IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO. FSD 175 OF 2015 (DDJ)

BETWEEN:

HARVEY RIVER ESTATE PTY LTD
FOUR LITTLE GIRLS PTY LTD
THE INDIVIDUALS AND COMPANIES LISTED AT SCHEDULE 4 OF THE ORDER DATED 2 NOVEMBER 2015

Plaintiffs

- and -

(1) PETER CLARENCE FOSTER
(2) ARABELLA LOUISE FOSTER
(3) BANKSIA HOLDINGS LIMITED
(4) THE PARTNERSHIP OF ANNE PATRICIA LARTER, ALAN JONES, MIRALESTE PTY LTD AND LEIGH JOHNSON TRADING AS "STC SPORTS TRADING CLUB"

Defendants

- and -

CAYMAN NATIONAL BANK

Discovery Respondent

- and -

JILL LOUISE FOSTER

Applicant

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Before:	The Hon. Justice David Doyle
Appearances:	John Harris of Nelsons for the Applicant
Heard:	29 May 2024
***Ex Tempore* Judgment delivered:**	29 May 2024
Draft transcript of *Ex Tempore* Judgment circulated:	30 May 2024
Transcript approved:	31 May 2024

Civil procedure – Order 65 rule 4 of the Grand Court Rules – substituted service

JUDGMENT

Introduction

1. In my judgment delivered on 14 March 2024 at paragraph 99 I stated that if the Applicant (Jill Louise Foster) was seeking an order for substituted service she must do so by way of a proper application supported by sufficient evidence and a focused skeleton argument dealing with the relevant authorities and arguments.

***Ex Parte* Summons**

2. By *ex parte* summons dated 8 May 2024 the Applicant applied for substituted service pursuant to Order 65 rule 4 of the Grand Court Rules ("GCR") in respect of any document required to be served by the Applicant on the Plaintiffs and an order extending the time limit for commencement of taxation of the Applicant's bill of costs pursuant to the order of 14 March 2024 and that the Plaintiffs do pay the costs of the summons.

The evidence

3. I have considered the evidence, including the latest affidavit of Israel Hydes stated to be sworn on 27 May 2024.

The submissions

4. I have also considered the written submissions dated 8 May 2024 and I have considered the oral submissions put before the court this morning by Mr Harris.

The relevant law

5. The relevant law and procedure is well known and in particular I have considered Order 65 rule 4, of the GCR in respect of substituted service which provides:

> "4. (1) If, in the case of any document which by virtue of any provision of these Rules is required to be served personally on any person, it appears to the Court that it is impracticable for any reason to serve that document personally on that person, the Court may make an order for substituted service of that document.
>
> (2) An application for an order for substituted service may be made by an affidavit stating the facts on which the application is founded. The affidavit shall set out the means by which it is proposed to bring the document to the notice of the person to be served, including electronic means if reasonably practicable.
>
> (3) Substituted service of a document, in relation to which an order is made under this rule, is effected by taking such steps as the Court may direct to bring the document to the notice of the person to be served."

6. I have also considered the only authority referred to by Mr Harris namely *Maples FS v B & B*

Protector Services Ltd 2022 (2) CILR 59.

Determination

7. The 132 legal entities which the Applicant describes as Plaintiffs are specified as Applicants in Schedule 4 of an injunction order made on 2 November 2015 by Smellie CJ, as he then was. Their addresses are not specified but the order refers to the name and address of the Applicants' attorneys as Harney Westwood & Riegels at an address at Harbour Place, George Town, Grand Cayman.

8. By order made on 27 February 2024, Harneys ceased to be the attorneys acting for the Plaintiffs and Harneys were ordered to serve the order on the Plaintiffs by various means, including via Tino Di Bello and Nelson McKinnon lawyers.

9. The Plaintiffs have already submitted to the jurisdiction of the courts of the Cayman Islands as they, styled then as Applicants, applied for an injunction, which was granted on 2 November 2015 by Smellie CJ, as he then was. That application was, as is clear from Schedule 2 to the order, supported by two affidavits made on behalf of the Applicants – one from Kenneth Edward Gamble, sworn on 30 October 2015, and one from Kevin Ronald Sorgiovanni, sworn on 29 October 2015.

10. The Applicant says that effecting personal service on all the Plaintiffs is practically impossible.

11. The Applicant, at paragraph 14 of her affidavit sworn on 6 May 2024, says that she has undertaken extensive investigations to determine the current addresses of all the Plaintiffs. At paragraph 16 she says that she has identified the whereabouts of certain of the Plaintiffs namely Kevin Sorgiovanni (who actually does not appear as a Plaintiff in Schedule 4). She adds that she has identified the whereabouts of members of his family and companies owned or controlled by him. The Applicant says that Williams Hughes (an Australian law firm) acts for 9 of the Plaintiffs but they have declined to identify them. She believes they act for Mr Sorgiovanni, his family members and his companies. The Applicant also believes that Mr Kenneth Gamble is the person "responsible for directing the Plaintiffs' claim herein".

12. There is also a reference to an email dated 8 May 2024 from the Applicant's Australian solicitor, Chris Hannay, confirming that "service can be affected by mail Or (sic) email."

13. There is evidence in respect of the corporate plaintiffs and their addresses.

14. Having considered the evidence, the relevant law, and the submissions, I am content to make an order, substantially in terms of the draft but such to include the amendments I specified during my exchanges with counsel this morning.

15. That is my judgment in respect of this matter.

David Doyle

THE HON. JUSTICE DAVID DOYLE
JUDGE OF THE GRAND COURT