 2005. I will allow a further
18 short period for the study of the documents and proceed on the basis that the
19 material facts were discovered, or could with reasonable diligence have been
20 discovered, by the plaintiffs by May 31, 2005. It follows that the limitation
21 period for present purposes can be taken to have expired on May 31, 2011. As a
22 consequence, I am satisfied that the extension would (at least arguably) have the
23 effect of depriving the defendants of a limitation period defence.
24

25 **Is There a Good Reason for the Extension?**
26

27 59. The only reason for the extension which has been put forward has to do, again,
28 with documents. Mr. Jervis says that he was aware of the significance of the
29 limitation period issue to his application for an extension and for his companion

1 application for leave to serve out of the jurisdiction. In the course of his
2 preparation he became aware of a disclosure of documents which had been made
3 in the English litigation not in 2005 but in 2004. Depending on the nature and
4 extent of this disclosure, it could have the effect of demonstrating that the relevant
5 period started to run a year earlier (in 2004) and therefore expired some time in
6 2010. He did not wish to proceed with his twin applications until he had accurate
7 information about what was disclosed in 2004. Mr. Davidson provides further
8 detail:

9 *The Writ in this action was issued in the Grand Court of the Cayman*
10 *Islands on April 7, 2011. In order to complete the preparation of the*
11 *Statement of Claim and this affidavit in support of a request for an order*
12 *to serve the Writ and Statement of Claim ex juris on the Defendants in the*
13 *United Kingdom, it was necessary to obtain documents from our former*
14 *solicitors in Carlisle, Cartmell Shepherd. As a result of the recent death*
15 *of Nick Richards (our previous counsel) and other delays in Carlisle, our*
16 *current counsel did not receive the requested documents until the end of*
17 *August 2011. Therefore the Statement of Claim in this action and this*
18 *affidavit could not be finalized until recently in September. (1st affidavit of*
19 *George Davidson, para. 40)*
20

21 ...

22 *In particular, as I have deposed in my previous affidavits, I only became*
23 *aware of many of the material facts which I understand give rise to a*
24 *claim by us against our former partner Moualem and joint venture*
25 *partners (the Starmount defendants) as the result of documents which we*
26 *received in the Carlisle litigation later in 2005, which I only had a chance*
27 *to study and review after that time. I was not aware that any documents*
28 *had been produced to our solicitors in Carlisle in 2004 as is alleged and*
29 *because of a question as to whether documents may have been produced*
30 *in 2004, we made inquiries of Cartmell Shepherd in June, July and August*
31 *2011 to determine what, if any, documents had been produced in the*
32 *Carlisle litigation to our solicitors prior to 2005. (3rd affidavit of George*
33 *Davidson, para. 23)*
34

1 In his third affidavit Mr. Davidson also said:
2

3 65. *As I indicated previously in my affidavits, we only learned many of the key*
4 *facts relating to the misconduct of the defendants after we received and*
5 *had an opportunity to study copies of the many documents produced for*
6 *the first time in the Carlisle litigation in 2005 after the disclosure made in*
7 *the summer of 2005 and the following. Many of these documents we only*
8 *received later that year and studied after that.*
9

10 66. *As we were preparing the Statement of Claim with counsel in May and*
11 *June of 2011 after the issuance of the Writ, I was asked whether*
12 *documents had been produced to our solicitors in Carlisle in 2004 in*
13 *order to assist with the preparation of the Particulars of the Claim. I was*
14 *not able to answer this question since I was unaware of documents that*
15 *may have been produced at that time. I therefore made requests in June*
16 *and July 2011 of our solicitor in Carlisle, Nick Richards, at the firm of*
17 *Cartmell Shepherd as to what documents had been produced in the*
18 *litigation prior to 2005. Despite repeated requests I did not receive any*
19 *information from Mr. Richards nor explanation for why I could not get*
20 *any information or receive any documents. I specifically asked that all of*
21 *the materials be made available to our counsel, Peter R. Jervis in Toronto.*
22

23 67. *After I was unable to obtain these documents, Mr. Jervis advised me that*
24 *he contacted Cartmell Shepherd in June 2011 and made inquiries to speak*
25 *to Mr. Richards and to obtain the documents and he was also*
26 *unsuccessful. He then sent a detailed email dated June 30, 2011 (Exhibit*
27 *4) requesting production of these documents from Mr. Richards in*
28 *Cartmell Shepherd. My experience was that Cartmell Shepherd was not*
29 *cooperative and would not provide the documents to me at all. They then*
30 *subsequently required a significant payment to begin the process to*
31 *produce the documents. Mr. Jervis advised me and I believe that he also*
32 *had significant difficulty obtaining the documents and it was only after*
33 *repeated requests and a discussion with another solicitor at the firm, who*
34 *refused to take his phone calls for several weeks in July and August 2011*
35 *that the documents were provided at the very end of August 2011 in a box*
36 *delivered to the office of Davis LLP in Toronto, Canada. I had even*
37 *offered to have my daughter and son-in-law, who now reside in England,*
38 *to attend at the offices of Cartmell Shepherd if that would assist and speed*
39 *up the process. I learned in August 2011 that Mr. Richards had died*
40 *suddenly. No explanation was given for the lack of cooperation or*
41 *responsiveness for these months.*
42

43 68. *The Statement of Claim and the first affidavit I filed to support the motion*
44 *to serve this Claim ex juris were completed shortly after receipt of these*

1 *documents. I understood that my affidavit had to disclose the particulars*
2 *of the content of my solicitor's file and that it could not be completed until*
3 *receipt of the material from the Cartmell Shepherd file, which they refused*
4 *to produce for several months.*

5
6 69. *I understood that it was necessary to make disclosure as much as possible*
7 *of the information that had been received in the Carlisle litigation*
8 *including any documents produced in 2004 in order to swear an affidavit*
9 *that made full disclosure to the court. This affidavit could not be sworn*
10 *until we had received the documents in the possession of Cartmell*
11 *Shepherd. I only learned at the end of August that Mr. Richards had died*
12 *and perhaps the reason for the lack of cooperation from anyone was*
13 *because of some issues affecting his health. In any event, we obtained the*
14 *documents as quickly as we could, produced the Statement of Claim within*
15 *a matter of weeks along with the supporting affidavit material which was*
16 *then filed with the court.*

17
18 60. When the documents were produced to Mr. Davidson's English solicitors in 2004
19 they were delivered to his agent. They were, if not in his possession, at least
20 under his control. At any time, he could have requested copies for himself. He
21 had an unfettered right to inspect and copy the documents. (It is not alleged that
22 Mr. Davidson's English solicitors ever claimed a solicitors' lien over the
23 documents.)

24
25 61. Assuming that Mr. Davidson's evidence provides a good reason for the delay
26 from May 2011 to August 2011, it is still entirely inadequate as it leaves many
27 important questions unanswered. Why was he, a claimant in a major commercial
28 action, unaware of the first disclosure of documents by the defendants in 2004?
29 Why did he remain unaware until Counsel raised the subject with him in 2011? It
30 is said that the 2004 documents were needed in order for the plaintiffs to plead;

1 did not the content of the pleading, which Mr. Davidson must have reviewed, alert
2 him to the existence of the documents? Throughout his dealings with the
3 Cumbria police and higher authorities, did they not question him about the
4 content of the 2004 documents? When Mr. Davidson consulted Mr. Jervis in
5 2009, why were the 2004 documents not obtained and reviewed?
6

7 62. Mr. Davidson's extensive affidavit evidence does not begin to address these
8 issues. I am unable to accept the plaintiffs' assertion that "the delay has been
9 fully explained and was necessarily and unavoidably incurred" (Skeleton, para.
10 144).
11

12 63. In sum, I am asked to deprive the Defendants of an arguable limitation defence
13 because the plaintiffs, having taken no (or at least inadequate) steps to familiarize
14 themselves with the disclosed evidence in their earlier litigation, found, when they
15 attempted to do so at the last minute in May 2011, that they could not do so in
16 time. That is not a good reason to extend the validity of the Writ. Accordingly, I
17 set aside my earlier *ex parte* Order and dismiss the application for an extension,
18 with costs to the Defendants on the standard basis.
19
20
21
22

1 **Allendale**

2

3 64. Allendale was dissolved on February 23, 2009 but restored to the Register in the
4 Isle of Man on June 13, 2011. Thus, it was not in existence on the day the Writ
5 was issued (April 7, 2011). In addition, it was not in existence on the day (May
6 31, 2011) upon which I have determined, for present purposes, that the limitation
7 period expired. By the time the next step in the action was taken (on October 5,
8 2011) Allendale had been restored to life.

9

10 65. The Defendants say that an action can be commenced only by a legal entity with
11 capacity to do so, that Allendale had no legal existence or capacity at all on April
12 7, 2011, and that as a consequence the proceedings are a nullity (Skeleton, para.
13 35).

14

15 66. A corporate entity draws its powers from its constitution, which is construed
16 according to the law of the place of incorporation: Dicey, Morris & Collins, *The*
17 *Conflict of Laws*, London, 2006, Rule 162. Moreover, “the existence or
18 dissolution of a foreign corporation created or dissolved under the law of a
19 foreign country is recognised in England”: *ibid.*, Rule 161. The capacity of a
20 corporation to commence and maintain an action in the Cayman Islands is
21 governed by our own domestic law, the *lex fori*. The principle that a company’s
22 capacity to sue is governed by its constitution and by the law of its place of

1 incorporation is itself a part of the law of the Cayman Islands and of our civil
2 procedure.

3
4 67. Allendale was not in existence on April 7, 2011 and had no capacity at all to
5 commence an action. At any time prior to Allendale's restoration on June 13,
6 2011 its name could have been struck from the style of cause upon application by
7 a defendant. That does not mean the action itself was a nullity.

8
9 68. Allendale is just one of three plaintiffs. It has not been suggested that the other
10 two plaintiffs, George and Maureen Davidson, suffer or have suffered from any
11 incapacity to sue. For that reason the Writ and the proceedings cannot be
12 considered a nullity. At the time of its issue one of the 3 plaintiffs did not exist
13 (although this seemingly simple proposition is subject to what I say below). Upon
14 application by the Defendants Allendale could have been removed as a plaintiff
15 but the claims by the Davidsons would have remained extant. This fact – the
16 presence in the action of two other viable plaintiffs – is a distinction which
17 renders most of the authorities cited on this branch of the argument unhelpful.

18
19 69. Upon its restoration, Allendale was deemed by the law of its place of
20 incorporation to have “continued in existence” throughout the period of its
21 dissolution. I have expert evidence from Mr. Terence Patrick McDonald on the
22 effect of the restoration in the law of the Isle of Man. He says:

1 4. *The effect of the restoration of the Company to the Register is that:-*

2
3 (i) *The Company is deemed to have continued in existence as if the name*
4 *had not been struck off the Register and the Company has always been*
5 *in existence.*

6
7 (ii) *Any acts or proceedings taken by or concerning the Company between*
8 *the date of its removal from the Register and its reinstatement on the*
9 *Register are valid.*

10
11 (iii) *In particular any steps taken by or concerning or taken on the*
12 *Company's behalf in relation to any court proceedings between the*
13 *date of the Company's removal from the Register and its reinstatement*
14 *on the Register are validated.*
15

16 This evidence is uncontradicted and I accept it.

17
18 70. Allendale is deemed by the law of its place of incorporation to have continued in
19 existence for all purposes related to this action as if its name had never been
20 struck from the register. In the interval between April 7, 2011 and June 13, 2011
21 the claims of the Davidsons served to keep the action alive albeit in an irregular
22 state.

23
24 71. Legal proceedings initiated by a single plaintiff which does not exist at the
25 relevant date are, in general, a nullity: *Dubai Bank Ltd. v. Galadari (No. 4), The*
26 *Times, February 23, 1990*; approved by the Court of Appeal in *Fielding v. Rigby*
27 *[1993] 1 WLR 1355 at 1359*. However, the issuance of a Writ without authority
28 on behalf of an existing plaintiff is not a nullity but an act capable of ratification:
29 *Presentaciones Musicales S.A. v. Secunda [1994] Ch. 271 (CA)*. In

1 *Presentaciones*, the plaintiff company had been “dissolved” before the Writ was
2 issued in its name but the law of its place of incorporation (Panama) permitted a
3 dissolved company to commence an action within 3 years after its dissolution
4 provided the action was then ratified by the (former) directors or the liquidators.
5 The Writ in question had been issued within the limitation period but ratified after
6 the period had passed. The Court of Appeal held that the ratification was
7 effective and affirmed the refusal to strike the Writ. A critical element in the
8 Court’s analysis was the finding that under Panamanian law the plaintiff company
9 continued to exist throughout the relevant period (see pp. 277 (majority) and 282
10 (per Roch, LJ)).

11
12 72. Similarly, Manx law asserts in the most unequivocal of terms that Allendale still
13 maintained, by virtue of its restoration to the register, a corporate existence on the
14 date the Writ was issued: “the effect of the restoration ... is that ... the Company
15 has always been in existence” (s. 4(i)). Steps taken on behalf of the Company
16 during its period in limbo are “validated” (s. 4(iii)). This applies specifically to
17 “court proceedings” (*ibid.*).

18
19 73. In keeping with the decision in *Presentaciones*, this language should be given its
20 plain and ordinary meaning: Allendale is now deemed to have continued in
21 existence without interruption and did possess the capacity, on April 7, 2011,

1 acting through its solicitor agents, to commence an action against the Defendants.

2 The fact that the limitation period expired several weeks later is immaterial.

3

4 74. My conclusion is that Allendale's removal from and restoration to the register is
5 not a ground for setting aside my earlier *ex parte* order.

6

7 **Order**

8 My *ex parte* Order extending the period of the validity of the Writ of Summons is set
9 aside, with costs to the Defendants on the standard basis.

10

11

12 Dated this 4th day of December, 2012.

13

14

Henderson, J.

15

Henderson, J.
Judge of the Grand Court

16

