Neutral Citation No: [2024] NIMaster 25 *Judgment: approved by the court for handing down (subject to editorial corrections)**	*Ref:* **2024NIMaster25** *ICOS No:* **2020/58977** *Delivered:* **27/11/2024**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

KING'S BENCH DIVISION

Between:

J.C. CAMPBELL (NI) LIMITED

Plaintiff

-and-

DAIMLER AG

Defendant

Mr O'Donaghue KC and Ms Jones (instructed by Comerton Hill Solicitors) for the plaintiff
Ms Gray KC and Mr Fletcher (instructed by Elliott Duffy Garrett Solicitors) for the defendant

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MASTER HARVEY

Introduction

[1] In this action, the defendant is a truck manufacturer based in Germany. The plaintiff is a company based in Northern Ireland which sells, maintains and repairs vehicles.

[2] The plaintiff seeks "follow on" damages from the defendant arising from a decision of the European Commission on 19 July 2016 in which it determined that the defendant, along with other truck manufacturers, had infringed Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA agreement. The Commission determined that the manufacturers engaged in collusive arrangements on pricing and gross price increases in the EEA between 1997 and 2011, a practice known as "price fixing." The Commission determined there was collusive conduct and that the infringement covered the entire EEA, imposing a fine of just over one million Euro.

[3] In these applications, the defendant essentially seeks to set aside the writ of summons/notice of writ and service of same. At hearing I granted leave to further amend their application seeking to set aside the order of Master Bell of 19 August 2022 in which he extended the period of validity of the writ by 12 months. A further limb of their application to discharge any order for leave to serve outside the jurisdiction was not pursued.

[4] The plaintiff seeks to cure the irregularities with service of the proceedings. Alternatively, they seek to extend the period of validity of the writ and notice of writ from 26 August 2022 to 25 August 2023, which if granted would mean that the notice of writ was valid when it was served on 25 July 2023.

[5] I am grateful to respective counsel for their excellent written and oral submissions which were of great assistance to the court.

Background

[6] In brief summary, the writ was issued on 27 August 2020 against the defendant which is domiciled in Germany. Its initial period of validity would have expired on 26 August 2021. The notice of writ was translated, and the certificate of translation was dated 23 November 2020. The plaintiff's solicitor followed the procedure for effecting service in Germany by forwarding the relevant papers to the Foreign Service Section ("FSS") of the High Court on 10 December 2020. He requested that they transmit the documentation to the receiving authority in Germany and to request that they serve them on the defendant. The court acknowledged receipt of these documents on 21 December 2020. Various complications and correspondence followed thereafter meaning the writ was not served within its period of validity.

[7] On 19 August 2022 an order was granted by Master Bell upon ex parte application by the plaintiff, extending validity of the writ for a period of 12 months. There is an issue regarding the plaintiff solicitor's understanding of this order, but it is now accepted by plaintiff's counsel this order was retrospective in nature meaning validity was extended from 26 August 2021 until 25 August 2022. Therefore, it should have been served on or before the latter date. The writ was ultimately served on 25 July 2023 when the defendant received the notice that had been posted by the relevant authority in Baden-Wurttemberg in Germany in accordance with the Hague Convention. It is now common case that such service was out of time, the writ having expired.

Legal principles

[8] The defendant rightly asserts it is trite law that service of a writ of summons or notice of writ that has expired does not amount to valid service and is an irregularity unless cured per *Bernstein v Jackson* [1982] 1 WLR 1082.

[9] The defendant's application is grounded on Order 12 Rule 8 of the Rules of the Court of Judicature (Northern Ireland) 1980 ("the Rules") which provides:

> "Application to set aside writ, etc.
>
> 8. A defendant to an action may at any time before entering an appearance therein, or, if he has entered a conditional appearance, within the time limited for service of a defence, apply by summons or motion for an order setting aside the writ or service of the writ, or notice of the writ, on him, or declaring that the writ or notice has not been duly served on him or discharging any order giving leave to serve the writ or notice on him out of the jurisdiction."

[10] In order to extend the validity of the writ, the plaintiff relies on Order 6 Rule 7 which is in the following terms:

> "(1) For the purpose of service, a writ (other than a concurrent writ) is valid in the first instance for 12 months beginning with the date of its issue and a concurrent writ is valid in the first instance for the period of validity of the original writ which is unexpired at the date of issue of the concurrent writ.
> (2) 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.
> (3) Before a writ, the validity of which has been extended under this rule, is served, it must be sealed with a seal showing a period for which the validity of the writ has been so extended.
> (4) Where the validity of a writ is extended by order made under this rule, the order shall operate in relation to any other writ (whether original or concurrent) issued in the same action which has not been served so as to extend the validity of that other writ until the expiration of the period specified in the order."

[11] In the event the court does not grant the above application, the plaintiff further relies on Order 2 Rule 1 which is in the following terms:

> "Non-compliance with the Rules
>
> (1) Where, in beginning or purporting to begin any proceedings or at any stage in the course of or in connection with any proceedings, there has, by reason of anything done or left undone, been a failure to comply with the requirements of these Rules, whether in respect of time, place, manner, form or content or in any other respect, the failure

shall be treated as an irregularity and shall not nullify the proceedings, any step taken in the proceedings or any document, judgment or order therein.

(2) Subject to paragraph (3), the court may, on the ground that there has been such a failure as is mentioned in paragraph (1) and on such terms as to costs or otherwise as it thinks just, set aside either wholly or in part the proceedings in which the failure occurred, any step taken in those proceedings or any document, judgment or order therein or exercise its powers under these Rules to allow such amendments (if any) to be made and to make such order (if any) dealing with the proceedings generally as it thinks fit.

(3) The court shall not wholly set aside any proceedings or the writ or other originating process by which they were begun on the ground that the proceedings were required by any of these Rules to be begun by an originating process other than the one employed."

[12] The defendant's amended application in which they challenge the Master's order of 19 August 2022, seeks to rely on Order 32 Rule 8 which is in the following terms:

> "The court may set aside an order made ex parte."

[13] Such an "appeal" of a Master's decision is referred to in The Supreme Court Practice ("White Book") (1999 Edition) at paragraph 58/1/3 which states:

> "An appeal from the refusal of a Master to make an ex parte order lies to the judge in chambers. On the other hand, where the Master has granted an order ex parte, the proper course is not to appeal, but to apply to him or another Master to set aside such order.
>
> …By its nature, an ex parte order is essentially a provisional order made by the judge on the basis of evidence and submissions emanating from one side only and there is therefore no basis for making a definitive order and accordingly when the judge reviews his provisional order in light of the evidence and argument advanced by the opposite party, he is not hearing an appeal from himself and is in no way inhibited from discharging or varying his original order… "

[14] In the Civil Proceedings in the Supreme Court ("Valentine"), paragraph 11.1 states:

> "The Applicant can appeal against refusal as with any interlocutory order, but the Respondent should apply to set it aside rather than

appeal …On such applications the court has the advantage of hearing both parties and can freely review the order."

[15] During submissions, the parties cited several authorities, all of which I have considered, even if not expressly referred to in this judgment. The case of *Bradley & Bradley v Rodgers & Ors* [2022] NIMaster 11 was referred to in which this court conducted a comprehensive review of the relevant authorities in this area which are well known, and I do not propose to recite them all in detail.

[16] In summary, the relevant principles in an application to extend the validity of a writ of summons were enunciated at paragraph 21 in *Cardy v Belfast Health and Social Care Trust & Ors* [2023] NIMaster 8 quoting the judgment of Maguire J in *Mooney v Rodgers* [2020] NIKB 41 and *McGuinness v Brady* [2017] NIQB 46 respectively:

"(i) It is the duty of the plaintiff to serve the writ promptly. He should not dally for the period of its validity; if he does so and gets into difficulties as a result he will get scant sympathy.

(ii) Accordingly, there must always be a good reason for the grant of an extension. This is so even if the application is made during the validity of the writ and before the expiry of the limitation period; the later the application is made, the better must be the reason.

(iii) Whether a reason is good or bad depends on the circumstances of the case and normally the showing of good reason for failing to serve the writ during its original period of validity will be a necessary step to establishing good reason for the grant of an extension….

(iv) Good reasons include difficulty or impossibility in finding or serving a defendant particularly where he is evading service, or agreement with the defendant to defer service. Bad reasons include: negotiations in the absence of agreement to defer service; difficulty tracing witnesses or obtaining evidence; carelessness; that legal aid is awaited.

(v) …

(vi) The application to renew the writ should be made within the appropriate period of validity, but the court has power to allow extension after expiry as long as the application is received during the "first period of expiry" (i.e. the year following)…This is arguably subject to a wider power to allow later extension according to a number of propositions.

> (vii) Where the application for renewal is made after the writ has expired and after expiry of the relevant limitation period the applicant must not only show good reason for the renewal but also must give a satisfactory explanation for failure to apply for renewal before the validity expired.
>
> (viii) Whether or not to extend validity is a matter for the discretion of the court and on exercising that discretion the court is entitled to have regard to the balance of hardship ….
>
> (ix) The application to extend involves a two stage enquiry. At the first stage the court must be satisfied that the plaintiff is demonstrating good reason for the extension and a satisfactory explanation for failing to serve before its validity expired. Only if it is so satisfied will the court proceed to the second stage by considering the circumstances of the case including the balance of hardship."

[17] Turning to Order 2 Rule 1, this gives the court discretion to cure irregularities in proceedings. The Supreme Court Practice ("White Book") (1999 Edition), at paragraph 2/1/6 notes that this provision is framed so as to give the court the widest possible power to do justice. The breadth of this rule is clearly set out by Steyn LJ in the English Court of Appeal case of *Khokhar and another v Post Office Counters Limited* [1994] Lexis Citation 2102 where it was noted that the power should be wide and not be emasculated or produce injustice so that (at page 122):

> "The principle governing Ord 2 r1 of the Supreme Court Rules … is simply that the judge must exercise his discretion in accordance with justice and he should exercise that discretion liberally where there is no prejudice whatever to the defendant arising from a departure from the requirements of the rule."

[18] Moreover, Hutchinson LJ in *Tavera v MacFarlane* [1996] PLQR 292d, referencing *Khokhar*, noted that the exercise of such a discretion stands alone and is regardless of the success or otherwise of any other application, thereby giving a judge power:

> "which he was entitled to exercise, even in the light of his view that an application to extend the validity of the writ had to be rejected…"

[19] In the case of *Patterson v The Trustees for the time being of St Catherine's College* [2003] NIQB25, at paragraph 32 LJ Nicholson stated:

> "I was entitled to exercise my discretion under Order 2 Rule 1 whether or not the court was willing to exercise powers under Order 6 Rule 7."

[20] The irregularity in this case arises from late service of a writ which had expired. There was an ex parte application by the plaintiff to extend time for service under Order 6 Rule 7 and therefore one aspect of this application is a rehearing of that application, with the court now having the benefit of submissions from the defendant.

[21] The principles one draws from the authorities are clear. Put simply, the legal test to be applied is first to determine if good reason has been shown to extend validity of the writ. Where such an application has been brought outside the period of validity, the court must then consider whether there is a satisfactory explanation for not bringing the application within its initial period of validity. If good reason is shown, the court then assesses the balance of hardship between the parties to determine whether the extension should be allowed. If the court is not minded to grant such an extension, the question then arises whether the wide discretion under Order 2 Rule 1 should be exercised to cure the irregularity. The effect of Order 2 Rule 1 is to treat a failure to comply with the rules as an irregularity rather than a nullity. This means it is capable of remedy at the discretion of the court, but this is only exercised in exceptional circumstances. As with all such matters, the court must also have regard to the overriding objective pursuant to Order 1 Rule 1A.

Knowledge of proceedings

[22] The plaintiff submits that correspondence was sent by the plaintiff's solicitor to the defendant's solicitor on 10 November 2021 enclosing the writ and notice of writ. The defence solicitors replied on 22 December 2021 seeking a copy of the acknowledgement letter from the FSS and evidence that service had been effected in Germany. They stated upon receipt of a reply from the plaintiff, they would seek further instructions but indicated at that stage they did not have authority to accept service of proceedings. The plaintiff asserts that the defendants were aware and on notice at that point that the proceedings had been issued. They contend the defendant company had clearly been in contact with their solicitor in Northern Ireland and this amounts to knowledge of proceedings. The court could therefore deem this as valid service at that point.

[23] I consider the defendant had knowledge of the details of the proposed claim given their solicitors clearly stated they had been in contact with Daimler and instructed to make enquiries on its behalf, even if that stopped short of authority to accept service. Moreover, the defendant was aware of the 2016 European Commission decision which determined it had been involved in collusive conduct. This case is therefore one of many against the various manufacturers in what was described by the plaintiff as a "sea of litigation." To provide some context, they stated that the cases originating in the UK are less than 1% of the total litigation arising from the Commission's decision. The defendant argues that knowledge may only be relevant to the issue of defective service and deeming service good and not relevant to the question of establishing and ensuring the fundamental step to make sure the writ was still alive. Ultimately, I consider the issue of knowledge is not

determinative of this application, and on balance I do not conclude there was effective service on 10 November 2021.

Order 6 Rule 7 – Good reason and satisfactory explanation

[24] The plaintiff claims that the particular circumstances of this case were exceptional and that there was good reason for the omission to serve the writ on time. These include the actions and omissions of the court office and the misinterpretation by the solicitor of the order of 19 August 2022 as it was retrospective not prospective, meaning the writ was only valid until 25 August 2022. The plaintiff's counsel contends that the solicitor otherwise conducted himself diligently.

[25] I note the writ and notice of writ were, on the face of it, not defective and were issued within the limitation period. This was not a case of delay, "dilly dallying" nor were there other procedural irregularities other than the failure to extend validity of the writ. There was a concerted effort by the plaintiff's solicitor, writing ten letters to the court office between 26 January 2021 and 19 January 2022, pressing for a reply and receiving equivocal responses which I was told in some instances were incorrect and muddied the waters in circumstances where the solicitor had 33 similar claims arising from the 2016 Commission decision. Service of the writ was not in his control, he had to follow the procedure for service in Germany which, prior to the end of the transition period following the UK withdrawal from the EU, required service via the receiving authority in Germany.

[26] The plaintiff solicitor lodged a complaint with the court regarding the actions of the FSS on 24 February 2022.

[27] The defendant asserts this is not good reason to extend validity of the writ, therefore, the plaintiff falls at the first hurdle. Where an application is made to extend validity after expiry of the writ, the applicant must satisfactorily explain the failure to apply before expiry and there is no satisfactory explanation. As a consequence, the defendant argues the court cannot consider the balance of hardship.

The order of 19 August 2022

[28] I consider that the original order by Master Bell was not made under a misapprehension and there are no new matters of substance being drawn to the court's attention which would have impacted that decision. I note the detailed affidavit and papers which accompanied that ex parte application and reject the defendant's assertion there was no good reason for Master Bell to grant the original order in the terms he did. It was in my view properly granted.

Prejudice and the balance of hardship

[29] The prejudice to the defendant if the defects with the late service of an invalid writ are remedied includes the inability to take advantage of the fact that the Rules were not followed, and service was not effected. I am told this will have a knock-on effect on other cases.

[30] No evidential prejudice is raised albeit the defendant states they would be denied a limitation defence which has now accrued. There is no evidence the defendant would be denied a fair trial if this action proceeds.

[31] One of the related claims has been transferred to the Competition Appeals Tribunal ("CAT"). The plaintiff's solicitor avers that following a case management review in Edinburgh in October 2023, the CAT panel, encouraged the transfer of all such actions to join those cases being heard in that forum. The plaintiff anticipates that applications will be lodged in each of the remaining claims, including the present action, to transfer them to the CAT. As stated above, there is a large volume of claims.

[32] The quantum in this case is c£30,000. I consider this is clearly a drop in the ocean for the defendant. If this application fails, the plaintiff cannot proceed with the current action and will need to issue a fresh writ and grapple with limitation which expired in 2022. There is also another potential remedy against their legal advisors. I consider there is a clear difference between the parties in terms of their respective resources.

Order 2 Rule 1 - Remedying the error

[33] The defendant asserts the defects in this case cannot be remedied in accordance with this provision and it is more than a simple irregularity. They assert that the Order 6 Rule 7 application must fail as there was no good reason for an extension to the period of validity of the writ in August 2022. They contend that a reasonably diligent solicitor would have appreciated that there was at least a significant risk that service would not be effected within the first period of validity. No satisfactory explanation can be given for the delay in bringing the application as the issues with the FSS were apparent by August 2021. Moreover, they rely on the "White Book", arguing that failure to renew a writ for service is such a fundamental defect in procedure that it renders it a nullity.

[34] I note in *Emmett Sweeney v National Association of Round Tables – Enniskillen Branch and Waterways Ireland* [2015] NI Master 6, Master McCorry stated at paragraph 22:

> "It is well established that a court should be reluctant to exercise its discretion under Order 2 Rule 1 where the validity of the writ of summons has expired and an application under Order 6 rule 7 to extend the validity of the writ would not have been successful."

[35] I consider the plaintiff is correct to assert that failure to succeed in an application pursuant to Order 6 Rule 7 is not a bar to relief under Order 2 Rule 1, and the authorities make that clear. I similarly recognise the court should only be "reluctant" to exercise its discretion (adopting the language used in *Sweeney)* under Order 2 Rule 1 rather than be precluded or prohibited from doing so where an application under Order 6 Rule 7 is unsuccessful, although I tend to accept the defendant's assertion that this is a "high hurdle."

[36] Given the writ was still "alive" until 25 August 2022, the convoluted but correct process the plaintiff's solicitor should have then followed to ensure it remained valid was to apply for another, this time prospective, extension for 12 months before the aforementioned date. The defendant obviously argues there was no basis to do so, and such an application would not have been granted. The plaintiff's solicitor had brought applications for extensions in other related cases, such as "Quinn" in which four applications were brought, albeit I note in that case limitation had not expired, the writ was from 2018 and it was not until the fourth application the plaintiff's solicitor appears to have become aware the extension order would not be prospective.

[37] The further difficulty for the plaintiff is that limitation in this case expired in July 2022. The solicitor stated as much in his letter to the court in April 2022 in relation to his formal complaint and he also expressly stated the validity of the writs of summons (in each of the referenced cases) had expired.

[38] The FSS admitted its mistake in its letter to the plaintiff's solicitor of 21 March 2022. It conceded that certificates of service were sent to the plaintiff solicitor in six cases, including this one, in error. Put simply, the solicitor was led to believe the writs were served when they had not been, The defendant argues none of this exonerates the plaintiff as third party errors or omissions do not excuse the failure to apply to extend the validity of the writ. While there may be force in such an argument, I find the sequence of events and the regrettable actions of the FSS served to cause delay and considerable confusion. Service of the writ was outside the control of the solicitor. He was writing letters and proactively chasing this up. He was entitled to rely on what he was being told by the court office. His counsel robustly asserted the solicitor was "actively misled" by the FSS. It is clear that staff absence and disruption arising from the Covid-19 pandemic led to delay and unfortunately erroneous information appears to have been provided to the solicitor. The unprecedented public health crisis impacted all workplaces and had an obvious adverse impact on service delivery in the court office for which it apologised. I consider that as a result, it is understandable the plaintiff solicitor's attention was focused on gaining clarity from the court office and why, in the context of a large number of related claims, the error in failing to make the appropriate renewal application occurred. The case had clearly not gone to sleep, and I consider the solicitor was acting relatively reasonably and responsibly in a turbulent period.

[39] The plaintiff also points to the wording of the court order of 19 August 2022 which it argues is ambiguous, the order simply stating:

> "IT IS ORDERED that the validity of the Writ of Summons in this action be extended by 12 months."

I note that for similar orders, where 6 month extensions had been granted, it stipulated the valid from or valid to date. On one view the plaintiff's solicitor got what they asked for and made two errors, not one. They did not realise the extension sought could only have been granted retrospectively, and once the order issued, they were mistaken as to its meaning. I tend to agree with the plaintiff's counsel that this is not a case where the plaintiff solicitor is blaming everyone but himself. Upon reviewing the various orders in the related cases I consider it is not unreasonable to suggest the wording of the order in this case could be misinterpreted. I also recognise that if the application had been brought in person or on a contested basis, the plaintiff solicitors' misunderstanding would have become immediately apparent.

Submissions from the parties

[40] This court is now faced with an application brought on 22 May 2024, for a retrospective 12 month extension of the period of validity of a writ which expired on 25 August 2022.

[41] In brief, the good reason offered by the plaintiff to satisfy the first test in an Order 6 Rule 7 application is the actions of the FSS and the state of mind of the plaintiff solicitor who was dealing with a large volume of such cases. The explanation for not bringing the application within the period of validity of the writ is a misunderstanding. After the extension was granted, the plaintiff only had six days to bring another application, inevitably meaning it was going to be brought outside the relevant period. The fact it was brought 21 months later demonstrates the continued misunderstanding of the wording of the order. The plaintiff argues this case cannot be viewed in isolation.

[42] Turning to the balance of hardship, the plaintiff asserts the disparity in resources between the parties and the lack of any prejudice to the defendant, means the balance favours the plaintiff. The defendant is clearly seeking to shut down their claim. They could easily have given authority to their very experienced NI solicitors to accept service instead of what they did which was to "sit back in Germany and say try to serve us." There is a wider context as the defendant was involved in price fixing and collusive conduct. Subject to causation this is a quantum only claim which the defendant is trying to stop.

[43] For their part, the defendant points to the need to disassociate failure to serve by a third party with failure to extend validity which is in the control of the solicitor. The defendant argues there has been serious procedural impropriety, the Rules have not been followed and they are there to provide certainty to parties and the courts.

Their client will lose the benefit of a limitation defence and this will impact other claims. The defendant further contends that such failure to renew a writ for service as has occurred here is a fundamental defect in procedure and constitutes impropriety so serious that it renders the proceedings and any order made, a nullity.

Consideration

[44] In all the circumstances of this case, taking into account the issues faced by the plaintiff's solicitor, the actions and inactions of the FSS during the height of the pandemic, the ex parte order and the misunderstanding that arose, I conclude the error was a reasonable one, committed by a solicitor who was otherwise diligent and using his best endeavours to progress the case.

[45] While I note the plaintiff asserts the authorities state otherwise, in my view it cannot be said that error by a solicitor can never be a good reason for failure to take certain appropriate procedural steps and it is a matter for judicial discretion, having regard to the court Rules and overriding objective, as to whether this can be remedied.

[46] I note in *O'Shea v Southern Health and Social Care Trust & another* [2014] Lexis Citation 2088 at paragraph 28 Master McCorry stated:

> "…it is not too controversial to say that a plaintiff coming from a starting point of seeking to cure an irregularity where the mistake causing the irregularity was not that of itself or its lawyer but of someone else, will generally be in a stronger position than where the irregularity was caused by its own mistake."

[47] In this case there was third party error, by the FSS, in relation to service but solicitor error in relation to validation of the writ. The court in *O'Shea*, however, observed that:

> "there is no authority to say that for Ord 2, r 1 relief to be granted in this type of circumstance, the mistake must be by a third party."

[48] As has been observed in the "White Book" (1999 Edition) 2/1/3:

> "The authorities show that O.2, r.1 should be applied liberally, in order, so far as is reasonable and proper, to prevent injustice being caused to one party by mindless adherence to technicalities in the rules of procedure."

[49] I have carefully considered the unique factual matrix in this case. Firstly, I am not persuaded by the defendant that there are sufficient grounds to set aside the order of Master Bell dated 19 August 2022, pursuant to Order 32 Rule 8, for the reasons given above.

[50] For their part, the plaintiff has not convinced me this is an appropriate case in which to exercise my discretion under Order 6 Rule 7, extending the validity of the writ. There may have been a good reason for not serving the writ in its initial period of validity but there is no satisfactory explanation as to why an application to extend validity was not brought before now. It has been brought at the 11th hour and after the defendant had lodged a skeleton argument in advance of a hearing of their own set aside application in May 2024, such hearing having been adjourned.

[51] After careful consideration, in all the circumstances of this case, I consider there are sufficient grounds in my view to exercise the court's discretion to grant relief under Order 2 Rule 1, curing the irregularities with the writ and deeming service valid on 25 July 2023. The aforementioned Rule provides a wide discretion, albeit one which is sparingly used and should be reserved for exceptional cases. This court chose to exercise its discretion in a similar application in the aforementioned case of *Cardy*. As was observed in that case, at paragraph 45:

> "The plaintiff can be considered very fortunate the circumstances of this case, and wider context make it wholly exceptional, leading the court to conclude that, on balance, in the interests of justice, this is an appropriate case in which to exercise the widest possible discretion to cure the irregularities. As noted in *Patterson*…the court concluded it has power to use the discretion under Order 2 Rule 1 even when rejecting an application to extend validity."

[52] I have carefully considered the material before me and the detailed submissions in these applications at length, I conclude that while the court should ensure adherence to the Rules, it must also aim to do justice between the parties. The background to this cause of action arises from collusive conduct and price fixing in which this defendant and others engaged over many years and as a result of which, it was heavily fined by the European Commission. Against that backdrop, the exceptional circumstances of the present case and various issues which arose with service of the proceedings and renewal of the writ combine to present a unique factual matrix. For the reasons set out above and elsewhere in this judgment, I consider that in the interests of justice in this case, the balance favours the plaintiff.

[53] I therefore refuse the defendant's application pursuant to Order 12 Rule 8, but I do wish to recognise the high quality of the written and oral submissions by counsel in this series of contested applications.

Conclusion

[54] I grant the plaintiff's application pursuant to Order 2 Rule 1. I determine that the costs of the applications shall be costs in the cause and certify for both counsel.