Claim No. KB- 2023-003084

IN THE HIGH COURT OF JUSTICE **Neutral citation number: [2024] EWHC 2015 (KB)**

KING'S BENCH DIVISION

Before :

MASTER THORNETT

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Between :

ANTHONY GOODFELLOW

(as executor of the Estate of William Goodfellow (deceased))

Claimant

-and-

WARREN BOYES & ARCHER (a firm)

Defendant

Date: 30 July 2024

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MR Jack Dillon (instructed by Wright Hassall) for the **Claimant**
MR Theo Barclay (instructed by DWF) for the **Defendant**

Hearing date: 30 May 2024

JUDGMENT

1. This is the reserved judgment on the Claimant's Application dated 28 November 2023 and the Defendant's Application dated 21 December 2023. Both Applications centre on the same question whether the Claimant had effectively served the Claim Form in a negligence claim against the Defendant, a former solicitors' partnership.

2. The Claimant argues there has been good service under CPR r.6.9 or, in the alternative, seeks a direction that, if wrong on CPR r.6.9, the court should retrospectively ratify service under CPR r.6.15. On the facts and circumstances, the Claimant submits there is "good reason" under r.6.15 to do so. The Defendant seeks a declaration that there was not good service and so the court has no jurisdiction to hear the claim, the four-month period on the Claim Form having expired and limitation no longer running. Alternatively, that the discretion retrospectively to permit alternative service should be refused.

3. *Factual background and issues*

   In 2005/6, "Warren, Boyes and Archer" ("WBA") was a two-partner firm of solicitors in Cambridgeshire. The partners were Mr Archer and Mr Hemens. WBA, through its partner Mr Archer, acted for the late William Goodfellow and his wife in a property purchase. The Claimant alleges that in April 2006 WBA negligently allowed the title to a property purchased by Mr and Mrs Goodfellow to be registered as a joint tenancy rather than a tenancy-in-common. The result was that Mr Goodfellow's share passed to his wife on his death through the doctrine of survivorship rather than forming part of his estate

   The claim was issued on 31 July 2023 after a 2021 Standstill Agreement between the parties had expired. That date, at least as it would seem at the time the parties had considered, was shortly before the expiry date of the 15-year limitation longstop applied by s.14B Limitation Act 1980. The Claimant did not attempt to serve the Claim Form and Particulars of Claim until 28 November 2023, which was two days before the expiry of the four-month period of validity of the Claim Form under CPR r.7.5(1). By then, the Defendant says, the claim was otherwise statute-barred and WBA would have an absolute limitation defence.

4. Mr Archer's co-partner resigned from the partnership in 2008. Following a period practising as a sole-partner but under the trading name "Warren Boyes Archer", Mr Archer entirely ceased practice as a solicitor and in October 2018 sold his ongoing caseload to a local firm of solicitors, Roythornes Limited. The precise details of the acquisition have not been evidenced but neither party has suggested the acquisition was anything more than the purchase of "assets", being the existing WBA caseload. The Claimant has not sought to argue, for example, that Roythornes took on the liabilities of the former WBA. Whatever the precise relationship and background to the acquisition, the Claimant nonetheless argues that his solicitors validly served the intended Defendant WBA by posting the Claim Form and Particulars of Claim to an

office of Roythornes at Incubator 2, The Boulevard, Alconbury PE28 4XA ("The Incubator").

5. The Claim Form at the date of issue had featured three Defendants: WBA, Roythornes Limited and Mr Archer. The address provided on the Claim Form for both WBA and Mr Archer was "20 Hartford Road, Huntington, Cambridgeshire, PE29 3QH". The Claimant accepts that this was the former trading address of the partnership before it was dissolved in 2008. The address for Roythornes on the Claim Form was not, however, The Incubator but instead another of their offices, "Enterprise Way, Pinchebeck, Spalding, Lincolnshire, PE11 3YR".

   Pursuant to CPR 17.1(1) and so before service, the Claimant's solicitors variously amended the Claim Form. The relevant amendment for these purposes was the deletion of respectively Roythornes and Mr Archer as defendants. The Claimant had before purported service therefore elected to pursue only the former partnership WBA and abandoned any contemplated claim against Roythornes as a firm and/or Mr Archer for the alleged negligence in 2006 of the former trading partnership WBA.

6. The period to serve the Claim Form and Particulars of Claim expired at midnight on 30 November 2023.

7. The Defendant's central proposition is that service of the Claim Form at Roythornes address at The Incubator could never have been good service pursuant to CPR r.6. The partnership WBA had never traded from any of Roythornes' offices. Particularly not The Incubator, which had not been purchased by Roythornes only until after Mr Archer, in his capacity as a sole trader, had retired from practice.

8. The parties are agreed, therefore, that two central issues need to be decided:

   8.1 Whether posting the Claim Form and Particulars of Claim to The Incubator constituted good service on WBA;

   8.2 If not, whether the Court should validate that event as a method of alternative service under CPR 6.15 (2).

9. *Evidence*

   Chronology re standstill agreement + protocol correspondence

   9.1 The Claimant's Application is supported by contemporaneous correspondence but, surprisingly, no separate Witness Statement from the Claimant or his solicitors explaining their thinking and/or justification for the central events going to purported service at The Incubator. The immediate call for explanation being that The Incubator was not an address either mentioned or associated with either of the three parties on the original Claim Form neither had it featured in the Standstill Agreement. The N244 solely relies upon nine

paragraphs within Box 10 of the pro-forma and annexes copy correspondence showing approaches by the Claimant's solicitors to the Defendant's solicitors about service during only the last few days of the validity of the Claim Form.

9.2 The essential facts and submissions relied upon in the N244 are as follows.

(a) On 27 November 2023 @ 10.56 – and so just three days before expiration of the four-month period for service of the Claim Form – the Claimant's solicitors e-mailed DWF to ask if they were instructed to accept service of "proceedings on behalf of your client. If so, please confirm if you are agreeable to service taking place by email". A response by 10.00am the following day was requested. At 14.11 that afternoon, the Claimant's solicitors again emailed DWF to remind that the Claim Form needed to be served shortly and so sought confirmation as to their instructions to accept service of the Claim Form.

At 12.21pm, DWF confirmed they were not "currently" instructed to accept service. Perhaps not surprisingly, and significantly in the context of the Claimant's alternative application under r.6.15(2), at 1.15pm DWF commented "Our client will want to know why we are being approached at the very end of the validity of the claim form when your firm has had four months to contact us. What is the explanation please?"

At 10.33 and 10.44am on 28 November 2023, DWF confirmed that they had yet to receive instructions.

(b) Both the Claim Form as issued and the Amended Claim Form, Particulars of Claim and accompanying materials were then sent by First Class post to "Warrens Boyes & Archer, c/o Roythornes Limited" to The Incubator. The covering letter remarked "We confirm that a copy of this letter and the enclosures have also been provided to DWF by post and email who we understand are still instructed by you but do not hold instructions to accept service of proceedings".

(c) Quoting directly from Paragraph 6 within the N244 Box 10 narrative:

"Pursuant to CPR 6.9, where the defendant is a partnership, the place of service is the principal or last place of business of the partnership. The last known place of the business of WBA is as set out in the Claim Form being 20 Hartford Road, Huntington, Cambridgeshire, PE29 3QH. However, the Claimant is aware that in or around November 2018, WBA was acquired by Roythornes. Following the acquisition, it is understood that the WBA team moved to Roythornes' offices in Alconbury at Incubator 2, The Boulevard, Enterprise Campus, Alconbury Weald, Huntingdon, PE28 4XA. Therefore, pursuant to CPR 6.9(3), the Claimant believes that the last known place of the business of the partnership is no longer in

existence and if proceedings are served on the address on the Claim Form, these will not be brought to WBA's attention"

(d) Quoting directly from Paragraph 7 within the N244 Box 10 narrative:

"Pursuant to CPR 6.9(4)(a), the Claimant has therefore served proceedings on WBA at the address for Roythornes provided at paragraph 6 above".

9.3 However, during oral presentation at the hearing the Claimant placed little if any reliance upon the assumption and justification featured in the Claimant's Box 10 narrative and instead relied upon the documentation as annexed instead to the Defendant's Application. In particular, the 2021 Standstill Agreement and Protocol correspondence.

9.4 In support of the Defendant's Application, Ms Sheona Wood of DWF provides a Witness Statement dated 21 December 2023. She confirms the instructions of Mr Archer that WBA ceased trading whilst at the Huntingdon address and had never traded from any office of Roythornes. She confirms that the Claimant's solicitors first contact with DWF to explore matters of service was on 27 November 2023 and submits that, as a claim against a former partnership, pursuant to r.6.5 and 6.9, the Claimant was only entitled to serve WBA either (i) by way of personal service upon Mr Archer as one of the two original partners or (ii) at Mr Archer's "usual or last known residence".

9.5 Ms Wood points out that the Claimant, through his solicitors, had had by then ample opportunity to consider how and when to serve. Further, he could have ascertained Mr Archer's current or last known address by way of a few simple steps. Mr Archer's e-mail address, for example, was on the 2021 Standstill Agreement to which the Claimant was a party. By way of an alternative approach and for the relatively nominal cost of £115 plus VAT, to demonstrate the ease with which the Claimant or his solicitors could have traced Mr Archer at his current residential address her firm had instructed a firm of tracing agents. The tracing agents had found and provided Mr Archer's residential address within 24 hours of instruction. Even more simply still, Ms Wood annexes an extract from the BT phonebook for Peterborough and Huntingdon 2019-20 showing Mr Archer's residential address. She adds it also could have been obtained from 192.com at a maximum cost of £15.00 plus VAT. DWF replicated an online search on 192.com and the said information "was generated in minutes".

9.6 In a Witness Statement directly from Mr Archer, dated 22 May 2024, Mr Archer confirms Ms Wood's description of how he ceased sole trading as WBA on 31 October 2018 and how, between October 2018 and 31 May 2019, he had worked for Roythornes as an employed consultant; initially for three days a week reducing to two and finally one during May 2019. On his

understanding, Roythornes did not even purchase The Incubator address until "the later end of 2020".

9.7 Therefore, he (i) never practised as WBA following it ceasing trading in October 2018 and (ii) had ceased to work for Roythornes approximately 18 months before The Incubator had been purchased and so he simply could never have worked there. He adds, for the avoidance of doubt, that his former WBA partner Mr Hemens had never worked at The Incubator, neither was The Incubator ever a place of business for WBA. Neither, again for the avoidance of doubt, has he or Mr Hemens ever resided at The Incubator.

9.8 The 2021 Standstill Agreement defines the parties as respectively the Claimant, Roythornes Limited "whose Head Office is Enterprise Way, Pinchebeck, Spalding, Lincolnshire, PE11 3YR" and Mr Archer "trading as Warrens Boyes & Archer".

Significantly for the purposes of the analysis that follows, however, no current address is provided for Mr Archer in the Agreement. Instead, the sentence states "formerly of 20 Hartford Road, Huntington, Cambridgeshire, PE29 3QH and acquired by Roythornes in October 2018 ("WBA")". The Agreement is signed by parties, with Mr Archer being described as the "Authorised Signatory for Gregory Archer trading as Warrens Boyes & Archer Solicitors".

Under "Background", Roythornes Limited confirms that it "took over the assets of Gregory Archer trading as Warren Boyes & Archer". Clause 11.1 deals with Notices which, as Mr Dillon (counsel for the Claimant) accepted, could only be taken strictly speaking to refer to notices under the Agreement. Nonetheless, the Claimant says that because the paragraph provides that a notice given to a party should be sent "to the Party at the address or DX number or to the fax number given in this Standstill Agreement or as otherwise notified in writing to the other Party", it was implicit that Mr Archer was holding himself out as willing to accept service at Roythornes.

9.9 Wright Hassall's Protocol Letter was dated 18 August 2021 and addressed to Ms Stevenson as the "Claims Partner" of Roythornes Solicitors. The second and third paragraphs of the letter reads:

"We understand that Warrens, Boyes and Archer Solicitors were the firm of solicitors instructed by Mr and Mrs Goodfellow in respect of the purchase of a property……We understand that Warrens, Boyes and Archer were incorporated into Roythornes and that Mr Gregory Archer is in the employ of Roythornes as a Consultant. Please provide the date and the basis upon which your firm acquired Warrens, Boyes and Archer solicitors.

Until such time that we receive confirmation of the date and basis which your firm acquired WBA Solicitors, we will be pursing both your firm and WBA Solicitors in respect of the above matter".

9.10 In a January 2022 response to pre-action correspondence from the Claimant's solicitors, DWF wrote to confirm that they acted for Roythornes "as Successor Practice to Warrens, Boyes and Archer ("WBA")….you should be aware that WBA has the benefit of Run-Off cover and, as such, we also act for these insurers. The details of our client's acquisition of WBA and/or of the Run-Off cover need not concern your client". In the third substantive paragraph of the letter, DWF wrote "This is WBA's Letter of Response pursuant to the Pre-Action Protocol". The letter goes to on to answer the allegations made against WBA.

10 *Relevant Law*

10.1 The parties do not disagree on the applicable law although, as ever in a case where legal principle and guidance is engaged to inform ultimately a question of discretion, each party seeks to take the court to different parts of the dicta available.

10.2 A claim against a partnership is a claim against the individual partners at the date that the cause of action accrued: *Brookes v. AH Brooks* [2010] EWHC 2720 (Ch), David Cooke, para 5. It is brought against the name under which the partnership carried on activity at the time the cause of action accrued (see CPR PD7A, 7.1 – 8.3 and *Planetree Nominees Ltd & Ors v Howard Kennedy LLP* [2016] EWHC 2302 (Ch) per Chief Master Marsh at [12]).

10.3 The provisions for service of the claim form in 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 r.6.9(2). An individual being sued in the name of a partnership must be served either at the usual or last known residence of the individual or at the principal or last known place of business of the partnership.

10.4 CPR 6.9(3)-(6) provide that:

"(3) Where a claimant has reason to believe that the address of the defendant referred to [above] 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 ("current address").

(4) Where, having taken the reasonable steps required by paragraph (3), the claimant

(a) ascertains the defendant's current address, the Claim Form must be served at that address; or

(b) is unable to ascertain the defendant's current address, the claimant must consider whether there is –

(i) an alternative place where; or

(ii) an alternative method by which, service may be effected.

(5) If, under paragraph (4)(b), there is such a place where or a method by which service may be effected, the claimant must make an application under rule 6.15.

(6) Where paragraph (3) applies, the claimant may serve on the defendant's usual or last known address in accordance with the table in paragraph (2) where the claimant

(a) cannot ascertain the defendant's current residence or place of business; and

(b) cannot ascertain an alternative place or an alternative method under paragraph (4)(b).

10.5 The following were available methods of service to the Claimant under CPR r.6:

a. Personal service on the individuals being sued in the name of the business (CPR r.6.5(3)).

b. Where the Defendant has not given an address for service, service at the usual or last known residence of one of the individuals being sued in the name of the business (CPR 6.9 (2)).

c. Where the Defendant has not given an address for service, service on the principal or last known place of business of the partnership (CPR 6.9 (2)).

10.6 CPR r.6.15, which r.6.27 extends to other documents (for example, the Particulars of Claim) provides as follows:

"6.15 - (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."

10.7 The Claimant observes that the Supreme Court has had the opportunity to consider r.6.15(2) twice in recent years.

(1) *Abela v. Baadarani* [2013] UKSC 44, Lord Clarke, paras 35 to 38:

> "35 As stated above, in a case of this kind the court should simply ask itself whether, in all the circumstances of the particular case, there is a good reason to make the order sought. ...
>
> 36 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). On the other hand, the wording of the rule shows that it is a critical factor. … [R]ule 6.15(2) was designed to remedy what were thought to be defects as matters stood before 1 October 2008. … [I]t may enable a claimant to escape the serious consequences that would normally ensue where there has been mis-service and, not only has the period for service of the Claim Form fixed by CPR r 7.5 run, but also the relevant limitation period has expired.
>
> 37 Service has a number of purposes but the most important is to my mind to ensure that the contents of the document served, here the Claim Form, is communicated to the defendant. In *Olafsson v. Gissurarson (No 2)* [2008] 1 WLR 2016, para 55 I said, in a not dissimilar context, that
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> > "the whole purpose of service is to inform the defendant of the contents of the Claim Form and the nature of the claimant's case: see eg *Barclays Bank of Swaziland Ltd v. Hahn* [1989] 1 WLR 506, 509, per Lord Brightman, and the definition of 'service' in the glossary to the CPR, which describes it as 'steps required to bring documents used in court proceedings to a person's attention' …"
>
> I adhere to that view.
>
> 38 … As Lewison J said at para 4 of his judgment (quoted above, para 25):
>
> > "The purpose of service of proceedings, quite obviously, is to bring proceedings to the notice of a defendant. It is not about playing technical games. There is no doubt on the evidence that the defendant is fully aware of the proceedings which are sought to be brought against him, of the nature of the claims made against him and of the seriousness of the allegations."
>
> I agree."

(2) *Barton v. Wright Hassall* [2018] UKSC 12 [2018] 1 WLR 1119, Lord Sumption at paras 9-10, 15-17:

"9 … (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. …

10 … 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. …

16 … Although the purpose of service is to bring the contents of the Claim Form to the attention of the defendant, the manner in which this is done is also important. Rules of court must identify some formal step which can be treated as making him aware of it. This is because a bright line rule is necessary in order to determine the exact point from which time runs for the taking of further steps or the entry of judgment in default of them."

10.8 In the context of the correspondence and in particular DWF's January 2022 letter, the Claimant refers to *Phoenix Healthcare Distribution Ltd v. Woodward* [2018] EWHC 2152 (Ch) where HHJ Hodge QC considered the extent to which a defendant can properly take advantage of an error made by the claimant. See para 173:

"The overriding objective does require parties to take reasonable steps to ensure, so far as is reasonably possible, that there is a clear, common understanding between them as to the identity of the issues in the litigation, and also as to related matters, including procedural arrangements. But that requires there to have been a genuine misunderstanding that has arisen between the parties regarding a significant matter."

10.9 The Defendant relies upon a more recent summary of the fundamental principles of CPR 6.15 by Carr LJ (as she then was) in *R (Good Law Project) v Secretary of State for Health and Social Care* [2022] EWCA Civ 355 at [55]:

"i) 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 are good service;

ii) 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. This is a critical factor. But the mere fact that the defendant knew of the existence and content of the claim form cannot, without more, constitute a good reason to make an order under CPR 6.15(2);

iii) The manner in which service is effected is also important. A 'bright line' is necessary to determine the precise point at which time runs for subsequent procedural steps. Service of the claim form within its period of validity may have significant implications for the operation of any relevant limitation period. It is important that there should be a finite limit on the extension of the limitation period;

iv) In the generality of cases, the main relevant factors are likely to be:

(a) Whether the claimant has taken reasonable steps to effect service in accordance with the rules;

(b) Whether the defendant or his solicitor was aware of the contents of the claim form at the time when it expired;

(c) What, if any, prejudice the defendant would suffer by the retrospective validation of a non-compliant service of the claim form.

None of these factors are decisive in themselves, and the weight to be attached to them will vary with all the circumstances".

10.10 Further, the following paragraphs with the Defendant's emphasis underlined:

"[58] The result of the application of these principles can be harsh, as the first instance decisions to which the Judge referred demonstrate. In Barton itself a litigant in person purported to serve a claim form for professional negligence within time by email on the defendant's solicitors (who were authorised to accept service, but not by email). The claim form expired unserved and the claim had become statute-barred. Both the District Judge and the Court of Appeal declined to authorise such service under CPR 6.15. The (majority in the) Supreme Court agreed. *Piepenbrock* (again involving a litigant in person) and *Ideal* (at first instance) (involving solicitors' failures) are further examples of retrospective validation being refused in circumstances where the defendant had full knowledge of the contents of the claim form within time and the only prejudice was the loss of an accrued limitation defence.

[…]

[62] Nothing could have been simpler than email service on the new proceedings address. The power in CPR 6.15 can be (and is) often used to assist claimants where there are difficulties in service, for example, because a defendant is being evasive or abroad and difficult to locate, or because service through diplomatic channels proves impossible to achieve in time. The courts are often invited (prospectively) and agree to authorise alternative methods or places in such circumstances. Here there were simply no obstacles in the way of valid service.

[63] Further, the absence of any proper explanation as to how the mistaken view that service of an unsealed claim form could amount to valid service came about (as set out above), or who (and how many) formed it, does not advance Good Law's cause. There was no attempt to serve the sealed claim

form on the correct address within time. The level of care required cannot be divorced from the significance of the procedural step in question. Thus, service of a claim form requires the utmost diligence and care to ensure that the relevant procedural rules are properly complied with. In the event, this was serious carelessness. The Judge was entitled to lay heavy weight on this consideration. As she said, the SSHSC had made the authorised address for service "very clear".

[….]

[83] …Parties who fail, without good reason, to take reasonable steps to effect valid service, in circumstances where a relevant limitation period is about to expire, expose themselves to the very real risk of losing the right to bring their claim.

[84] The consequences of the error in service may seem harsh in circumstances where the sealed claim form was sent to the SSHSC's lawyers within time. But as the authorities demonstrate, CPR 6.15 is not a generous provision for claimants where there are no obstacles to valid service of a claim form within time. The power to validate will not necessarily be exercised even when the defendant, either itself or through its solicitors, is fully on notice within time and the only prejudice to the defendant would be the loss of an accrued limitation defence".

10.11 In *Barton v Wright Hassall*, a case in which the Defendant ironically observes directly concerned the Claimant's firm of solicitors, the Defendant took me to (again with the Defendant's emphasis underlined) Lord Sumption at [23]:

"Naturally, none of this would have mattered if Mr Barton had allowed himself time to rectify any mishap. But having issued the claim form at the very end of the limitation period and opted not to have it served by the Court, he then made no attempt to serve it himself until the very end of its period of validity. A person who courts disaster in this way can have only a very limited claim on the court's indulgence in an application under CPR rule 6.15(2). By comparison, the prejudice to Wright Hassall is palpable. They will retrospectively be deprived of an accrued limitation defence if service is validated".

11 *The Claimant's submissions*

The Claimant relies upon two fundamental points.

11.1 First, a clear objective interpretation of the contemporaneous documentation establishes that WBA could be served at an office of Roythornes. Whilst falling short of reliance upon there having been any express assertion to this effect on behalf of WBA, the Claimant can be taken as having acted reasonably in reaching this conclusion and accordingly should be treated as

having taken "reasonable steps" to serve the Claim Form. To adopt the more subjective wording in the Claimant counsel's skeleton argument, the Claimant had "ascertained to his satisfaction" that Roythornes' address was also Mr Archer's for the purpose of service.

11.2 Secondly, that Mr Archer, WBA's insurer and their jointly instructed solicitors DWF, all were fully aware of the proposed claim and then the issue of a Claim Form with Particulars of Claim in support. Following the exchange of protocol correspondence and the Standstill Agreement, it was therefore entirely clear in November 2023 that the Claimant was seeking to cross the "bright line" described in *Barton* at [16] and to commence proceedings. If there therefore was an error of understanding as to the correct address for service, WBA (through DWF) had "contributed" to the Claimant's misunderstanding by not correcting the Claimant despite having had the opportunity to do so. The Claimant submits that this, combined with the "unexplained" refusal to accept service, constitutes technical game-playing per *Abela* [38].

11.3 The Claimant's first point requires some careful attention. It requires the court to accept that the materials on an objective reading support the Claimant's understanding of how service should be effected. Mr Dillon submits that because such an interpretation is clear and obvious, this explains why Claimant has chosen not to explain or amplify matters by direct witness evidence; either from him or, as one would anticipate to be more likely, his solicitors.

11.4 The Claimant submits that, taken as a whole, the clear impression and natural reading of the Standstill Agreement was that:

(i) Mr Archer traded as WBA; and

(ii) Because of the acquisition of WBA's business by Roythornes, Mr Archer had come to use Roythornes' address.

(iii) Although Mr Dillon was careful not to suggest that such references in the Agreement were intended consciously to mislead, the wording plainly encouraged and maintained the impression to which DWF knew Wright Hassall were working: that Mr Archer's address was Roythornes.

11.5 The Claimant accepts that whilst WBA's principal or last known place of business had been 20 Hartford Road, that address had for some years been accepted as not an effective place for service. The proposition instead is that because the Claimant understood at least from the time of the Standstill Agreement that Mr Archer was still practising as a solicitor and had some form of professional association or engagement with Roythornes, then it was a reasonable assumption and hence reasonable step to adopt Roythornes' address for the purposes of serving Mr Archer pursuant to r.6.9(4)(a).

11.6 Mr Dillon was keen to emphasise that until the production of the unequivocal explanation of facts in Mr Archer's witness statement, the Defendant has never been entirely clear about Mr Archer's status either in relation to Roythornes or in his own right, if independently. For example, Ms Wood's statement implies that Mr Archer continued to practise as a solicitor after dissolution of WBA at the Hertford Road address: where was this address, then, if not Roythornes? So, if it was reasonable to assume Mr Archer was at the operative time of service trading as a sole practitioner in his own right as "WBA", so too it was reasonable to assume his address would be an office of Roythornes. This thinking is said to emanate from the backdrop how Mr Archer is presented in the standstill agreement.

11.7 The Claimant was asked at the hearing to explain more deeply the proposition that Mr Archer was served as a practising sole practitioner in the context of the apparent meaning of the sentence at Paragraph 6 in the N244 Box 10 narrative *"Following the acquisition, it is understood that the WBA team moved to Roythornes' offices*". In the absence of a Witness Statement, surely "acquisition" should instead be taken to mean the Claimant connoted that WBA had somehow subsumed into the business of Roythornes. Was it not a reasonable inference that The Incubator address was, quite to the contrary, assumed by the Claimant to be Mr Archer's address because he and the former business WBA was now part of Roythornes?

11.8 Mr Dillon clarified that the Claimant was not maintaining that the business address of Roythornes was being taken as Mr Archer's address for service just because of an understood association between Mr Archer and Roythornes. The Claim Form had, by amendment before service, selected solely the partnership "WBA" as the single defendant answerable to the claim. The Claimant therefore had abandoned suing Roythornes as a separate defendant and there was no basis to conclude the Claimant thought that Roythornes and Mr Archer were synonymous.

To the contrary, Mr Archer was being served as a solicitor trading as WBA but from new partnership premises.

11.9 This clarity of this explanation only became apparent in the course of Mr Dillon's oral submissions. When this was observed, Mr Dillon reiterated the explanation how this served to illustrate how unclear the Claimant generally had been through to the date of intended service about the precise relationship between Mr Archer, his understood trading as WBA and any employment or engagement of him by Roythornes. This was despite the Claimant having sufficiently raised question in pre-action correspondence about the relationship. Because of a lack of clarification in response, the Claimant reasonably continued to understand that Mr Archer could be served at his "business address or last known business address". Therefore, because Mr Archer was still trading, or at least so it was thought, service in this way would be an effective "shortcut" than serving both WBA partners individually.

11.10 In a further point introduced and developed only during the hearing, Mr Dillon proposed that "reasonable steps" in the rule are satisfied if the relevant claimant had a tenable basis for personally believing their steps were reasonable. This approach was particularly apposite on the facts of this case where, the Claimant submits, the documentation had lulled the Claimant into an understanding that the Defendant could instead quite easily have qualified, if not corrected. Particularly in this context, the Claimant can therefore be treated as having acted reasonably.

11.11 Whilst the Claimant concedes that pre-Claim Form it had also been motivated to know more about the relationship between WBA and Roythornes because it might justify Roythornes also being sued, this feature of three defendants originally having been endorsed on the Claim Form is described as a merely a prior feature to the Claimant's clear questions shortly before service as to how Mr Archer, "trading as WBA", could be served.

11.12 Mr Dillon observes that nothing in the DWF January 2022 letter mentions that Mr Archer in fact had ceased working or being associated with Roythornes in May 2019, some 3 ½ years earlier. The Claimant was therefore entitled still to adopt the impression from the Standstill Agreement that Mr Archer was continuing to trade as WBA and moreover from Roythornes' address. In this context, the questions raised in November 2023 by Wright Hassall just before expiration of the Claim Form had been, even if rather late, entirely consistent with an impression the Claimant (i) had been entitled to adopt (ii) had made clear to DWF he as adopting but which (iii) DWF had never qualified or disabused. Roythornes' address could reasonably, therefore, continue to be treated as the place of business for Mr Archer by the point of service.

11.13 This conclusion may since have been factually rebutted in Mr Archer's only very recently served Witness Statement. However, the benefit of Mr Archer's clarification and elucidation only after the Claimant had served the Claim Form does not establish that the Claimant had acted unreasonably at the time of purported service. On the facts presented at the time, the Claimant ought not to be blamed for not having further scrutinised or pressed matters. He had, in short, taken reasonable steps.

11.14 The Defendant relies upon a limitation point in that, if the Claimant's Application is not granted (in either form), limitation for a fresh claim has by now expired. The Claimant challenges that such a defence arises, arguing that the Deceased's interest in sharing a joint tenancy, rather than being a tenant in common as he contends was his instruction, only became measurably and demonstrably less valuable when he died.

12 *The Defendant's submissions*

12.1 The Defendant refers to the table of methods of service at CPR r.6.9(2) and reminds me that there is no question of personal service ever having been contemplated. Therefore, as a person under the third part of the table "being sued in the business name of a partnership", if not being served either at his "usual or last known" residence then the mandatory requirement was for Mr Archer to be served at the "principal or last known place of business of the partnership". By r.6.9(3), if a claimant has reason to believe that that a defendant no longer either resides at, or carries on business at, an address in the table then the claimant "must take reasonable steps to ascertain" the current residence or place of business.

The Defendant reminds me that this procedural sequence is central and the danger of mixing either the sequence or the respective terminology in each part of the sequence must be avoided.

12.2 There is no evidence whatsoever that the Claimant's solicitors made any attempt to establish the usual or last known residence of Mr Archer, the partner relevant to the negligent transaction. Hence the question of reasonableness of steps does not arise in that regard. This is particularly surprising given the CPR provides a specific and straightforward mechanism for those bringing a claim against a former partnership such as WBA to ascertain the correct addresses on which to serve individual partners:

CPR PD7A, 8.1 - 8.3 provides that claimants are entitled to request a copy of a 'partnership membership statement' setting out the names and last known places of residence of all persons who were partners in the partnership at the date when the cause of action accrued.

The partnership membership statement:

(i) can be requested at any time, including before issue of the Claim Form;
and
(ii) must be provided within 14 days of receipt of the request.

12.3 In this case, despite being in communications with Mr Archer and WBA's solicitors, neither the Claimant nor its solicitors ever made such a request. In the analogous case of *Planetree Nominees Ltd v Howard Kennedy LLP* Chief Master Marsh stated at [18]:

"…what is absolutely clear is that no steps were taken under Practice Direction 7A para 5B [now CPR PD&A, 8.1-8.3] to request a partnership membership statement. <u>It seems to me that it is not possible for a claimant to say that [the Claimant] has taken reasonable steps to ascertain the current address of the individual defendants, the partners, or a place of business without serving such a request.</u>"

[Emphasis by the Defendant as underlined]

12.4 The events the Claimant seeks to argue were reasonable had been explored only during the last days before expiry of the period of validity of the Claim Form. There seems to be no reason for this but, the Defendant submits, even at that late stage it would have been straightforward for the Claimant's solicitors to ascertain Mr Archer's usual or last known residential address and to serve him there. There had been no previous uncertainty about Mr Archer's relevance: it is clear from the Particulars of Claim and pre-action correspondence the Claimant was aware that it was Mr Archer, as a partner of the former two partnership WBA, who had conduct of the transaction in 2005/6. His residential address and home telephone number were (and are) listed in the BT Phone Book. His residential address is listed on the freely available Companies House website. Further, his residential address could have been obtained from www.192.com in minutes at a modest cost of £15.99 + VAT.

12.5 A firm of tracing agents instructed by DWF in December 2023 was, from the information in the standstill agreement executed on 12 March 2021, able to ascertain Mr Archer's residential address at a cost of £115 + VAT in a timeframe of one day.

12.6 In response to the Claimant's submission that he should be treated as having acted reasonably in the circumstances, Mr Barclay points out that the phrase in r.6.9(3) as correctly described is that a claimant must take "reasonable steps to ascertain the address of" the defendant. The question of "reasonable steps" is the ascertainment of the address. The question is not whether a claimant subjectively had a reasonable belief that a particular address was or might be correct even if, in fact, it was not. Mr Barclay remarked that this was a quite new point relied upon by the Claimant and asked for the opportunity to find the authority in rebuttal of it.

13. Following the lunchtime adjournment, Mr Barclay produced the authority of *Collier v Williams* [2006] EWCA Civ 20, a combined appeal decision of the Court of Appeal. In the appeal of *Marshall v Maggs*, the evidence was that the defendant had never resided at the property at which the claimant had tried to serve, believing it was sufficient. Whilst obliged to concede that the address was not in fact the defendant's "usual or last known address", the appellant claimant had submitted that an address may still qualify as a defendant's "last known address" for the purposes of service if the claimant honestly believed it was, following such steps they say were reasonably taken.

The Court of Appeal were clear in rejecting this proposition. Dyson LJ:

"68. No authority has been cited to us in which the court has had to decide whether an address can be a person's last known residence if it was never his residence at all. As Mr Butler points out, the rule could have been expressed in terms of "the address

reasonably believed to be the usual or last residence of the individual". The use of the concept of knowledge was deliberate. There is no other area of the law where the concept of knowledge is equated with that of belief. No authority has been cited to us in support of the proposition that a piece of information which is false can nevertheless be known. As a matter of the ordinary meaning of words, to say "I know X" entails the proposition that "X is true". We do not see how the phrase "last known residence" can be extended to an address at which the individual to be served has never resided.

69. We accept that the rules should, if possible, be interpreted in a practical way which promotes certainty and minimises the risk of satellite litigation. This does not, however, warrant rewriting the rules so as to make them bear a meaning which they plainly do not have. Nor do we see how interpolating the words "or reasonably believed" in the phrase "the address known to be last residence of the individual" adds to certainty or reduces the risk of satellite litigation".

14. Hence, the Defendant submits the Claimant in this case did not take reasonable steps. Given the actual events and drawing upon the emphasis in relevant case law as to the limitations of reliance on r.6.15, the court should not retrospectively validate what had never been a compliant method of service. Seen objectively, there were no obstacles to prevent the valid service of the Claim Form in time. Neither had the Defendant interposed the relatively easy path open to the Claimant to ascertain Mr Archer's address by placing any obstacles in the way.

15. In terms of broader issues going to discretion under r.6.15, the Defendant points to the significant prejudice if a non-compliance method of service were now to be validated. The Defendant would be deprived of an obvious limitation defence to a claim pleaded at £230,000 plus interest at 8%. That feature is a material consideration, as recognised by per Lord Sumption at [23] in *Barton*, Carr LJ at [84] in *Good Law Project* and John Kimbell KC at [68]-[72] in *Lonsdale v Wedlake Bell* [2022] EWHC 2169 (QB).

16. *Discussion and decision*

The Defendant illustrates in simple but cogent terms how Mr Archer could so easily have been traced and served as a former partner of WBA at his current residential address. Even if, were there to be any justification for leaving it as late as the last few days remaining on the Claim Form. The Claimant is clear in acknowledging that the WBA Huntingdon address was no longer the "principal or last known place of business of the partnership". Given the Claimant seeks to sue a partnership that dissolved in 2008, I conclude that ascertaining and serving Mr Archer at his residential address was an obvious and easy first point to consider.

17. The absence of evidence from the Claimant and his representatives why this was not considered, still less explored, I find is fundamentally damaging to his Application. If the court is being invited to infer that ascertaining Mr Archer's residential address was not reasonably possible then, on the Defendant's evidence, that implied

proposition is wholly unsustainable and I reject it. In consequence, the Claimant must be treated as having failed to take reasonable steps to at least to "ascertain the defendant's current residence" per rule 6.9(3).

18. The identification of a valid address for service is the central requirement to have been explored under r.6.9(3) in order for r.6.15 to be engaged in the alternative. Convincing reliance upon r.6.15 has already, therefore, been reduced because the residential address enquiry was never explored.

19. In seeking to argue that there was good service upon a place of business, I dismiss the argument it was reasonable for the Claimant to treat The Incubator as Mr Archer's place of business even if, in fact, it was not. *Collier* is quite clear that the Claimant's mandatory task was to take "reasonable steps" to "ascertain" Mr Archer's address, not simply reach a subjective state of reasonable belief.

20. The conclusion is therefore there was never good service under r.6.9(2). I agree with the Defendant that no other rational conclusion can be reached.

21. The Claimant's only real argument is that the background facts still constitute "good reason" under r.6.15 to permit alternative service at The Incubator. In the absence of any witness commentary from the Claimant or his solicitors, it relies solely upon documentation. I find the basis and logic of the Claimant's interpretation of the documentation difficult to follow and ultimately unpersuasive.

22. If a party seeks to rely upon documentation alone to justify alternative service, it seems to me that only if obvious and uncontentious facts are evident within that documentation can a party expect to establish "good reason" under r.6.15. Having read and carefully considered the Claimant's documentation, I am unable to accept it supports the interpretation invited. Further even if it (just) might so support the Claimant's impression, for the reasons that follow I am satisfied that the documentation remained sufficiently ambiguous to have required the Claimant still to call for greater clarification. The failure to seek that clarification negates there being "good reason" under r.6.15.

23. The starting observation is the simple and obvious one that the Claimant has always intended to pursue the former partners of a long since dissolved solicitors' practice. It is plain from *Brookes* that a claim against a partnership is a claim against the individual partners at the date the cause of action accrued and, from CPR PD7A, 7.1 – 8.3, it is to be brought against the name under which the partnership carried on activity at the time the cause of action accrued. Not against a practice that happens to adopt the same trading name sometime after the relevant partnership dissolved.

24. It is clear from the Standstill Agreement and Protocol correspondence that the Claimant at those stages reserved the question whether Roythornes had assumed some form of liability for the former WBA liabilities, as would justify them being at

least a co-defendant; if not the only defendant. The plausibility of this possibility beyond initial suspicion, however, seems less likely once one takes into account that:

(i) The two-partner firm WBA had dissolved some time before its caseload was acquired by Roythornes. It is trite that an ordinary partnership dissolves and reforms upon the addition and removal of partners. Further, the Standstill Agreement under "Background", recited:

> "Upon a representative of Roythornes Limited confirming that it is the firm which took over the assets of Gregory Archer trading as Warren Boyes & Archer, the Parties, notwithstanding that Roythornes Limited does not believe it has attracted any liability in this matter as a result of the said asset purchase, wish to enter into this standstill agreement".

On this wording, the Claimant was plainly on notice that a claim against Roythornes would need special evidence to establish how an asset purchase could engage a liability for torts allegedly committed by the vendor when he was previously a partner in a now long dissolved partnership. That, in turn, surely would or ought to emphasise the importance of ensuring that Mr Archer was to be correctly served as a former partner of the applicable firm WBA.

That distinction was, or ideally ought, to have been uppermost in the minds of those drafting the Standstill Agreement on behalf of the Claimant. Either way, reading the document as at the time a subsequently issued Claim Form had to be served, it was or ought to have been clear that:

(ii) The identification of Mr Archer as a party in the Agreement as "Gregory Archer trading as Warrens Boyes & Archer" had always required careful elaboration, given WBA by then could only have been his sole practitioner trading name, the former partnership existing at the time of the alleged negligence practising by that name having long since dissolved;

(iii) The address provided for Mr Archer in the agreement "formerly 20 Hertford Road, Huntingdon, Cambridgeshire, PE29 3QH" was unlikely, if not obviously irrelevant for the purposes of serving him in 2023. First, the Huntingdon address was that of a partnership dissolved thirteen years previously. Secondly, "formerly of" plainly could never constitute a current address, whether residential or (if it could be relevant in terms of acquired liabilities from the former WBA) Mr Archer's actual business address;

(iv) Even for the purposes of service under the Agreement itself, a party who provides their address as "formerly X" was hardly facilitating any of the methods of service stipulated in the Agreement but even less so for the purposes of r.6.9;

(v) If further indication was required at the time of the Agreement as to the ambiguity and uncertainty of Mr Archer's status to be served with a Claim

Form that may come to be issued in the future, Mr Archer describing himself in the signatory block as "Authorised Signatory for Gregory Archer trading as Warrens Boyes & Archer Solicitors" provided it. Whether or not Mr Archer continued post-dissolution to practice as a solicitor using the title WBA, his place of business in that business could not have been adopted as "the principal or last known place of business" of the former WBA partnership. Still less, given that partnership dissolved in 2008, could there be any "current" place of business for WBA, whether that of Mr Archer as a sole-practitioner or some kind of employee or consultant at Roythornes.

24. If the Claimant truly intended to serve Mr Archer as a practitioner associated with WBA but that Roythornes merely provided his address, one would have expected events after the Standstill Agreement but before service to see the Claimant adopting and applying a clear severance between the liability of Mr Archer as a former partner of WBA and any potential liability of Roythornes. I am satisfied, and so find, that the evidence emanating from the Claimant does not illustrate this and indeed presents to the contrary.

25. The second and third paragraphs of the Claimant's solicitors' 18 August 2021 letter [quoted at Paragraph 9.9 above] had very clearly reserved the Claimant's right to pursue both Roythornes and WBA. DWF's 24 January 2022 response adopted and responded to a distinction between the alleged negligence of the former partnership WBA and the limited company Roythornes. It told the Claimant that WBA had run off insurance and, as far as Roythornes' were concerned, details of its acquisition "need not concern your client".

26. The phrase "need not concern your client" is entirely consistent with a limited company that had, in a Standstill Agreement some ten months' previously, recorded that it disputed it had acquired any liabilities of a solicitor's caseload it had acquired. In more colloquial parlance, DWF might have said it was "none of the Claimant's business" because Roythornes was unconnected to the dispute. I am satisfied this is the clear and more likely meaning of the phrase. I am unable to accept there was anything misleading in it, such as reasonably induced the Claimant into believing that he was being assured that Roythornes and WBA were sufficiently synonymous that further detail as to the acquisition need not be explored and Mr Archer could be served at any address of Roythornes.

27. Even if this was at least an interpretation that could be reached, it could only have been reached unilaterally by the Claimant and his solicitors. It did not arise from anything unfair or misleading from DWF. Correspondence in litigation, whether pre or post service of a Claim Form, always has to be carefully read. Once the Claimant had decided he would not be suing Roythornes and deleted its name from the Claim Form, the burden was solely upon the Claimant to review and be clear as to the address at which Mr Archer was to be served as a former partner, following the sequence of consideration set out in rule 6.9.

28. The justification for serving Mr Archer at The Incubator is far from established in the Claimant's N.244. Having acknowledged that the Huntingdon address was no longer in existence and so inapplicable for certain provisions of CPR 6.9, the significant words then appear "However the Claimant is aware that in or around November 2018, WBA was acquired by Roythornes. Following the acquisition, it is understood that the WBA team moved to Roythornes' offices in Alconbury at Incubator 2, The Boulevard, Enterprise Campus, Alconbury Weald, Huntingdon, PE28 4XA".

29. This is the only explanation supported by a Statement of Truth from the Claimant to justify alternative service. I find it very far from providing support as to a belief and reliance that Mr Archer held out that service on an address at Roythornes (even if not The Incubator) would be good service. To the contrary, and at best, this wording instead seeks to justify serving either (i) a business that was not being sued (Roythornes) anyway, by way of a transaction that had never been established; or (ii) a former partner at an address for which there had been no justification or invitation to use.

30. Because there was never a realistic basis to justify the Claimant having served Mr Archer at The Incubator, I am unable to treat this approach as constituting a "good reason" retrospectively to authorise service at that address. Seen overall, the circumstances of the case do not justify it: *Abela* at [35]. To do so would be to use r.6.15 for the purposes of making good an erroneous approach for which there was no "good reason" to choose. Further, the Claimant had not previously taken reasonable steps to satisfy himself that Mr Archer could not otherwise be served: *Planetree Nominees Ltd* at [18].

31. Whilst it can (just) be said that Mr Archer, through DWF, came to know of the Claim Form in the last few days before its expiration, it is clear from the correspondence that the case cannot be described as one where a defendant knows that a claimant is taking reasonable steps to serve but the defendant fails reasonably to co-operate; or, still less, put steps in the claimant's way. The Defendant's late knowledge of attempts to serve do not alone constitute "good reason", per *R (Good Law Project)* at paragraphs 55 ii and 58.

32. For the reasons discussed, I consider it unnecessary to take into the balance whether, as a matter of law and hence prejudice, the Defendant would have a clear limitation defence to any subsequent claim. The pertinent point is that the lack of either "reasonable steps" and then "good reason" entirely eclipse a potential additional discretionary factor going to prejudice. Put another way, even if the Claimant is correct on his analysis of limitation, it does not alone provide sufficient justification for retrospective permission under r.6.5.

33. The Claimant's Application is dismissed and the Defendant's Application granted.

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