Neutral Citation Number: [2024] EWHC 2602 (IPEC)

Claim No. IP-2024-000060

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INTELLECTUAL PROPERTY ENTERPRISE COURT

The Rolls Building
7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Date: Friday, 11th October 2024

Before:

HIS HONOUR JUDGE HACON
(sitting as a Judge of the High Court)

- -

Between:

ABDULHAMID AGEL J TANASH	**Claimant**
- and -	
HH SHEIKH MOHAMMED BIN RASHID AL MAKTOUM	**Defendant**

- -

- -

THE CLAIMANT appeared **In Person.**

MR. JAMES ST. VILLE KC, MR. SIMON OLLESON and **MR. PAOLO BUSCO** (instructed by **Kingsley Napley LLP**) appeared for the **Defendant.**

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Approved Judgment

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HIS HONOUR JUDGE HACON :

1. I will deal first with a preliminary point arising from one of the applications and begin by setting out some of the background.

2. The applications are made by the defendant. The first is that the court has no jurisdiction to try the claim because the defendant is immune from jurisdiction pursuant to section 1(1) and section 14(1) of the State Immunity Act 1978. The second is for a declaration that the claim form was not validly served. The defendant seeks consequential relief.

3. Mr. James St. Ville KC, Mr. Simon Olleson and Mr. Paolo Busco appear for the defendant. The claimant appears in person.

4. The claimant, Mr. Tanash, lives in the United Kingdom. The defendant named on the Claim Form is His Highness Sheikh Mohammed Bin Rashid Al Maktoum. Sheikh Mohammed is the ruler of Dubai. He is also the Prime Minister of the United Arab Emirates and the Vice-President of the UAE.

5. The background can up to a point be simply stated. Mr. Tanash claims that he is the owner of copyright in either software relating to a project of his called Schofam, or possibly in the concept of the project recorded in some way. Mr. Tanash describes the idea behind Schofam in his Particulars of Claim as a means "to integrate robust security within educational content framework to create a safe learning environment".

6. Schofam was launched by Mr. Tanash in April 2016. He says that his software and/or his concept has been copied in the UAE and the copy presented as the work of the UAE Ministry of Education in a launch by Sheikh Mohammed. His case may include an allegation that the copying was procured by Sheikh Mohammed. In any event, Mr. Tanash alleges that his copyright has been infringed, that there has been a breach of confidence and that Sheikh Mohammed is involved.

7. It is difficult to be precise about the nature of Mr. Tanash's case. The Particulars of Claim were drafted by Mr. Tanash himself. Mr. Tanash is not a lawyer and does not hold himself out as having expertise in IP law. Presumably in consequence of that, the Particulars are long, sometimes repetitious and are not easy to follow. There is no prayer for relief in the standard way but in the document Mr. Tanash seeks injunctions in a variety of forms, damages including exemplary and aggravated damages, and costs. The damages claimed total £3 billion. I observe in passing that a claim of that size by some margin exceeds the maximum that can be granted in this court. However, it seems to me that simply transferring the claim to the general Intellectual Property List to be dealt with there would not be an efficient use of court time since I have already looked into the claim.

8. Although the claim form identifies Sheikh Mohammed as the sole defendant, the Particulars identify three defendants. They are Sheikh Mohammed, the Mohammed Bin Rashid Al Maktoum Foundation, and the UAE Ministry of Education. Formally, though, the only defendant before the court today is Sheikh Mohammed.

9. Earlier on I thought it useful to ask Mr. Tanash to say more about how he puts his case. He that said he sent the concept of his Schofam programme to the UAE

Ministry of Education. The Ministry told him it would gladly use the concept but the UAE subsequently launched a programme, claiming it as its own. It was either the same as or a substantial copy of Mr. Tanash's concept. Mr. Tanash also told me that the concept was secret when it was submitted to the Ministry. As explained to me this morning, Sheikh Mohammed's involvement was to announce the launch of the Ministry's programme in the UAE.

10. The Particulars of Claim as currently drafted do not quite read that way. As I read the document and as might be interpreted through the eyes of an English lawyer, Mr. Tanash's case is probably that the relevant copyright is in software, that the Foundation and/or the Ministry are the alleged primary tortfeasors, the infringers of Mr Tanash's copyright, and that one or other or both also acted in breach of confidence. All this happened in the UAE. Sheikh Mohammed seems to be presented as a joint tortfeasor on the ground that he procured the alleged acts of infringement and breach of confidence although how a claim in breach of confidence arises is not clear from the Particulars. I think for today's purposes, I must primarily go ahead on the basis my understanding of what is said in the Particulars of Claim although it does not for now make a great deal of difference.

11. Before turning to the service of the claim form, Mr. St. Ville drew my attention to a preliminary issue. It is whether his client's seeking a declaration that the claim form has not been validly served has the consequence that Sheikh Mohammed thereby submits to the jurisdiction. Mr. St. Ville asked me for a finding that this is not the case. He referred me to relevant authorities.

12. Beginning with the State Immunity Act 1978, section 1 provides:

> "General immunity from jurisdiction.
>
> (1) A State is immune from the jurisdiction of the courts of the United Kingdom except as provided in the following provisions of this Part of this Act.
>
> (2) A court shall give effect to the immunity conferred by this section even though the State does not appear in the proceedings in question."

13. Subsections 2(1)-2(4) provide:

> "**Submission to jurisdiction**.
>
> 2.
>
> (1) A State is not immune as respects proceedings in respect of which it has submitted to the jurisdiction of the courts of the United Kingdom.
>
> (2) A State may submit after the dispute giving rise to the proceedings has arisen or by a prior written agreement; but a provision in any agreement that it is to be governed by the law of the United Kingdom is not to be regarded as a submission.

> (3) A State is deemed to have submitted - (a) if it has instituted the proceedings; or (b) subject to subsections (4) and (5) below, if it has intervened or taken any step in the proceedings.
>
> (4) Subsection (3)(b) above does not apply to intervention or any step taken for the purpose only of - (a) claiming immunity; or (b) asserting an interest in property in circumstances such that the State would have been entitled to immunity if the proceedings had been brought against it."

14. In *Kuwait Airways Corporation v Iraqi Airways Company* [1995] 1 Lloyds Law Report 25, Nourse LJ said at 31-32:

> "What then is the effect of s 2? Sub-section 3(b) provides that a State (or state entity) is deemed to have submitted if it has intervened or taken any step in the proceedings. But that provision is expressed to be subject to sub-s (4) which, by par (a), states that it does not apply to intervention or any step taken for the purpose 'only' of claiming immunity. The joint effect of those provisions is to presuppose an intervention or step in the proceedings; the prima facie result of that is a deemed submission to the jurisdiction; but if the intervention or step is made or taken for the purpose only of claiming immunity, there is no submission. Moreover, and this is very important, there is no submission if what is done by the State or State entity does not amount to an intervention or step in the proceedings.
>
> This last point does not seem to have been firmly grasped in the Court below, or indeed in some of the argument in this Court; it being thought, so it appears, that the word 'only' in s 2(4) causes a difficulty where, as here, the defendant objects to the continuation of the action against it both on the ground of immunity and, at the same time, on other grounds as well. I see no such difficulty. In my view s 2(4) is a relieving provision. It would apply if, for example, a defendant served a defence in which the only claim made was one of immunity. Usually the service of a defence would be the taking of a step in the proceedings. But if it was confined as in the example suggested, s 2(4)(a) would relieve the defendant from the usual consequences."

15. Leggatt LJ and Simon Brown LJ expressed a similar view.

16. This collective view was noted and summarised by Moore-Bick LJ, with whom Patten and Tomlinson LJJ agreed, in *The London Steam-Ship Owners Mutual Insurance Association Ltd v Kingdom of Spain - The Prestige (No. 2)* [2015] EWCA Civ, 333, at paragraph 34:

> "[34] In *Kuwait Airways Corporation v Iraqi Airways Co* [1995] 1 Lloyd's Rep 25 this court considered what constitutes

> a step in the proceedings for the purposes of section 2(3)(b). All three members of the court held that it is a step of a kind which evidences an unequivocal election to waive immunity and allow the court to determine the claim on its merits: see per Nourse LJ at page 32 col 1, Leggatt LJ at page 34 col 1 and Simon Brown LJ at page 37 col 2 to page 38 col 1."

17. Moore-Bick LJ continued:

> "[50] … I accept that a state which wishes to claim immunity is not precluded from taking steps at the same time to resist enforcement, for example, by applying to set aside a default judgment, and that the acid test by which to determine whether it has taken a step in the proceedings otherwise than for the sole purpose of claiming immunity is whether it has acted in such a way as to demonstrate that it is willing to allow the court to determine the substance of the dispute."

18. This appeal was followed by related proceedings in the same dispute: *London Steamship Owners Mutual Insurance Association Ltd v Kingdom of Spain* [2020] EWHC 1582 (Comm). The relevant facts were closer to those of the present case. There was an application to set aside an order giving permission to serve an arbitration claim form out of the jurisdiction. The defendant, Spain, contended that it was immune from the court's jurisdiction pursuant to the State Immunity Act 1978 and that the court had no jurisdiction to appoint an arbitrator under section 18 of the Arbitration Act 1996. It was contended by the claimant that Spain had submitted to the jurisdiction for two reasons, one of which was the fact of the challenge to the court's jurisdiction. Henshaw J said at paragraph 149:

> "Spain has made no separate application, prior to asserting state immunity, invoking the court's jurisdiction or demonstrating an election to abandon its claim to state immunity. Nor has Spain, in my view, by combining an immunity claim and a jurisdictional objection in the same application, made any such election, still less any unequivocal election. Nor does the inclusion of arguments relating to the merits within the confines of a jurisdictional objection in my view give rise to such an election. I also do not consider that any such election was made by Mr Harris suggesting, in his witness statement, that the issue of jurisdiction was logically prior to the immunity issue and could or should be determined first. The application and witness statement as a whole, constituting a single act, made clear that Spain was resisting the court's jurisdiction and maintaining its plea of state immunity against any assertion of jurisdiction that the court might otherwise consider could be made. In these circumstances, Spain did not in my judgment take a step in the proceedings for the purposes of SIA 1978, section 2 or submit to the jurisdiction of the English court."

19. Following those authorities, I have no real doubt that the application by Sheikh Mohammed for a declaration that the claim form was not validly served does not

amount to a submission to the jurisdiction. Moore-Bick LJ characterised the acid test as being whether the defendant has acted in such a way as to demonstrate that it is willing to allow the court to determine the substance of the dispute. It seems to me that an application for a finding that the claim form was not validly served is the very opposite of a demonstration that Sheikh Mohammed is willing to allow this court to determine the substance of the dispute. He is contending that the court should not do so.

20. I therefore find that neither making, nor pursuing, that application constitutes a submission to the jurisdiction.

[Further Argument]

21. The next issue is whether the claim form was validly served on the defendant, Sheikh Mohammed. The claim form was sent by Mr. Tanash to two addresses. One was the address marked on the claim form: The Carlton Tower Jumeirah, 1 Cadogan Place, London SW1X 9PY. This is a hotel. The other was the embassy of the UAE in London.

22. The only evidence in this case is a witness statement made by Melanie Hart, a partner in the firm Kingsley Napley who act for Sheikh Mohammed in this case. Ms. Hart's evidence is that Sheikh Mohammed is a citizen of the UAE, and is resident in Dubai. That is unsurprising evidence and I have no reason to doubt that it is correct. CPR 6.9 (1) and (2), provide:

> "**Service of the claim form where the defendant does not give an address at which the defendant may be served**
>
> **6.9**
>
> (1) This rule applies where –
>
> (a) rule 6.5(1) (personal service);
>
> (b) rule 6.7 (service of claim form on solicitor); and
>
> (c) rule 6.8 (defendant gives address at which the defendant may be served), do not apply and the claimant does not wish to effect personal service under rule 6.5(2).
>
> (2) Subject to paragraphs (3) to (6), the claim form must be served on the defendant at the place shown in the following table."

23. Line one of the table states that where defendant is an individual, the claim form must be served at his or her usual or last known residence.

24. The meaning of residence was considered by the Court of Appeal in *Stait v Cosmos Insurance Limited Cyprus* [2022] EWCA Civ 1429. Whipple LJ, with whom Underhill and Popplewell LJJ agreed, summarised the law. At paragraph 59 Whipple LJ said:

> "There is abundant case law on this topic. I would not wish to summarise the principles established in *Levene* and other cases which followed it into any numbered list. The case law sets out broad principles which must be applied to the infinitely variable facts of each case. Residence is an ordinary word with an ordinary meaning, which denotes the place where a person lives, is settled, has their usual abode, with some degree of permanence."

25. Ms. Hart's evidence is that neither The Carlton Tower Hotel nor the UAE Embassy in London is Sheikh Mohammed's usual or last known residence. I accept that unsurprising evidence. Sheikh Mohammed's residence, for the purposes of service under CPR 6.9 is in Dubai. Consequently, Sheikh Mohammed has not been validly served.

26. The second point made on behalf of Sheikh Mohammed is that, pursuant to CPR Part 6.36, Mr. Tanash was required to obtain permission to serve the claim form outside the jurisdiction. No such permission was applied for or given. There are exceptions to the requirement for permission, but none applies in this case. Those reasons are sufficient for me to find that there has been no valid service of the claim form. The time for service has now expired and so the claim form falls to be set aside.

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