

The "Ching Ho" And Another
[2001] SGHC 259

Case Number : Adm in Rem 150/2000
Decision Date : 04 September 2001
Tribunal/Court : High Court
Coram : Judith Prakash J
Counsel Name(s) : Corina Song and Kok Tsung Hao (Allen & Gledhill) for the second and fourth plaintiffs; Leong Kah Wah and Derek Tan (Joseph Tan Jude Benny) for the defendants
Parties : —

Civil Procedure – Originating processes – Writ – Extension of validity – Grounds for extension – Non-service of writ due to plaintiffs' alleged misinterpretation of document – Plaintiffs had had reasonable opportunities to serve writ during its validity – Whether good reason shown for extension – O 6 r 4 Rules of Court

Civil Procedure – Originating processes – Writ – Extension of validity – Ex parte application – Non-disclosure of material facts – Whether fatal to application

Civil Procedure – Originating processes – Writ – Issue of writ against vessel – Duty to serve promptly – Whether on-going negotiations with defendants relieves plaintiff of duty

Civil Procedure – Originating processes – Writ – Extension of validity – Whether balance of hardship per se good reason for extension – Need for matters constituting good reason to exist

Judgment:

1. This admiralty action against the vessels 'Ching Ho' and 'Chun Ho' is one of five similar actions filed against those vessels on 25 April 2000. The facts leading to the registrar's appeal in this action which is now before me have led to similar appeals in the other four actions and it is common ground that the decision that I make here will be the decision for those other appeals as well.

2. When the writ herein was issued, four parties were named as plaintiffs. The first plaintiffs were described as 'The owners of cargo and/or persons interested in and/or having rights to sue in relation to the cargo lately laden on board the ship or vessel 'Ching Ho'. The second plaintiff was named as Rimbuan Hijau General Trading Sdn Bhd ('RHG Bhd'), a Sarawak company. The third plaintiff was Grandsell Trading Pte Ltd, a Singapore company and the fourth plaintiff was Bordamur Gabon, an entity existing in Gabon, West Africa. It should be noted that each of the second, third and fourth plaintiffs is a separate entity and as plaintiffs they are several and not joint. Only one of them (it has not yet been established which) has the legal right to bring this action against the defendants. The solicitors who issued the writ on behalf of the plaintiffs were Messrs Allen & Gledhill ('A&G').

3. The defendants, the owners of the two vessels, are represented by Messrs Joseph Tan Jude Benny ('JTJB'). JTJB were appointed to act for the defendants by The Britannia Steamship Insurance Association Ltd ('Britannia'), a protection and indemnity association with which the defendants are entered. On behalf of the defendants, JTJB have accepted service of the writ in this action as issued by the third plaintiff. They have not accepted service of the writ as issued by the second and fourth defendants.

4. On 24 April 2001, A&G, having learnt that JTJB had no instructions to accept service of proceedings issued by the second and fourth plaintiffs, applied to court on behalf of these plaintiffs for an extension of the validity of the writ for a period of 12 months from 25 April 2001. This

application was heard by the assistant registrar that same day and was granted. On 14 June, the defendants applied to set aside the renewal of the writ. Their application was heard by a senior assistant registrar on 27 July. It was not successful and the defendants therefore lodged the present appeal.

Background

5. In February 2000, the defendants' vessel '*Ching Ho*' loaded a cargo of sawmill accessories and logging spare parts at the port of Tanjong Manis, Sibu, Sarawak and then set sail for Libreville, Gabon. On route, the vessel met with very heavy weather and 25 containers of cargo were swept over board. Other cargo was damaged. The vessel arrived at the port of destination towards the end of March 2000.

6. The shippers of the cargo had taken out insurance for the voyage with QBE Insurance International Ltd. When the insurers were notified of the loss and possible damage, they appointed a Singapore company, Insight Marine Services Pte Ltd ('Insight') to investigate and deal with the cargo claims. The person in charge in Insight was one Dan Yeo Puay Song. The first thing he did was to instruct solicitors to issue writs against the '*Ching Ho*' and her sister vessel '*Chun Ho*' to protect against the possibility of a change of ownership. Since five bills of lading had been issued, five writs were taken out. In each writ, there were three or four plaintiffs, one of whom was described in a generic fashion, whilst the others were named specifically. The persons named as plaintiffs were involved with goods either as shippers or consignees.

7. Immediately following the issue of the writs, Insight, having ascertained that the vessels were entered with Britannia, wrote to Britannia's local correspondents notifying them of the plaintiffs' claim and requesting security for it. Mr Yeo told Britannia that Insight acted for the owners and insurers of the goods. He did not, however, notify them at that stage that the writs had been issued.

8. On 10 May 2000, Britannia informed Insight that the defendants were agreeable to providing security subject to agreement on the wording and the quantum. Britannia also asked for a letter of authority from Insight's principals authorising Insight to act on their behalf. The next day, Insight sent Britannia a draft of the wording required for the letter of undertaking. This draft was addressed to 'Owners of Cargo mentioned below'. Before the main body of the letter, particulars of the vessel, voyage, cargo and all five bills of lading were given. The first paragraph of the document began 'In consideration of the owners and other persons entitled to sue in respect of the above-mentioned claims concerning the cargo referred to above (hereinafter together referred to as "the Cargo Owners") ...'. The second paragraph contained an undertaking by Britannia to instruct solicitors to accept service of proceedings against the '*Ching Ho*' within 14 days of being asked to do so.

9. The letter of authority asked for was forwarded under separate cover. It was issued and signed by four companies namely, I-PPON Trading Pte Ltd ('I-PPON'), Grandsell Trading Pte Ltd ('Grandsell'), Wimbush Limited ('Wimbush') and Pacific Barter Trade Limited ('Pacific Barter'). At that time Insight had not received authority to act from any other cargo interest including the second and fourth plaintiffs.

10. Britannia responded by forwarding a draft of the letter of undertaking that it was prepared to provide. This draft was based on the draft provided by Insight. In its covering letter, Britannia pointed out that the quantum was slightly less than Insight had requested and that the only other real amendment it had made was to provide for English law and jurisdiction to govern the undertaking instead of Singapore law. There was one change in the draft which Britannia did not highlight and this was that instead of being addressed to 'Owners of Cargo' it was addressed as follows:

'To – Insight Marine Services Pte Ltd acting on behalf of

I-PPON Trading Pte Ltd

Grandsell Trading Pte Ltd

Wimbush Limited

Pacific Barter Trade Limited

as owners of cargo mentioned below.'

On 16 June, Insight informed Britannia that the quantum and wording proposed by Britannia were acceptable and asked for the letter of undertaking to be forwarded as soon as possible. The original letter of undertaking was issued by Britannia the same day and sent to Insight who received it on 23 June 2000. The wording of the actual letter was identical to that of the draft which Britannia had sent Insight.

11. Following this, the claim made by the cargo interests (ie the various plaintiffs in the five actions) against their insurers was adjusted and settled by the insurers. On 18 November 2000, Insight notified Britannia of the settlement and, on behalf of the cargo insurers, forwarded claim documents to Britannia for their consideration. The total amount claimed was US\$1,130,586.64. Among the documents forwarded was a letter signed by the fourth plaintiffs authorising the cargo insurers to use their name in legal proceedings for the recovery of the loss. Similar letters signed by the third plaintiff in Admiralty 151 of 2000, Shimmer International GE Ltd, and the fifth plaintiff in Admiralty 152 of 2000, Societe Forestiere Et Industrielle De Koulamdutou, were also forwarded. At that stage, there was still no authority from RHG Bhd, the second plaintiffs herein, who are also the second plaintiffs in Admiralty 152 of 2000.

12. Subsequently, Insight sent Britannia several letters asking it to forward a settlement proposal. On 3 February 2001, in one of these letters, Insight told Britannia that if no favourable response was received within the next seven days, it would have to recommend that its principals proceeded with legal action. On 7 February, Britannia replied to advise Insight that the defendants did not consider that they were responsible for the claim because the goods had been carried on deck. More than a month later, on 28 March, Insight asked Britannia to re-examine its case and then, in the absence of a reply, wrote again on 9 April to inform Britannia that suit time had been preserved and that writs had been issued in Singapore on 25 April 2000. A copy of one of the writs was enclosed. Insight asked Britannia to nominate lawyers in Singapore to accept service of the writ, pursuant to the undertaking since the writs were due to expire on 24 April 2001. This was the first time that Britannia had notice of the issue of the writs in the five actions.

13. Britannia then appointed JTJB to handle the matter for the defendants. On 12 April, JTJB wrote to A&G stating that under the letter of undertaking, Britannia was obliged to appoint solicitors to accept service of process commenced by I-PPON, Grandsell, Wimbush and Pacific Barter. They noted that these entities apart, the parties named in the writ had not been included in the Britannia letter and asked for copies of all the writs issued so that they would be in a position to advise Britannia whether to accept service or not. Copies of the writs were sent over by A&G the same day. At the same time, A&G asked JTJB to respond on the substantive issue of service by the close of the day. Subsequently, there was a telephone conversation in which JTJB informed A&G that in view of the intervening Easter weekend, they would not be able to respond with Britannia's instructions until Tuesday, 17th April or Wednesday, 18th April.

14. By Wednesday, 18th April, nothing had been heard. A&G therefore wrote to JTJB asking them to take instructions on amending the wording of the letter of undertaking so that it would include the names of all cargo interests (including the second and fourth plaintiffs) who had not been mentioned originally. On Friday, 20 April, JTJB informed A&G that it had been instructed to accept service of the writs insofar as they had been issued by the persons named in the original letter of undertaking. It had further been instructed not to agree to the amendments to that letter as proposed by A&G. As far as this action is concerned, that reply meant that service would only be accepted in respect of the writ as issued by the third plaintiffs.

Application for renewal

15. As stated, on 24 April, the second and fourth plaintiffs applied for the renewal of the writ. Mr Yeo made the affidavit in support of the application. In it, he disclosed that the '*Ching Ho*' had called in Singapore during the validity of the writ viz on 3 October 2000 and on 11 April 2001 and that the '*Chun Ho*' had been here once during the validity of the writ ie on 19 March 2001. Mr Yeo affirmed that although the plaintiffs did have reasonable opportunity to serve the writ of summons during its currency, he had always believed that Britannia was obliged to appoint solicitors to accept service of process of the plaintiffs' claims.

16. In paragraphs 34 to 37 of his affidavit, Mr Yeo stated that when he had referred in his draft letter of undertaking to 'The Owners and other persons entitled to sue in respect of the above-mentioned cargo claims' he had intended by this to include all the parties named in the writ that had been issued on 25 April 2000. He did not notice and never realised that the letter only covered some of the plaintiffs and not all of them. He had only realised this when he encountered problems with the defendants' solicitors in April 2001 after he requested that solicitors be appointed to accept service. He went on to say that the omission of all the names of the plaintiffs on the letter of undertaking was clearly an oversight on his part as it would not have made sense for Insight to have issued the writ on behalf of only some but not all the parties named therein. Mr Yeo also said that although it was correct that Insight did not have authority from the receivers of the cargo at the time the letter of undertaking was issued, it would not have been difficult to have obtained the necessary authority as the shippers and receivers were related.

17. Notwithstanding that assertion, in respect of RHG Bhd no letter of authority was received until July 2001 when a letter of appointment was sent to A&G authorising them to act for RHG Bhd in relation to the loss of this particular cargo and agreeing that A&G was authorised to accept and act on instructions of Insight who were the loss adjusters and recovery agents appointed by the cargo insurers. It appears from the letter of appointment that the first word of the fourth plaintiffs' name is actually 'Rimbunan' rather than 'Rimbuan' as appears in the writ.

18. It should also be noted that during the period of the initial validity of the writ each of the vessels visited the port of Singapore twice. The '*Ching Ho*' was here between Tuesday, 3 October 2000 at 2020 hours and Wednesday, 4 October 2000 at 1440 hours and again between Wednesday, 11 April 2001 at 2030 hours and Wednesday, 18 April 2001 at 2000 hours. The '*Chun Ho*' was here from 1645 hours on Tuesday, 12 December 2000 to 1320 hours on Friday, 15 December 2000 and from 1500 hours on Monday, 19 March 2001 till 2200 hours the same day. The writs could easily have been served during any of the visits except perhaps the last visit of the '*Chun Ho*' in March.

Grounds of appeal

19. The defendants had two grounds of appeal:

(a) that the second and fourth plaintiffs had not shown good reason for the renewal of the writ;

(b) that they had failed to disclose material facts in their ex-parte application to renew the writ.

I will deal with them in turn.

Good reason

20. The principles that have to be applied when a judge considers whether or not to extend the validity of a writ have been settled since 1987. They were clearly spelt out by Amarjeet Singh JC in *The Lircay* [1997] 2 SLR 669 and I can do no better than to quote the relevant passages of this judgment.

'Principles

11.1 Order 6 r 4(2) of the Rules of the Supreme Court (S 274/70) states:

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 12 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.

11.2 The Court of Appeal in *Lim Hong Kan & Ors v Mohd Sainudin bin Ahmad* [1992] 1 SLR 353 in interpreting the above rule following *The Myrto; Kleinwort Benson Ltd v Barbrak Ltd* (No 3) [1987] 2 All ER 289 laid down the principles to be considered in the exercise of the power.

One of the principles was that the power of extension should only be exercised for *good reason*. Lord Brandon in *Kleinwort Benson* had observed that it is not possible to either define or circumscribe the scope of the expression *good reason* and much depended on all the circumstances of the case and hence the application of the phrase must be left to the judge dealing with the matter. There would be *good reason* for instance where there was an agreement between the parties, express or implied to defer service of the writ or where the delay concerning the application to extend the validity of the writ was induced or contributed by the defendant or his representative. Another salient consideration would be the difficulty in effecting *service* more particularly if a defendant was evading service. In the end, it was the exercise of *discretion* by the court which determined whether the writ was to be extended. In the exercise of that *discretion* — *discretion* that was undefined — the judge was entitled to have regard to the balance of *hardship* between the parties as a relevant matter to be taken into account in extending the writ's validity on an *ex parte* application and further that in doing so, the court may well need to consider whether allowing an extension will cause *prejudice* to the defendants in all the circumstances of the case.

Time bar

11.3 The ambit of the rule as to an accrued right of limitation was fully canvassed by the House of Lords in the *Kleinwort* case. The House had classified cases where a question of extension of a writ arose into three categories. Lord Brandon stated:

- Category (1)
cases are where
the application for
extension is made
at a time when
the writ is still
valid and before
the relevant
period of limitation
has expired.
- Category (2)
cases are where
the application for
extension is made
at time when the
writ is still valid
but the relevant
period of limitation

has expired.
Category (3)
cases are where
the application for
extension is made
at a time when
the writ ceased
to be valid and
the relevant
period of limitation
has expired. In
both category (1)
cases and
category (2)
cases, it is still
possible for the
plaintiff (subject
to any difficulties
of services which
there may be) to
serve the writ
before its validity
expires, and, if he
does so, the
defendant will not
be able to rely on
a defence of
limitation. In
category (1)
cases, but not
category (2)
cases, it is also
possible for the
plaintiff, before
the original writ
ceases to be
valid, to issue a
fresh writ which
will remain valid
for a further 12
months. In neither
category (1)
cases and
category (2)
cases, therefore,
can it properly be
said that, at the
time when the
application for
extension is
made, a

defendant who has not been served has an accrued right of limitation. In category (3) cases, however, it is not possible for the plaintiff to serve the writ effectively unless its validity is first retrospectively extended. In category (3) cases, therefore, it can properly be said that, at the time when the application for extension is made, a defendant in whom the writ has not been served has an accrued right of limitation.

It would not be right, however, to regard the question whether, at the time of the application for extension, a defendant on whom a writ has not been served has an accrued right of limitation as the only significant factor in relation to such extension. For, even in category (1) cases and category (2) cases, where there is no such accrued right, the

effect of an extension may still enable a plaintiff to serve the writ which was issued before the relevant period of limitation expired, more than 12 months after the expiry of that period. *This necessarily involves a departure in favour of a plaintiff, from the general rule on which a defendant is entitled to rely that a writ against him, if it is to be effective, must be issued before the relevant period of limitation has expired and must be served on him within 12 months of its issue.* [Emphasis added.]

11.4 I may add that whilst *good reason* is always necessary in category (2) and (3) cases the applicant for an extension would have in addition to justify his failure to apply for an extension before the validity of the writ expired.'

21. Based on the principles set out above, this case is a category (2) case since the plaintiffs managed to have the writ renewed on the day before it expired. Accordingly, the defendants have no accrued right of limitation and have not been deprived of any advantage by reason of the renewal. The case turns on whether good reason to renew has been established. I should also add that as Lord Brandon himself made clear in the case of *Waddon v Whitecroft-Scovill Ltd* [1988] 1 All ER 996 in which he explained the decision in *Kleinwort*, balance of hardship does not of itself constitute good reason for extending the validity of the writ. It is only where there are matters which could, potentially at least, constitute good reason for extension that balance of hardship might be a relevant consideration in deciding whether an extension should be granted or refused: see p 1003 of that judgment.

22. The plaintiffs did not deny that they had had reasonable opportunity to serve the writ on either

the 'Ching Ho' or the 'Chun Ho' during the year that elapsed from its issue. The reason why they did not do so was Mr Yeo's belief that Britannia had undertaken to appoint solicitors to accept proceedings started by all the plaintiffs. Mr Yeo affirmed that he had not realised when he received the signed letter of undertaking that it was addressed only to the four parties who had given him letters of authority. His position was that all along he was representing all cargo interests since he had been appointed by the cargo insurers and therefore his intention had been to protect all such parties. It was submitted on the plaintiffs' behalf that a genuine mistake such as that made by Mr Yeo would constitute good reason to renew the writ.

23. The defendants argued that it was well settled that a mistake by the plaintiffs, their agents or solicitors resulting in a failure to effect service within the time limited was not a good reason for renewal of the writ. For example, in *Official Receiver, Liquidator of Jason Textile Industries Pte Ltd v QBE Insurance (International) Ltd* [1989] 1 MLJ 1, it was held that it was not a good reason for renewal that the plaintiffs' solicitors had given erroneous advice that service should be withheld pending the results of CID investigations whilst in *Singh v Duport Harper Foundries Ltd* [1994] 2 All ER 889, the erroneous belief of the plaintiff's solicitors' employee that a writ could only be properly served if accompanied by a medical report was found not to be a good reason. Even the temporary loss of the files by the plaintiffs' solicitors has been held not to justify the exercise of discretion in favour of renewal: see *New Ching Kee v Lim Ser Hock* [1975] 2 MLJ 183.

24. The plaintiffs contended that the circumstances of this case were different from those cited by the defendants. They relied instead on *Jones v Jones* [1970] 2 QB 576 where a writ issued against two defendants and served on one was not served on the other due to a misinterpretation of the rules of court by the plaintiffs' solicitor. He construed the relevant rule to mean that once the writ had been served on one defendant within 12 months, it was still valid for service on the other after the expiry of the 12 months. The Court of Appeal considered that the misinterpretation, although a wrong view of the procedural rule in question, was a view which any trained lawyer could reasonably take and therefore upheld the conclusion of the judge below who found that there was good and sufficient reason to extend the time for service of the writ upon the second defendant. In my view, that was an extreme case since it was considered that the misinterpretation was a reasonable construction of the rule. The situation here is not as ambiguous since the letter of undertaking was plainly addressed to only four parties and it would have been obvious to anyone who read the document (it only contained two paragraphs) that the undertaking was given in consideration of those parties not taking any action to arrest the vessels and that the undertaking to appoint solicitors to accept service was given in respect of those parties only.

25. After the hearing, when I indicated I would reserve judgment, the plaintiffs were able to find another authority which they submitted supported their position on mistake. This is *Cheltenham & Gloucester Plc v Moore Manton (A Firm) & Ors* (an unreported decision of the English Court of Appeal delivered on 23 June 1998). That case concerned an action against a valuer, Mr Foggo, who was alleged to have negligently over-valued a property. At the time the action was started, Mr Foggo had died. The writ was issued on 24 April 1997, just within the limitation period. Notwithstanding that the plaintiffs' solicitors had previously written to the executors of Mr Foggo's estate, notifying them of their clients' claim, when they issued the writ they erroneously named Mr Foggo as the defendant rather than naming his executors as defendants. The mistake was only discovered after the writ had been served on the executors. The writ was valid for service for a period of four months. It would have expired on 24 August 1997 but on 21 August, the plaintiffs applied ex-parte for orders to substitute the executors as the defendants in the proceedings and to extend time for serving the writ. Both orders were granted. The executors then appealed.

26. In the Court of Appeal, the judge's decision on both applications was upheld. In relation to the

extension of the writ, Bingham CJ, observed:

'27. We have paid attention of course to those arguments advanced by counsel, and I have already made reference to the judge's reasons for regarding the case as one which in which there was good reason to extend the period of validity. In my judgment the case was at best very close to the borderline and a number of the facts to which the judge made reference would not in any ordinary case suffice to justify the grant of additional time.

28. Counsel for the plaintiffs has, however, submitted that the facts of this case were quite extraordinary and it seems to me that there is considerable material upon which he can so submit. The executors had been very clearly and explicitly notified of this claim. The solicitors had delayed after issuing the writ for a period before serving it, since they wished to know the quantum of their claim before serving the writ. It was not necessary for them to know that quantum, nor was reference made to quantum in the writ. But it seems to me that this was not an irrational ground for delay. The executors were told of the impending issue of the writ and Mr Newby, a solicitor, expressed willingness to accept service. They had been told that the writ would be served shortly and it was, in fact, served on them well within the period. They replied, saying they had not been correctly identified, but there was some delay before they gave that answer. That is not a matter of criticism of them. As counsel points out, they need not have answered at all. But it was that period of delay which contributed to the need to obtain an extension. It is also a very unusual, if not unique, feature of this case that the personal representatives were actually in possession of the writ at the time when the application was made. It is difficult to imagine a case in which there was less misleading. At the time when application was made to the judge, there was still time to effect personal service. It was however a more expensive exercise to effect personal service during the time which remained and in many ways effecting postal service on a firm of solicitors would seem more appropriate. It has not been suggested that there was any prejudice in the extended period. Had the judge refused the extension it seems to me almost certain that the executors would still have been served and their position would not have been improved, although counsel suggests (and he must be right) that one cannot be certain that personal service would have been effected in time.

29. On the unusual and extraordinary facts of this case it seems to me that the judge was entitled to conclude that good reason had been shown for not serving sooner and for

granting the extension. It has been pointed out that he did not expressly consider the discretionary matters which might have weighed for or against granting an extension, but in my judgment these considerations were overwhelmingly in favour of making the order which he did. Counsel submits that that order deprived the executors of an accrued limitation defence, but in my judgment they had no such defence and had the judge refused an extension they would still not have had such a defence.'

27. Lord Justice Judge who agreed with the judgment of Bingham CJ made a point of adding that the *Cheltenham & Gloucester* case remained 'close to the line which must be drawn between cases in which it can be properly demonstrated that good reason for extending the validity of the writ under Order 6, rule 8 has or has not been demonstrated'. He added that because of the unusual facts it would not be appropriate to interfere with the judge's conclusion which he shared though as he said 'not without some degree of hesitation'.

28. From the above, it can be seen that the facts of *Cheltenham & Gloucester* were really *sui generis*. The writ had been issued and had actually been served within time. It was in the hands of the executors at the time the application for extension was made. The writ could have been amended and served within the period of its original validity but this would have resulted in expense. If the application to extend the writ had been refused, the amended writ could probably still have been served on the executors within time. There was no prejudice to the executors who were fully aware of the claim and who had been informed of the impending issue of the writ. Further, the need for the extension of the validity of the writ was the error in the description of the defendant. The writ had been served within time on the correct party (ie the personal representatives of Mr Foggo) but since Mr Foggo instead of the executors was named as the defendant, the plaintiffs needed to amend the writ and re-serve it. The mistake that had been made therefore was one as to the manner in which the defendant should have been described in the writ and was not a mistake as to when and how the writ was to be served. Yet, with all those extenuating factors, the two judges of appeal who expressed their opinions on the case still considered it to be close to the borderline and were somewhat hesitant in agreeing with the decision of the judge at first instance.

29. The mistake in the present case was not a mistake in identification of the defendants. It was a mistake as to the manner in which the writ had to be served in that Mr Yeo assumed that Britannia had agreed to appoint solicitors to accept service on behalf of all the plaintiffs. On the facts here, I have considerable doubt whether there was a genuine mistake or whether Mr Yeo was simply careless and at some time overlooked the fact that only four parties were covered by the letter of undertaking, a fact which he would have been well aware of when the letter was issued.

30. Insight was appointed by the cargo insurers to adjust the cargo claims and settle them. The company is in the business of investigating and adjusting cargo claims. Mr Yeo, a director of the company, is therefore a professional claims handler and is fully aware of the limitation periods that govern cargo claims and the fact that claims against vessels can be defeated by a change in ownership. He would also be apprised of the fact that admiralty writs in this jurisdiction are valid for a period of only one year unless renewed and that renewal is not automatic but based on good reason. As professional claims handlers appointed by insurers before settlement of the claim by the insurers, Insight must have been aware that its authority to represent the shippers and receivers of cargo could not come from the insurers but had to come from these parties themselves. This knowledge was reflected in the response to the request to Insight from Britannia for 'a letter of authority from your principals authorising you to act on their behalf'. Mr Yeo complied by forwarding what he described as

'the required letter of authority from the shippers'. He did not forward the letter of appointment from the insurers. It is clear that he knew at that time that he was only authorised to act for these four parties who were shippers and that he was not authorised to act for any of the receivers nor other parties who might have been involved as shippers.

31. The position was, therefore, that at the time the letter of undertaking was issued, Insight was aware that it was authorised to act only for the four parties named in the letter. It is difficult for me to accept that Mr Yeo was not aware of the changes made to the manner in which the addressees of the letter were described. It is not as if Britannia simply sent him its issued letter for retention. Instead, the draft incorporating its proposed amendments was sent to him for his review and approval and only after such approval was received, was the letter issued and signed. The description of the persons to whom the letter is addressed appears right at the beginning of this short document. The original description drafted by Mr Yeo ie 'To: Owners of cargo mentioned below' occupied only one line. The amended description occupied six lines as can be seen from the quotation in 10 above. The changes made appear to me to be so glaring that they could not possibly have been overlooked. If Mr Yeo truly did not notice the change in addressees this could only have been because what had been done reflected what he knew to be the position at the time ie that Insight was acting on behalf of those four named parties and not on behalf of any one else and thus there was nothing amiss that would draw his attention.

32. During all the initial correspondence between Insight and Britannia on the questions of security and service, Insight was aware that writs had been issued naming many parties as plaintiffs. Mr Yeo did not, however, disclose this fact to Britannia at any time up to April this year. Even when he received authority from more parties (including the fourth plaintiffs herein though not the second), he did not disclose the existence of the writs to Britannia. Nor did he take any steps to either procure letters of undertaking covering these parties or to serve the writs against the vessels though Insight must have been informed of their movements since, as counsel informed me, professional ship-watchers had been employed to keep track of the two ships.

33. It has been long established that it is the duty of a plaintiff who issues a writ to serve it promptly or, in the case of a writ against a vessel, as promptly as possible bearing in mind the vessel's movements. Plaintiffs are not excused from this duty by the existence of on-going negotiations with the prospective defendants unless there has been an agreement to that effect between the parties. In this case, it was clear from 7 February 2001 that Britannia was not disposed to settle the plaintiffs' claim. Whilst Insight should have procured the service of the writ on behalf of those parties who were not included in the letter of undertaking before February 2001, once it became obvious that it was unlikely that an out of court settlement could be achieved whilst the writ was still valid, Insight should have taken steps to serve the writ immediately. If Insight had asked Britannia at that stage to nominate solicitors to accept service, Mr Yeo would have discovered his mistake earlier and been able to serve the writ on the '*Ching Ho*' during its April visit if he missed the '*Chun Ho*' during its short stay in March.

34. The events that took place in April 2001 appear to me to show that Insight had, rather belatedly, realised that effecting service of the writ was an urgent matter. It would be recalled that in the letter of undertaking, Britannia had 14 days within which to nominate solicitors to accept service. Thus to ask them for such nomination on 9 April, when the writ was due to expire on 24 April, was cutting matters extremely fine. I do not think that the fact that it was only on 20 April that JTJB confirmed that it would not accept service of process issued by the persons who were not named in the letter of undertaking can be a matter for which the defendants can be blamed. There was no obligation on the defendants to respond earlier. Bearing in mind that copies of all the writs were only given to JTJB on 12 April, the intervening Easter holidays and the fact that the action was in Singapore whilst

Britannia was handling the matter from London and the defendants' themselves were located in Taiwan, no malicious intent can be read into the lapse of time. This is not a case where the delay in serving the writ was induced or contributed to by the defendants or their representatives.

35. During the oral argument, I indicated to counsel that I did not consider that good reason for extending the validity of the writ in this case had been established by the plaintiffs. I reserved judgment because counsel for the plaintiffs made an impassioned plea that the plaintiffs not be penalised for what she described as a 'genuine mistake'. The opportunity of considering the matter further has, however, confirmed me in my original opinion. There was no good reason to extend the writ when it was possible to serve it on several occasions during its validity and the explanation for non-service was the alleged misinterpretation of a document that did in fact speak clearly for itself. There have been many cases where the neglect of a solicitor has been called in aid of applications for renewal of a writ. In very few of those cases have the plaintiffs been successful. *Jones v Jones* was a rare exception. Although Insight is not a law firm, it is a professional claims adjuster and handler and Mr Yeo should have had no difficulty in properly interpreting the letter of undertaking and taking the appropriate action with regard to the service of the writ.

Non-disclosure

36. The defendants contended that the plaintiffs had failed to disclose material facts in their ex-parte application to renew the writ of summons. They submitted that the plaintiffs had failed to disclose:

- (1) that the fact that a writ had been issued in Singapore in the names of the second plaintiff and fourth plaintiff was revealed to Britannia and/ or the defendants only on 9 April 2001;
- (2) that nowhere in the documents produced by the plaintiffs was there any evidence to show that Insight was authorised to represent RHG Bhd;
- (3) that the vessels '*Ching Ho*' and '*Chun Ho*' had called in Singapore on a total of four occasions; and
- (4) the length of the vessels' stay each time.

37. In my view, items (3) and (4) were not material. The plaintiffs had disclosed that the vessels had been in Singapore a total of three times and that they had had reasonable opportunity to serve the writ. That being the case, it was not necessary for them to state the exact length of the vessels' stay each time and the omission to mention the fourth occasion was immaterial.

38. As regards the first item, it was clear from Insight's letter to Britannia on 9 April 2001 asking the latter to appoint solicitors that this was the first time that Britannia had been informed of the issue of the writs. This letter was exhibited as part of Mr Yeo's affidavit in support of the renewal application. Although Mr Yeo did not draw attention to this fact in the body of his affidavit, the letter itself was referred to by A&G during the course of the argument before the assistant registrar who, on reading the letter, would have realised the position. I do not consider that there was any non-disclosure.

39. The situation regarding the second item is, however, different. It was an important fact that at the time of the application for renewal neither Insight nor A&G had received any letter of authority from RHG Bhd authorising the issue, let alone the renewal, of this writ. If the assistant registrar had

known that A&G did not have the necessary authority at that time, I am sure that he would have considered himself obliged to dismiss the application insofar as it related to RHG Bhd, the second plaintiff. I consider that the non-disclosure of this fact was material.

Conclusion

40. For the reasons given above, I am allowing the appeal and setting aside the renewal of the writ herein. The same order will be made for the appeals in the other actions. I will hear the parties on the appropriate costs order.

JUDITH PRAKASH
JUDGE
SINGAPORE

Date: 4 September 2001

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