Neutral Citation Number: [2023] EWHC 375 (Ch)

Case No: BL-2022-000814

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 28 February 2023

Before:

MASTER BRIGHTWELL

- -

Between:

ELLISON ROAD LIMITED	**Claimant**
- and -	
(1) KHURRAM MIAN T/A HKH KENWRIGHT & COX SOLICITORS	**Defendants**
(2) MORIARTY LAW LIMITED	

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Jonathan McNae (instructed by **Maddox Legal Limited**) for the **Claimant**
Stephen Innes (instructed by **Mills & Reeve LLP**) for the **First Defendant**

Hearing date: 14 February 2023

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Approved Judgment

This judgment will be handed down remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10:00am on Tuesday 28 February 2023.

Master Brightwell:

Introduction

1. These applications concern the validity of the service of a claim form upon a solicitor who is sued in his own name, trading as the full business name under which he formerly carried on business as a sole practitioner. The claimant served the solicitor, the first defendant, at what it understood to be his current place of business, being the address of another firm of solicitors (the second defendant), for which at the date of service the first defendant was described on the Solicitors Regulation Authority website as the "head of legal practice".

2. The first defendant, Mr Khurram Mian, contends that where an individual is sued in their own name, trading as their business name, they are sued only as an individual and not "in the name of a business", such that they may for the purposes of compliance with CPR rule 6.9(2) be served only at their usual or last known residence. Counsel for both parties indicate that their researches have revealed no authority directly addressing this point. The first defendant also contends that, even if service could be effected at his principal or last known place of business, the address at which he was served was not in fact such address and that the claimant also failed to comply with CPR rule 6.9(3) by taking reasonable steps to ascertain Mr Mian's current business address.

3. As the claim form was, in time-honoured fashion, issued at the end of the relevant limitation period and served or sought to be served at the end of the four-month period provided by CPR rule 7.5(1), the first defendant has applied by application notice dated 6 October 2022 under CPR rule 11(1) for a declaration that the court has no jurisdiction to try the claim.

4. By a cross application dated 10 November 2022, the claimant seeks orders (if required) dispensing with service of the claim form under CPR rule 6.16, or making provision for service by an alternative method under CPR 6.15. As the claimant has also been informed by the first defendant since seeking to serve the claim form that the first defendant lives at an undisclosed address in the United Arab Emirates, in the alternative it seeks an order granting permission to serve him out of the jurisdiction and to extend time for service of the claim form.

5. The second defendant has acknowledged service and was not represented at the hearing of the applications.

6. The claim is a claim for professional negligence, it being alleged that the defendants acted negligently, in breach of contract and/or in breach of fiduciary duty in May 2016 in advising the claimant in relation to a loan agreement it entered into with a company called Roadgaz Doncaster Limited,

and to a later loan to another company, Ancora Developments Limited. The claimant alleges that the defendants failed properly to advise it in relation to the terms of the agreements and of the terms of the security it was to receive, and concerning a related option agreement, such that the claimant has failed to recover sums due to it and has suffered consequential loss.

7. The claim form was issued on 13 May 2022, the first defendant having refused to enter into a standstill agreement. The first defendant was at that stage already represented by Mills & Reeve LLP. Upon issue, the first defendant was named in the claim form as "HKH Kenwright & Cox Solicitors", with the address given as 15 Old Bailey, London EC4M 7EF, being the address from which the first defendant had previously carried on business.

8. The claim form was amended on 7 September 2022 so as to describe the first defendant as "Khurram Mian t/as HKH Kenwright & Cox Solicitors". As this amendment was done before service of the claim form, no permission was required (see CPR rule 17.1(1)). The first defendant's address for service was also amended to 20 Old Bailey, London EC4M 7EF.

9. On 9 September 2022, the amended claim form together with the particulars of claim were delivered by hand (and sent by post) to 20 Old Bailey. Mr Innes confirmed to me that the first defendant did not dispute that those steps were taken. Accordingly, if 20 Old Bailey was the correct address for service, the claimant had completed a relevant step for service within the jurisdiction before the claim form expired in accordance with CPR 7.5(1).

10. That four-month period expired at midnight on 13 September 2022. The day before, on 12 September 2022, the claimant's solicitor sent a copy of the claim form and particulars of claim to Mills & Reeve by email, "as a matter of courtesy", and not by way of service. The firm had not been asked whether it would accept service on behalf of Mr Mian. When I asked, Mr Innes did not suggest that there was any reason why Mills & Reeve could not send a copy of these documents to him before the end of 13 September 2022. The claim form and particulars of claim therefore came to the attention of Mr Mian before the time for service of the claim form within the jurisdiction had expired.

11. As to the documents delivered to 20 Old Bailey, the claimant relies on the first witness statement of his solicitor, Mr Edward Mercer. Mr Mercer explains that, before determining where to serve the claim form, the claimant knew that 15 Old Bailey was in a state of redevelopment, because his firm had previously carried on business there. He explains that the claimant thus consulted the SRA website and the Companies House website. He says that the latter gives an Essex address for correspondence for Mr Mian, which appears from the evidence given on behalf of Mr Mian and mentioned at [13] below to be incorrect.

12. The SRA website entry for Mr Mian in evidence, under the heading, "Where this person works" gives the name of Moriarty Law Limited, and under the heading "Firm or organisation at date of publication", the name of Moriarty Law Limited is again given, together with the address of 20 Old Bailey. The website also states that Mr Mian was prosecuted by the SRA with an outcome date of 16 July 2021 and a published date of 9 March 2022. It does not give details of the nature of the prosecution, but says that the matter was heard by the Solicitors Disciplinary Tribunal on 27 May 2022 and that Mr Mian was fined £2,500. The only reference to HKH Kenwright & Cox Solicitors at 15 Old Bailey is under a heading, "Firm or organisation at time of matters giving rise to outcome". In other words, the SRA website clearly indicates that Mr Mian is no longer in practice as HKH Kenwright & Cox Solicitors at 15 Old Bailey, but at the second defendant, and at 20 Old Bailey.

13. Mr Mian however contends in the first witness statement filed on his behalf by his solicitor, Ms Sophie Briggs, that 20 Old Bailey is not his principal or last known place of business. Ms Briggs says that 20 Old Bailey "is the address of Moriarty Law Limited, and whilst Mr Mian is a director of Moriarty Law Limited, section 1140 [i.e. Companies Act 2006] provides that directors of a company are to be served at the address given for service by that individual, which in the case of Mr Mian was 15 Old Bailey". Mr Mian relies on the Companies House details for the second defendant, where his correspondence address is given as 15 Old Bailey. It is clear, although I consider ultimately irrelevant, that this correspondence address was in fact incorrect in that Mr Mian's correspondence address was not 15 Old Bailey by the time that the claimant sought to serve the claim form. The claimant also knew it to be incorrect because 15 Old Bailey was not in use. Furthermore, Mr Innes accepted at the hearing that section 1140 would be relevant only if Mr Mian were sued as a director of the second defendant, which is not the case here.

14. I would also note that Ms Briggs says that Mr Mian lives in Dubai. Mills & Reeve have since the issuing of the first defendant's application declined to give an address for Mr Mian in Dubai, saying that it is confidential.

The CPR provisions

15. The provisions for service of the claim form in those cases where the defendant does not give an address for service and where the claimant does not wish to effect personal service are set out in the table found in CPR rule 6.9(2). So far as is relevant to the present dispute, an individual must be served at their usual or last residence. An individual being sued in the name of a business must be sued either at the usual or last residence of the individual; or at their principal or last known place of business.

16. CPR rule 6.9(3) then provides that where a claimant has reason to believe that the address of the defendant referred to in either of the circumstances above (or where an individual is being sued in the name of a partnership), "is an address at which the defendant no longer resides or carries on business, the claimant must take reasonable steps to ascertain the address of the defendant's current residence or place of business". Where, having taken the reasonable steps so required, the claimant ascertains the defendant's current address, the claim form must be served at that address. Where the claimant is unable to ascertain the defendant's address, they must consider whether there is an alternative place where or method by which service may be effected and, if there is, must make an application under rule 6.15: rule 6.9(3) to (5).

17. The first defendant contends that the unamended claim form, naming HKH Kenwright & Cox Solicitors as the first defendant, brought a claim against Mr Mian being sued in the name of a business. He contends that the amended claim form, where the first defendant is named as Khurram Mian t/a HKH Kenwright & Cox Solicitors is a claim against an individual, and that service could therefore be made only at his usual or last known residence. Furthermore, and in any event, he argues that the claimant did not take reasonable steps to ascertain his current address and can therefore not rely on CPR rule 6.9(4)(a), which requires service at the defendant's current address when reasonable steps have led to it being ascertained.

18. As I have mentioned above, there would appear to be no authority on the question whether an individual is being sued in the name of a business for the purposes of CPR rule 6.9(2) when they are named as an individual with the words "trading as" and the business name following. The claimant argues that Mr Mian was, following the amendment of the claim, so sued in the present claim. Furthermore, Mr McNae maintains that the claimant was required to name the first defendant in this way (and thus to amend the claim form once the issue was appreciated) because of the provisions of CPR Practice Direction 16 paragraph 2.6. So far as relevant, this provides:

> "The claim form must be headed with the title of the proceedings, including the full name of each party. The full name means, in each case where it is known:
>
> (a) in the case of an individual, his full unabbreviated name and title by which he is known;
>
> (b) in the case of an individual carrying on business in a name other than his own name, the full unabbreviated name of the individual, together with the title by which he is known, and the full trading name (for example, John Smith 'trading as' or 'T/as' 'JS Autos');

(c) ….”

19. Mr Innes on the other hand relies on CPR Practice Direction 7A, which says this at paragraph 5C:

> “5C.1 This paragraph applies where–
>
> (1) a claim is brought against an individual;
>
> (2) that individual carries on a business within the jurisdiction (even if not personally within the jurisdiction); and
>
> (3) that business is carried on in a name other than that individual’s own name (‘the business name’).
>
> 5C.2 The claim may be brought against the business name as if it were the name of a partnership.”

20. He argues that this provision means that there is a difference in how a person carrying on business within the jurisdiction is to be served depending on whether they are sued by the business name in accordance with this provision, or sued in the name of the individual, trading as the business. He submitted that the provisions in the two Practice Directions mentioned above are inconsistent and Practice Direction 7A, coming first, should take priority.

21. Mr McNae argues, consistent with the notes in the *White Book* (2022) at 7APD.9, that paragraph 5C enables proceedings to be brought against a business name even if the name of the individual who carries on that business is not known, providing the trading name is known. Where the name of the individual is known, however, the provisions of Practice Direction 16 paragraph 2.6 are mandatory.

22. Mr McNae also relied on the case where a self-employed person carries on business in their own name (as would be the case with a barrister, for instance), arguing that the question of how service is to be effected cannot just depend on how the defendant is described in the claim form; one also has to consider the contents of the claim. This way this point was put cannot be right. Although it was not cited to me, I would note that it is clear on authority that an individual is sued in the name of a business only when he is sued in the name of a business which is not his personal name: see *Murrills v Berlanda* [2014] EWCA Civ 6 at [19] (Sir Stanley Burnton). That does not resolve the issue in the present case.

23. However, I agree with Mr McNae that the difference between the provisions of the two Practice Directions can be explained in the way suggested in the *White Book*. Practice Direction 7A paragraph 5C permits claims against an

individual to be brought solely in the (different) name of a business, from which it must follow that this is permitted in certain circumstances. It also refers back to claims against a partnership which, by paragraph 5A.3, must be brought against the name of the partnership, unless it is inappropriate to do so. Practice Direction 16 paragraph 2.6 states that the full name of each defendant must be given as described in each sub-paragraph, "in each case where it is known". It is those words which distinguish the two Practice Directions and explain the difference between them. I would note that, even though this sub-paragraph does not refer to Practice Direction 7A, there are words in parentheses at the end of paragraph 2, directing the reader to consider Practice Direction 7A. The two are to be read so as to be consistent with one another. Where the full unabbreviated name of an individual defendant sued in the name of a business is known, that name must be used, together with the title by which they are known and the full trading name. Where the full unabbreviated name of such an individual defendant is not known, the claim may be brought against the business name alone and indeed in practice must so be brought for the claimant will have no alternative.

24. Mr Innes' next submission is that Mr Mian was in this claim sued as an individual even though a trading name was also provided. It necessarily follows from my conclusion above that this submission must be that the only circumstance in which an individual with a trading name other than their own name is sued as a business is when the claimant does not know the full name of the defendant. The only time the business name alone may be used is when the defendant's actual name is unknown. This will be the exceptional case. If Mr Innes' construction were correct, line 2 in the table at CPR rule 6.9(2), dealing with individuals sued in the name of a business, would have any application only in such an exceptional case and would thus as a general rule be rendered otiose. Furthermore, as a matter of general usage, when John Smith is sued trading as JS Autos (the very example given in Practice Direction 16), it seems to me that he is quite explicitly being sued in the name of a business.

25. Accordingly, I consider that in this case Mr Mian is being sued in the name of a business and that service may thus be effected at his principal or last known place of business, or the address ascertained in accordance with CPR rule 6.9(3).

Was service of the claim form validly effected?

26. It is then Mr Mian's position that 20 Old Bailey was not at any time his place of business. Mr Innes submits that this place of business must be the place of business of HKH Kenwright & Cox Solicitors and not the place of business of Mr Mian. 20 Old Bailey was never the place of business of HKH Kenwright & Cox Solicitors. Further, and in any event, 20 Old Bailey was not the

principal or last known, or current, place of business of Mr Mian. This, it is said, was recognised by the fact that the address for service in the claim form was shown as "care of" Moriarty Law Limited at 20 Old Bailey.

27. I reject the submission that the relevant place of business is that of HKH Kenwright & Cox Solicitors only and not of Mr Mian. HKH Kenwright & Cox Solicitors was not a legal entity but rather the trading name adopted by Mr Mian as a sole practitioner. CPR rule 6.9(2) is clear in providing that the relevant place is the principal or last known place of business of an individual who is sued in the name of a business. It is instructive to compare the provision at line 3 in relation to service on an individual being sued in the business name of a partnership. Such person must be sued at the "usual or last known residence of the individual; or the principal or last known place of business *of the partnership*" (emphasis added). There are no comparable words, i.e. 'of the business', at the end of line 2; the relevant place of business must be that of the individual. There is also a recognition that a person may carry on business at more than one place in that there may be a principal place of business and, it must follow, that they may carry on more than one business.

28. Mr Mercer's first witness statement explains that the claimant knew that Mr Mian was not carrying on business at 15 Old Bailey, as its solicitors knew that the building was being redeveloped. The solicitors therefore consulted the SRA website, and found that Mr Mian was practising as a solicitor from Moriarty Law Limited, and that the address provided to the SRA and thus by the SRA to the public for that firm was 20 Old Bailey. It is therefore submitted that they thus ascertained Mr Mian's current business address and served him with the claim form there, i.e. in accordance with CPR rule 6.9(4)(a).

29. Mr Innes submitted that the steps taken by the claimant's solicitors were not reasonable for the purposes of CPR rule 6.9(3). He suggested that they should have contacted Mills & Reeve and enquired whether they would accept service or provide Mr Mian's address. He also submitted that they knew that Companies House gave 15 Old Bailey as the correspondence address for Mr Mian as a director of the second defendant.

30. Mr Innes did not submit that Mr Mian was not in fact holding himself out as practising as a solicitor at Moriarty Law Limited, or that the address given on the SRA website, i.e. 20 Old Bailey, was not the address at which that firm carried on business. I consider that 20 Old Bailey was at 9 September 2022 Mr Mian's current place of business, and furthermore that the claimant through his solicitors had taken reasonable steps in ascertaining that address as Mr Mian's current business address. The public is entitled reasonably to assume that the information published by the SRA about a practising solicitor

is correct. It would have been obvious that the Companies House address was out of date as the building was not in use and the claimant did not rely on it. Once the address had been ascertained it was not reasonably necessary to make further enquiries of Mills & Reeve; the duty is to carry out reasonable steps, not to make every possible enquiry.

31. Further, in light of this conclusion, nothing turns on the use in the amended claim form of the words "care of" after Mr Mian's name and before the service address. Mr Innes did not suggest that the use of these words invalidates what is otherwise good service. The words are in any event explicable as Mr Mian was being sued as an individual and not as a director of the second defendant, which was of course also being sued in the same proceedings.

32. Accordingly, I hold that the claimant has effected good service of the claim form on the first defendant and I dismiss the first defendant's application.

The claimant's application

33. In light of my conclusion above, the claimant's application falls away. In case I am wrong in what I have held, I will indicate how I would have determined that application in the event that the steps taken by the claimant did not constitute good service of the claim form on Mr Mian.

34. Given that no address in Dubai is known to the claimant and thus it has no means to serve Mr Mian there, I consider that the appropriate application to consider is that for an order under CPR rule 6.15, for service at an alternative place or validating the steps that have already been taken, and not the application under CPR rules 6.37 and 7.6 for permission to serve the claim form out of the jurisdiction and to extend time for such service.

35. CPR rule 6.15(1) and (2) provides:

> "(1) Where it appears to the court that there is a good reason to authorise service by a method or at a place not otherwise permitted by this Part, the court may make an order permitting service by an alternative method or at an alternative place.
>
> (2) On an application under this rule, the court may order that steps already taken to bring the claim form to the attention of the defendant by an alternative method or at an alternative place is good service."

36. The relevant principles to apply to an application under CPR rule 6.15 were set out by Lord Sumption JSC in the judgment of the majority in *Barton v Wright Hassall LLP* [2018] 1 WLR 1119 at [9]-[10], as follows:

"[9] What constitutes "good reason" for validating the non-compliant service of a claim form is essentially a matter of factual evaluation, which does not lend itself to over-analysis or copious citation of authority. This court recently considered the question in *Abela v Baadarani* [2013] 1 WLR 2043. That case was very different from the present one. The defendant, who was outside the jurisdiction, had deliberately obstructed service by declining to disclose an address at which service could be effected in accordance with the rules. But the judgment of Lord Clarke of Stone-cum-Ebony JSC, with which the rest of the court agreed, is authority for the following principles of more general application:

(1) The test is whether, "in all the circumstances, there is good reason to order that steps taken to bring the claim form to the attention of the defendant is good service": para 33.

(2) Service has a number of purposes, but the most important is to ensure that the contents of the document are brought to the attention of the person to be served: para 37. This is therefore a "critical factor". However, "the mere fact that the defendant learned of the existence and content of the claim form cannot, without more, constitute a good reason to make an order under rule 6.15(2)": para 36.

(3) The question is whether there is good reason for the court to validate the mode of service used, not whether the claimant had good reason to choose that mode.

(4) Endorsing the view of the editors of *Civil Procedure 2013*, vol 1, para 6.15.5, Lord Clarke JSC pointed out that the introduction of a power retrospectively to validate the non-compliant service of a claim form was a response to the decision of the Court of Appeal in *Elmes v Hygrade Food Products plc* [2001] CP Rep 71 that no such power existed under the rules as they then stood. The object was to open up the possibility that in appropriate cases a claimant may be enabled to escape the consequences for limitation when a claim form expires without having been validly served.

[10] This is not a complete statement of the principles on which the power under CPR r 6.15(2) will be exercised. The facts are too varied to permit such a thing, and attempts to codify this jurisdiction are liable to ossify it in a way that is probably undesirable. But so far as they go, I see no reason to modify the view that this court took on any of these points in *Abela v Baadarani*. Nor have we been invited by the parties to do so. In the generality of cases, the main relevant factors are likely to be (i) whether the claimant has taken reasonable steps to effect service in

> accordance with the rules and (ii) whether the defendant or his solicitor was aware of the contents of the claim form at the time when it expired, and, I would add, (iii) what if any prejudice the defendant would suffer by the retrospective validation of a non-compliant service of the claim form, bearing in mind what he knew about its contents. None of these factors can be regarded as decisive in themselves. The weight to be attached to them will vary with all the circumstances."

37. The claimant relies in particular on the submission that it had taken reasonable steps to effect service in accordance with the rules and on the fact that Mr Mian and his solicitors were, by virtue of it being sent by email to Mills & Reeve on 12 September 2022, aware of the contents of the claim form at the time when it expired.

38. Mr Mian would oppose the application, pointing out that the focus of the inquiry is on the reason why the claim form could not be served within the period of its validity (*Abela* at [48]). He relies principally on the fact that he would lose a good limitation defence if service were retrospectively validated and the prejudice he would suffer accordingly. He says that reasonable steps were not taken to ascertain his address, matters were left until the end of the limitation period and the end of validity of the claim form and that there should have been a prospective application under rule 6.15.

39. In favour of the claimant, I consider for reasons that I have already explained above that reasonable steps were taken to ascertain Mr Mian's current address. It is particularly relevant that Mr Mian is a solicitor and an officer of the court and litigants and others should be entitled to rely on information published by the SRA about the current business address of practising solicitors. Furthermore, this application will arise only if I am wrong in my conclusion on the construction of the relevant rules. In those circumstances, the claimant will have adopted the same construction as I have on a point on which there appears to be no direct authority. This is relevant to the exercise of the court's discretion under rule 6.15. This is not a case like *Barton* where the relevant rule (concerning service by electronic means) was unambiguous and where the claimant had simply not considered it.

40. Accordingly, the only point of weight in favour of Mr Mian is that he will lose the benefit of a limitation defence if service of the claim form is now validated. In my judgment, the reliance by the claimant on (accurate) information published by the SRA together with the fact that the contents of the claim form came to the attention of Mr Mian and his solicitors during the period of validity of the claim form outweigh this prejudice.

41. If necessary, I would therefore make an order under CPR rule 6.15(2) validating the steps taken by the claimant to bring the claim form to Mr

Mian's attention by emailing them to his solicitors during the period of validity of the claim form for service within the jurisdiction in addition to sending and delivering the claim form to 20 Old Bailey. Given that this was done, it is not necessary separately to consider the application to dispense with service of the claim form altogether.

Conclusion

42. I am satisfied that the claim against the first defendant is a claim brought against an individual who is being sued in the name of the business and that the claimant served him with the claim form at his current business address as identified in accordance with CPR rule 6.9(3). If I am wrong about that, then I would make an order that the steps already taken by the claimant to bring the claim form to the attention of the first defendant is good service.