

Nwoko v Oyo State, Nigeria
Chancery Division
27 June 2014
Case Analysis

Summary: Where a defendant had filed an acknowledgement of service but had not disputed the court's jurisdiction within 14 days after filing it, as required by CPR r.11(4), he was not entitled to extra time to serve notice to dispute jurisdiction even though the claimant's claim form had been served on the defendant outside the jurisdiction after the six-month period required for service. Rule 11(5) had been engaged and the defendant was treated as having accepted the court's jurisdiction.

Abstract: The applicant (N) applied for the appointment of an arbitrator in a dispute with the respondents (O). N had entered into an agreement in 2007 with the first respondent state government and the second respondent state governor, which provided for the payment of fees to N in certain circumstances. The agreement contained an arbitration clause which stated that in the event of any disputes arising from the agreement the aggrieved party was at liberty to refer the matter for arbitration in the United Kingdom or Nigeria in the first instance, and if not resolved, to begin proceedings in London or Abuja. N's demands for payment under the agreement were refused on the basis that no work had been done and therefore no commission had been earned. Issues of fraud, illegality of contract and immunity from suit also arose. N made a request to the Chartered Institute of Arbitrators in the UK seeking the appointment of an arbitrator under the agreement and one was appointed in 2009. The arbitrator made preliminary directions but resigned following allegations of bias. N made a further request and was informed that the institute would only appoint an arbitrator at the court's discretion. A claim form was issued on July 28, 2010. The time for service of the claim form outside the jurisdiction was six months from the date of issue of the claim pursuant to CPR r.7.5. N tried to serve out of the jurisdiction by courier which proved difficult. N accepted that the claim form had not been served within the time specified in the Rules and that no application had been made to extend time for service. O accepted service and it was acknowledged that service had been effected by July 1, 2011 and that the relevant time limit for filing the acknowledgment of service was two months and 21 days thereafter. An acknowledgment of service in the standard form was filed on O's behalf stating an intention to dispute the court's jurisdiction on forum non conveniens grounds. The application was not made within 14 days as required by CPR r.11(4). On May 22, 2014 N applied for a retrospective order extending the time for service of the claim form. O submitted that it was too late for a retrospective order extending time to serve the claim form and that it was contrary to justice if such an extension was granted as that would inadvertently extend time. O argued that they should be allowed extra time to serve notice disputing the court's jurisdiction. O maintained that the original notice of arbitration did not comply with the Arbitration Act 1996 s.14, that the arbitration had not been properly commenced, and that the notice of arbitration did not in terms constitute notice in writing to appoint an arbitrator.

Application granted. (1)The claim form had not been served within the period specified by r.11(4), but that did not mean that it was a nullity or invalid, *Hoddinott v Persimmon Homes (Wessex) Ltd* [2007] EWCA Civ 1203, [2008] 1 W.L.R. 806 applied. Although, when the acknowledgment of service was filed, the claim form had not been served within the specified time, the filing was not void or invalid, as r.11(5)

had been engaged and O was to be treated as having accepted the court's jurisdiction. There would be no prejudice to O if the claim was allowed to go forward. (2) It was plain from the CPR that s.14 had to be interpreted broadly. The original notice of arbitration did comply with s.14(4). In exercising its discretion the court had to look at all the circumstances; even though N had delayed by serving the claim form late, O should have made their application disputing the court's jurisdiction in time and that delay should be the main focus in exercising the court's discretion. The court had jurisdiction to appoint an arbitrator and gave the necessary directions for an arbitration to proceed.

Judge: Eder, J.

Counsel: For the applicant: Philip Newman. For the respondent: Adedamola Aderemi.

Significant Cases Cited

Hoddinott v Persimmon Homes (Wessex) Ltd

[2007] EWCA Civ 1203; [2008] 1 W.L.R. 806; [2008] C.P. Rep. 9; (2007) 104(47) L.S.G. 25; Times, December 28, 2007; Official Transcript; CA (Civ Div); 2007-11-21

All Cases Cited

Hoddinott v Persimmon Homes (Wessex) Ltd

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Significant Legislation Cited

Arbitration Act 1996 (c.23) s.14
Civil Procedure Rules 1998 (SI 1998/3132) r.11(4)
Civil Procedure Rules 1998 (SI 1998/3132) r.11(5)
Civil Procedure Rules 1998 (SI 1998/3132) r.7.5

Legislation Cited

Arbitration Act 1996 (c.23) s.14
Civil Procedure Rules 1998 (SI 1998/3132) r.11(4)
Civil Procedure Rules 1998 (SI 1998/3132) r.11(5)
Civil Procedure Rules 1998 (SI 1998/3132) r.7.5