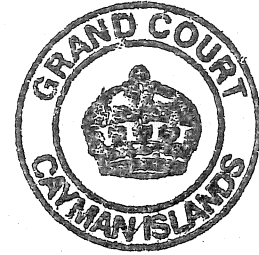


18/7/08



1 AMENDED COPY  
2  
3 IN CHAMBERS  
4

5 IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: C16 of 2008

7  
8 BETWEEN: STUART CAMERON CONOLLY PLAINTIFFS  
9 ANJANNTTE YSAGURRIE  
10 SLOANE STUART CONOLLY  
11  
12 AND: CAYMAN ISLANDS HEALTH FIRST DEFENDANT  
13 SERVICES AUTHORITY  
14  
15 AND: CIVIL AVIATION AUTHORITY SECOND DEFENDANT  
16

17 Before: The Honourable Madam Justice Levers

18 Appearances:  
19 Ms Keva Reid and Mr. Norman Hill QC  
20 Mr. Conolly present  
21

22  
23 Heard: 1<sup>st</sup> July 2008  
24

25 This is an application by Stuart Cameron Conolly and Anjanntte Ysagurie as  
26 administrators in the Estate of Sloane Stuart Conolly (deceased), to extend the validity of  
27 the writ.

28 The plaintiffs in this case are suing the Cayman Islands Health Services Authority and the  
29 Civil Aviation Authority of the Cayman Islands for the death of their son, Sloane Stuart  
30 Conolly. The application is supported by an affidavit of one of the administrators, Stuart  
31 Cameron Conolly.  
32

1 The plaintiffs allege that the Health Services Authority were negligent in providing  
2 immediate attention to their son, the deceased, despite the obvious necessity to do so, in  
3 view of his worsening condition at the hospital. And it is further alleged it was at the  
4 hospital that he was injured, and the unavailability of expertise, and the refusal of the  
5 request for assistance of expertise, was negligent.

6

7 The writ in this case was issued on the 11<sup>th</sup> January 2008, and was not served due to  
8 having to gather details of the various aspects of the claim. For example

9

- 10 1. The completion of an expert report from the University Hospital of the West  
11 Indies in the event that the report was not favourable and action should not be  
12 commenced.
- 13  
14 2. To enable details to be gathered to draft a detailed and proper statement of  
15 claim.
- 16  
17 3. That the principal parties in the action might renege on their promise to finalise  
18 their reports by a certain date.
- 19  
20 4. To ensure that before serious allegations are made against the government  
21 institution, which is the main healthcare institution in a small jurisdiction like  
22 the Cayman Islands, the matter was investigated thoroughly
- 23  
24 5. There is a statute of limitations against the hospital, and that had to be taken  
25 complied with, as a result of which the writ had to be filed, as a holding  
26 position.
- 27

1 The Law:

2 The jurisdiction given to the Court to exercise its discretion to extend the validity of the  
3 writ, even though it has expired, is governed by Order 6 Rule 8. The validity of a writ  
4 usually lasts for four months. However, under Order 6 Rule 8 subsection 2 subject to  
5 paragraph 3:

6 “Where a writ has not been served on the defendant, the Court may, by Order  
7 extend the validity of the writ, from time to time, for such period not exceeding  
8 four months at any one time, beginning with the day following that on which it  
9 would otherwise expire as may be specified in the Order if an application for  
10 extension is made to the Court before that day or such later day if any, as the Court  
11 may allow”.

12  
13 Subsection 3 has no bearing whatsoever on the question of an expired writ being extended  
14 and the discretion of the Court to do so.

15  
16 The plaintiffs rely on two cases, one of which is Kleinwort Benson Ltd v Barbrak Ltd. and  
17 other Appeals The Myrto (No 3 ) [1987] 2 All ER page 289. In that case it was held that  
18 on the true construction of the Rules of the Supreme Court Order 6 Rule 8 (in the United  
19 Kingdom which were identical to those in this jurisdiction) the power to extend the  
20 validity of writ was not limited to exceptional circumstances but could be exercised if in  
21 the circumstances, and balancing the hardship to the plaintiff were an extension to be  
22 refused against the hardship to the defendant, were an extension to be allowed, there was  
23 good reason to do so.

24 Where an application for an extension was made, and the writ had ceased to be valid, and  
25 the relevant limitation period had expired, the applicant was also required to give a

1 satisfactory explanation of his failure to apply for an extension before the expiration of the  
2 validity of the writ. It was also held that since there was good reason for allowing the  
3 extension of the bank's writ to stand, namely the saving of unnecessary proceedings and  
4 costs without prejudice to the respondents, the appeal would be allowed.

5  
6 Jones v Jones and another 3 All ER [1970] page 47 is another case on which Mr Norman  
7 Hill Q.C. for the plaintiffs relies.

8 The plaintiff solicitor in that case issued a writ against two defendants, which was validly  
9 served on the first defendant. The solicitor reasonably, and without negligence but  
10 mistakenly as the Court held, took the view that service of the writ on the first defendant  
11 within twelve months of its issue enabled him to serve it on the second defendant after the  
12 expiry of the twelve months. It was held in that case, there was good and sufficient reason  
13 for extending the time for service of the writ on the second defendant because:

14 (a) The solicitor's error was not unreasonable in the circumstances,  
15 consequently

16 (i) The plaintiff would have had no redress in negligence against his  
17 solicitor, if the second defendant had in fact been held solely to blame for  
18 the plaintiff's injury but could not be served and  
19

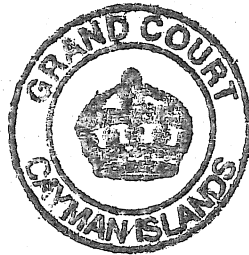
20 (ii) The Court was entitled in exercising its discretion whether to  
21 extend the validity of the writ, to balance the hardships to the plaintiff,  
22 which would have followed, had the validity of the writ not been extended  
23 against the hardship which the second defendant might have suffered  
24 through such extension.  
25  
26

1 It is clear from all the authorities, in addition to those that I have researched, that this  
2 particular case comes not only as one in which there is good and sufficient reason, but that  
3 the case falls within the category of exceptional circumstances.

4  
5 This is a matter of public policy. The hospital is one which services ninety percent of the  
6 population of the Cayman Islands. The government makes that service a condition of  
7 contracts given to civil servants in these islands, all of whom are cared for by that  
8 institution (the George Town hospital). If in fact this is a case of negligence, and if in fact  
9 the plaintiffs' claim is accurately alleged, then not only would the plaintiffs have been  
10 denied their right to litigation and suffered enormous hardship, if the claim is stuck out on  
11 a technicality, but the population of the islands, especially the civil service population,  
12 stands to suffer the same risk. In those circumstances I have no doubt in my mind that I  
13 must exercise my discretion in favour of the plaintiffs and grant the validity of the writ for  
14 a further four months.

15 Costs in the cause.

16  
17 



18  
19  
20 Levers J.  
21 Judge of the Grand Court

22  
23  
24 Dated this 10<sup>th</sup> July 2008