

IN THE HIGH COURT OF JUSTICE

[2021] EWHC 3698 (QB)
Claim No. QB-2020-003252

QUEEN'S BENCH DIVISION

Claim No. QB-2020-001858

JUDGE: MASTER MCCLLOUD

Laura Bailey

v

Barclays Bank UK Public Limited Company

And

London Plastic Surgeons Ltd (Proposed Part 20 Defendant)

AND

Carla Wilson

v

American Express Services Europe Limited

And

My Aesthetics Ltd (t/a My Breast) In Liquidation (Proposed Part 20 Defendant)

Counsel for the Defendants: Ruth Bala instructed by TLT LLP

Counsel for the Proposed Part 20 Defendant London Plastic Surgeons Ltd: Bradley Say
instructed by KLS Law Solicitors

Counsel for the Claimants: Hugh Preston QC, instructed by Leigh Day

Accessible language summary (not part of judgment)

This summary has a Flesch score of above 50 and was written to ensure accessibility of the judgment to readers with average reading ability.

Where a claim form is issued by a Claimant against more than one Defendant but is not served on one of the Defendants, and time for service of the Claim expires without service

on that Defendant, the Defendant who was served must use CPR 20.7 if it wishes to commence any Part 20 Claim against the non-served Defendant. If that were not the case then CPR 20.6 would enable a claim to commence and be pursued against the unserved Defendant without any valid originating process having been served and absent any order deeming it served (or extending time for service), merely by filing a Notice. There has to be at least one Originating Process served in respect of a Defendant whether that be the original claim (in which case CPR 20.6 may apply) or a separate Part 20 claim (in which case CPR 20.7 applies).

Judgment

1. In these two similar cases I have been asked to decide a novel if 'niche' point of procedural interest relating to CPR Part 20, that remarkably fertile ground for rule amendments and clarifications. I need not say anything about the claims in these cases or the issues save that the Part 7 Claim Forms named two defendants, and were not served on D2 in each case and have now expired for service. Subsequent to that expiry the first Defendant served a notice under CPR Part 20, rule 6 which is an additional claim for an indemnity or a contribution.
2. That rule indicates that a Defendant who has filed an acknowledgement of service or defence may file such a Notice, seeking an indemnity or contribution against a party to the proceedings. That may be done without permission if the Notice is filed with or at the same time as the defence (or in certain other circumstances not relevant here).
3. I am asked to decide whether the Notice under CPR 20.6 is valid or whether, instead, a Part 20 Claim form has to be issued under CPR 20 rule 7.
4. My decision is as follows, and I agreed with counsel that this judgment should be distributed in view of the lack of authority on the point. This is an extempore judgment in the course of a case management hearing and has been slightly edited and clarified before release. It is typical of the type of ruling which Masters in the QB make which help to shape procedural law, when we are not otherwise engaged in trial work.
5. The interesting question here has arisen because as noted the intended Part 20 Defendant was named on the claim form in each case, but the claim form was never served on them and the time for service had expired. The Claim Form cannot now be validly served against the intended Part 20 Defendant in each case (or rather there is no remotely arguable case that the court could allow such service out of time, since non-service was deliberate, and that is not in dispute). Is the unserved Defendant 'a party' without service and after expiry of the claim for service, in circumstances where the court has (as agreed) no arguable power to extend the time for service?
6. I note that there are rights under the CPR provided for persons against whom claims are issued and not served, which enable such defendants to require the claim to be served or dismissed: see r7.7 (the right to require service). That would work perfectly

well during the period of validity of the claim form in a case where the named but unserved Defendant wanted to be served, but not otherwise. The proposed Defendant could have exercised that right in this instance in both cases but did not (and presumably neither such proposed Defendant had reason to do so).

7. In my judgment it is fundamental to legal certainty that there must be an originating process for any claim to a substantive final legal remedy. I might also reduce that to the concept that 'for any Prayer there must be a Process', but were I to do so I expect that exceptions would be mailed in on the proverbial postcard to show why that would be a poor way of expressing it, and that the concept of a prayer in a pleading is I assume no longer one familiar to pleaders.
8. The consequence of my former proposition, at least, is that when one looks at r20.6, the rules require that the defendant be a "party" already: if not, then a Part 20 Claim form must be issued. Given the importance of an originating process for any claim – subject to the limited exception that on rare occasions a claim may proceed on the basis of an undertaking to issue the originating process in an urgent case - I consider that r20.7 is the appropriate procedure in this circumstance. I observe that for example matters could become unclear in cases where overseas service is expected, were the contrary to be the position.
9. Under rule 20.7 I have the power to allow an Additional Claim to be made with the Court's permission under r20.7. That is not opposed. I direct therefore that the Additional Claim should be issued as a Part 20 claim and served, together with the claim forms under CPR 20.7. This applies to both cases in respect of which I am making this decision.

10. In short therefore:

Where a claim form is issued by a Claimant against more than one Defendant but is not served on one of the Defendants, and time for service of the Claim expires without service on that Defendant, the Defendant who was served must use CPR 20.7 if it wishes to commence any Part 20 Claim against the non-served Defendant. If that were not the case then CPR 20.6 would enable a claim to commence and be pursued against the unserved Defendant without any valid originating process having been served and absent any order deeming it served (or extending time for service), merely by filing a Notice. There has to be at least one Originating Process served in respect of a Defendant whether that be the original claim (in which case CPR 20.6 may apply) or a separate Part 20 claim (in which case CPR 20.7 applies).

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