



Neutral Citation Number: [2011] EWHC 1072 (QB)

Case No: HQ11X01388

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 06/05/2011

Before :

THE HONOURABLE MR JUSTICE TUGENDHAT

Between :

LOUIS BACON

- and -

(1) AUTOMATTIC INC

(2) WIKIMEDIA FOUNDATION

(3) DENVER POST LLC

Claimant

Defendants

Matthew Nicklin (instructed by **Schillings**) for the **Claimant**

The Defendants did not appear and were not represented

Hearing dates: 19 April 2011

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....
THE HONOURABLE MR JUSTICE TUGENDHAT

Mr Justice Tugendhat:

1. The difficult question raised by this application is: can a defendant domiciled in the United States of America be served by means of email with a claim form issued in England?
2. On 13 April 2011 the Claimant issued a Claim Form naming the three defendants. The first two are in California and the third in Colorado. The relief he seeks is a *Norwich Pharmacal Order* (*Norwich Pharmacal v Customs and Excise Commissioners* [1974] AC 133) requiring the Defendants to disclose to his solicitors the names, addresses, IP addresses and other information that will identify, or assist the Claimant's solicitors in identifying, the person or persons responsible for publishing statements about the Claimant which he alleges to be defamatory. These are publications on websites operated by the Defendants namely www.en.wikipedia.org, www.wordpress.com and www.denverpost.com respectively. He states that he has no other reasonable means of identifying the individual or individuals responsible for publishing those statements.
3. The principle in *Norwich Pharmacal* is described in the speech of Lord Reid at page 175 as follows:

“If through no fault of his own a person gets mixed up in the tortious acts of others so as to facilitate their wrongdoing he may incur no personal liability but he comes under a duty to assist the person who has been wronged by giving him full information and disclosing the identity of the wrongdoers. I do not think that it matters whether he became so mixed up by voluntary action on his part or because it was his duty to do what he did. It may be that if this causes him expense the person seeking the information ought to reimburse him. But justice requires that he should co-operate in righting the wrong if he unwittingly facilitated its perpetration.”
4. By way of background, on 21 December 2010 I granted a *Norwich Pharmacal Order* at the request of the Claimant in respect of a website www.bahamascitizen.com. The result has been that the Claimant has been able to identify a person who accepts that he was responsible for creating that website for a client, but has so far refused to identify that client. The Claimant is likely to bring proceedings in the Bahamas to obtain an order that the identity of the client be disclosed.
5. The Claimant is the founder and the Chief Executive Officer of Moore Capital Management LLP, a company with offices in New York, Washington DC and London. He owns residential properties in London, the Bahamas and Denver, Colorado. He is a prominent person in the world of finance, and is the subject of news stories from time to time in each of the jurisdictions mentioned above.
6. The first Defendant is a web development company based in San Francisco which operates the website www.wordpress.com, amongst others. WordPress.com hosts weblogs.
7. The Second Defendant runs the Wikipedia website.

8. The Third Defendant is the publisher of the Denver Post newspaper, which is published both in hard copy and online at its website www.denverpost.com. That site has a forum section which encourages users to post comments.
9. The substantive complaint of the Claimant is that numerous article and comments which he claims are defamatory of him have been posted on the Defendants' websites under various names such as "gotbacon" and "TCasey82", none of which reveal the true identity of the person responsible for the publication. It is unnecessary to consider further the substantive claim which the Claimant wishes to make against these persons, because in my judgment it passes the threshold of being a good arguable case in defamation.
10. On 18 March solicitors for the Claimant wrote by e-mail to the First Defendant. They set out the basis of the claim for *Norwich Pharmacal* relief and asked for disclosure of information which could lead to the identification of those responsible for the defamatory postings complained of. On the same day the First Defendant replied by an e-mail, which included the following:

"Please provide us with a court order including a court's decision regarding this particular content; if any content is found to be defamatory or illegal by a court of law, it will be removed immediately from our service. Any court order, should you obtain one, should be sent to the following e-mail address: [court-orders at wordpress.com](mailto:court-orders@wordpress.com)".
11. The solicitors had written a similar letter to Wikipedia on 1 March 2011 and had received a reply on 14 March by email. That included the following:

"I have removed the statements complained of and have raised a task for one of our biography specialists to further investigate the quality of sources of information in the article. While you will not automatically be notified of the outcome of this, it generally results in articles being cleaned up and improved above and beyond the triage and removal of obviously wrong statements which the Quality Support Team provides...."
12. On 30 March the Wikimedia Support Team sent a further e-mail which included the following:

"You request log details and IP information for a registered Wikipedia editor. We will be happy to provide you with this information upon receipt of an official court order/subpoena requesting the data. An official copy of the court order/subpoena should be sent via postal mail via our registered agent using the address noted at [and a website address is given]".
13. However on 14 April 2011 Counsel for Wikimedia Foundation sent an e-mail indicating that the position was different in one respect: a order issued by a US court is required. The e-mail included the following:

“Unfortunately, the Wikimedia Foundation does not disclose personally identifying information regarding its users absent US subpoena. Please note that we do not comply with foreign subpoenas absent and immediate threat to life or limb, due to the varying standards and requirements of courts from country to country. There is a procedure by which you can have a foreign subpoena recognised by US courts. Should you choose to pursue this course of action, please send the US subpoena to me and we will comply with the subpoena to the best of our ability”.

14. The Claimant therefore took legal advice from California counsel who has made a witness statement. Mr Spiegel, a partner in Lavelly and Singer Professional Corporation, states that a *Norwich Pharmacal* order may be enforced in California as provided in the recently enacted Interstate and International Depositions and Discovery Act, Cal. Code of Civil Procedure Section 2029.100 (and following) which were effective from the 1 January 2010. Having seen the terms of the draft order which the Claimant asks me to make, he advised that, based on his experience, he did not envisage difficulty with enforcing such an order in California.
15. The position in relation to the Third Defendant is different. On the website denverpost.com there is a list of different e-mail addresses to which different types of communication should be sent. One of these is “legal notices” and an e-mail address is given: legals@denverpost.com. Solicitors for the Claimant wrote to the Denver Post on 18 March 2011 in terms similar to the letters addressed to the First and Second Defendants, and they sent a further letter to the same effect on 29 March. They have not received a response to either letter. However, the website includes a section headed Privacy Policy and a subsection “Disclosure To Third Parties”. Under that heading there is a paragraph stating that:

“The Post will disclose information. The Post maintains that when required to do so by law or pursuant to a legal proceeding, including without limitation, in response to a court order or a subpoena. The Post may also disclose such information in response to a law enforcement agency’s request...”
16. The witness statement of Samantha Domin dated 12 April 2011, and made in support of the application, sets out the basis for the substantive complaint in defamation which the Claimant wishes to make against the as yet unidentified publishers. She goes on to state the basis for the *Norwich Pharmacal* relief, which I find to be well founded for the purposes of the present application. It makes out a good arguable case. Ms Domin goes on to state that the information is required urgently because, unless the wrongdoers are identified and restrained by injunction, they are likely to continue publishing defamatory material about the Claimant. And the Claimant wishes to take steps as soon as possible to protect his reputation against the untrue defamatory allegations.
17. There is a further reason for urgency. It is the policy of the Second Defendant to retain information of the kind sought by the *Norwich Pharmacal* order. The policy is to retain it only for a limited and unspecified amount of time.

18. Accordingly, the Claimant applies for permission to serve the claim form out of the jurisdiction, on the grounds specified in Practice Direction 6B para 3.1(2): a claim is made for an injunction ordering the Defendants to do an act within the jurisdiction, namely disclose to the solicitors the information sought.
19. The period for filing an acknowledgement of service or defence in a case where a claimant serves the claim form on a defendant outside the jurisdiction is greatly extended by the CPR. For claims to be served in the USA, the period specified in the Table in Practice Direction 6B is 22 days.
20. The methods by which service is to be affected on a party out of the United Kingdom are specified in CPR 6.40 (3). That reads as follows:

“Where the claimant wishes to serve a claim form or any other document on a defendant out of the United Kingdom, it may be served –

(a) by any method provided for by –

(i) rule 6.41 (service in accordance with the Service Regulation);

(ii) rule 6.42 (service through foreign governments, judicial authorities and British Consular authorities);
or

(iii) rule 6.44 (service of claim form or other document on a State);

(b) by any method permitted by a Civil Procedure Convention or Treaty; or

(c) by any other method permitted by the law of the country in which it is to be served.”
21. In order to avoid delay which might defeat the purpose for which these proceedings are brought (for example if the data are not kept for the period of time required), the Claimant applies for an order that service be by an alternative method to the methods set out in CPR 6.40(3). The method for which he seeks permission is service at the e-mail addresses specified by the Defendants, as set out above.
22. None of the Defendants has been specifically asked to, or has consented to, service by e-mail at those addresses. In future it would be preferable if solicitors writing letters asking for information to be provided (if necessary pursuant to a *Norwich Pharmacal* order) should specifically ask defendants such as these whether service of the claim by e-mail is a method permitted by the law of the country in question, and if so, for their consent to service by e-mail. If consent is given, an application for service by alternative methods would not then be necessary.
23. It seems likely that such consent would be forthcoming in the present case from the First and Second Defendants, but not from the Third Defendant which has not

responded to the solicitors' letters. However, since it has not been asked for given in the present case the form of the draft order makes provision for what is to happen in the event that the Defendants, or any of them, wish to oppose the making of the order. The provisions in the form of a suspensive clause, so that the order does not have immediate effect if the Defendant in question wishes to challenge it.

24. Mr Nicklin submits that there are two provisions of the CPR, one or other, or both, of which give the court power to authorise service by an alternative method, which includes, he submits, service by email. These are CPR 6.15(1) and 6.37(5)(b)(i). These provisions respectively provide 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...

6.37(5) Where the court gives permission to serve a claim form out of the jurisdiction – ...

(b) it may –

(i) give directions about the method of service; ...”

25. However, the authorities to which Mr Nicklin referred me identify possible problems in the application in each of these two provisions of the CPR. I am indebted to Mr Nicklin for the thoroughness of his research on these recent authorities. One issue is whether the methods of service referred to in CPR 6.37(5)(b)(i) are confined to the methods specified in CPR 6.40(3), or whether they also include alternative methods.

26. It is a feature of CPR 6.15 that it provides as follows:

“(4) An order under this rule must specify –

(a) the method or place of service;

(b) the date on which the claim form is deemed served; and

(c) the period for –

(i) filing an acknowledgment of service;

(ii) filing an admission; or

(iii) filing a defence.”

27. There is no corresponding provision in CPR 6.37(5). But it is plain that if the order is to be effective, it must specify these matters. That might suggest that the methods of

service referred to in CPR 6.37(5)(b)(i) are confined to the methods specified in CPR 6.40(3), and so do not include alternative methods.

28. CPR Part 6 in its present form took effect on 1 October 2008. In the form in which it had previously been (since the year 2000) it was thought that service by an alternative method was permissible outside the jurisdiction, as explained in *Knauf UK GmbH v British Gypsum Ltd* [2001] EWCA Civ 1570 [2002] 1 WLR 907. But whether, and if so on what basis, service by an alternative method outside the jurisdiction is possible under the CPR as now in force has been the subject of differing views expressed in different judgments.
29. The first of these is a judgment of Andrew Smith J in *Brown v. Innovatorone Plc* [2009] EWHC 1376 (Comm) delivered on 19 June 2009. That case did not concern service outside the jurisdiction. But in what he called a “digression” (see para 26) he said this at paragraph 25:

“I emphasise in accepting this submission about the general structure of CPR Pt 6 that I do not consider there to be a clear, consistent and rigid line of demarcation to be found in the amended CPR Pt 6 between the method of service and place (where and on whom) service is made. Any such inflexible distinction would be artificial, and after all, CPR r 6.3(c) concerns the place of service, cross-referring to rr 6.7, 6.8, 6.9 and 6.10. I mention this because it is of considerable importance to the court's jurisdiction about service by an alternative method out of the jurisdiction. The amended CPR r 6.15, expressed to be about alternative method and place of service, applies only to service within the jurisdiction. Under the old rules the court exercised the power conferred by the CPR r 6.8 to make orders for service about on whom or where a claim form might be served outside the jurisdiction (see, for example, *Marconi Communications International Ltd v PT Pan Indonesia Bank TBK* [2004] EWHC 129 (Comm), [2004] 1 Lloyd's Rep 594 at para 39 et seq). The change is observed in the notes in Civil Procedure 2009 ed, Vol 1 at p 178, para 6.15.7. However, in the amended CPR r 6.37 there is a provision that “Where the court gives permission to service a claim form out of the jurisdiction . . . (b) it may (i) give directions about the method of service”. Although the amended CPR r 6.37 refers to “method” of service, I do not interpret it as conferring a more restricted power than the court was generally recognised to have under the old rules, and consider that so to interpret it would not respect the overriding objective and the principle of interpretation stipulated in CPR r 1.2.” (emphasis added)

30. In his judgment he also included the following summary of the law in relation to the relevance of headings to the rules as an aid to construction:

“I have set out the headings to the rules as well as the rules themselves. It is not in dispute that reference may be made to

the headings in interpreting the rules. The CPR are a kind of delegated legislation made under the authority conferred on the Civil Procedure Rule Committee by the Civil Procedure Act 1997. Just as headings may, and indeed should, be considered in interpreting primary legislation provided that due account is taken of that fact that the function of a heading is to provide a brief and therefore necessary inexact guide to the material to which it applies (see Bennion on Statutory Interpretation, Code ss 255 and 256), so too headings are relevant when interpreting delegated legislation. Indeed, while in the case of primary legislation it is relevant to keep in mind that headings are not included in a bill for debate but for ease of reference (see *R v Montila* [2004] UKHL 50 at para 34, [2005] 1 All ER 113, [2004] 1 WLR 3141), this consideration might not detract in the same way from the assistance available from the headings in the CPR: there would be no constraint upon the Rules Committee debating headings.”

31. On 15 June 2010 Nicol J handed down a judgment in *GMC v. Benjamin* [2010] EWHC 1761 (Admin). Nicol J was concerned with the service of proceedings by the General Medical Council on a doctor resident in the United Arab Emirates, in respect of whom conventional methods of service abroad were proving impractical. At paras 20 and 21 of his judgment he said this:

“20...[Counsel for the GMC] submits that the court should accept that the power to allow alternative methods of service, which is referred to in rule 6.15 of Part 6, although expressly dealing with service within the jurisdiction, ought to be construed as being capable of extension to service outside the jurisdiction. He relies on the service of Andrew Smith J in the case of *Andrew Brown v. Innovatorone*...

21. I accept that the court does have such a power. It would be consistent with the practicable way that these matters need to be handled, and also consistent with the proper care and attention that needs to be given to bringing claims to the attention of defendants resident outside the UK. No doubt there does need to have to be good reason why the court should allow alternative service and should examine with care the Rules...”.

32. That passage is not entirely easy to follow, because Andrew Smith J had expressed the view that the power arose under CPR 6.37 and not under CPR 6.15. But Nicol J seems to be stating that in his view it arises under CPR 6.15.
33. On 21 December 2010 HHJ Chambers QC, sitting as a judge at the High Court, handed down a judgment in *Amalgamated Metal Trading Ltd & ors v. Baron* [2010] EWHC 3207 (Comm). At paras 62 to 85 he considered the question set out in the heading “Is the Jurisdiction to Order Alternative Service in the Present Case?”. That case concerned whether or not there had been good service of proceedings upon a defendant in Peru. At para 67 the Judge concluded that the claimants could not rely

on CPR 6.15 as giving jurisdiction to the court to order service within the jurisdiction as an alternative method. But at para 85 he concluded that such power is given to the court by 6.37(5)(b)(i).

34. In reaching his conclusion the Judge noted in paragraph 64 that CPR 6.15(1) does not say “by this section” but “by this Part”, and the only Part that it could be referring to is Part 6, which contains Section IV just as much as it contains Sections II and III. He also notes that the width of CPR 6.40(4) is adequate as much to control an order under CPR 6.15 as it is to govern CPR 6.40(3). But he nevertheless rejected the view that alternative service out of the jurisdiction is possible pursuant to CPR 6.15(1), saying that that has been rejected by the two courts that have been confronted with the problem. He then refers to the decision of Andrew Smith J in *Innovatorone*. I assume that he interpreted the judgment of Nicol J as following that of Andrew Smith J, whereas, on my reading of it, it states the opposite.
35. Continuing in paragraph 65 of his judgment, HHJ Chambers QC states that if CPR 6.15 is to be limited in that way, he nevertheless found it hard to see that it could govern process which should, with what would be that one exception, be governed by Section IV. At para 66 he referred to the title to the rule and expressed the view that “alternative” meant “alternative to ordinary service within the jurisdiction”.
36. At para 80 he stated that he did not think that the history of the Rule 6.37(5)(b)(i) necessarily meant that it was not to confer power on a court to order service by alternative means in respect of service out of the jurisdiction. That power had existed in the past and he was confident that the Rule Committee did not intend to remove that power. He therefore found that the court does have power under CPR to order service by alternative means by reason of CPR 6.37(5)(b)(i).
37. HHJ Chambers QC did not refer to the absence from CPR 6.37 of any equivalent to what is in CPR 6.15(4).
38. Before HHJ Chambers QC had handed down his judgment on 21 December 2010, there were two other cases which raised the same issue before the court. On 6 and 7 December 2010 the issue arose in the Court of Appeal in the case of *Bayat Telephone Systems International Inc & Ors v Lord Michael Cecil & Ors* [2011] EWCA Civ 135, in which judgment was handed down on 18 February 2011. On 7 to 10 December 2010 the issue also arose before Sir Edward Evans-Lombe (sitting as a judge of the High Court) in *Abela v. Baadaerani* [2011] EWHC 116 (Ch). He handed his judgment down before the Court of Appeal, namely on 28 January 2011.
39. The decisions of HHJ Chambers QC and Nicol J were drawn to the attention of Sir Edward Evans-Lombe after the close of argument in that case (see para 69). These judgments were not referred to in the judgments of the Court of Appeal.
40. The Court of Appeal allowed an appeal from a decision of Hamblen J by which he had refused to set aside orders made by two other judges, Field and Tomlinson JJ, extending the time for service of the claim form in that case. The court did not therefore have to address the question of whether Hamblen J was also right to refuse to set aside an order of Steel J made under CPR 6.15, permitting service by alternative means (see para 1(c) of the judgment of Stanley Burnton LJ). Nevertheless, having heard full argument, the Court of Appeal did address that point. It appears that the

alternative means in question included electronic means, that is e-mails to be sent to defendants who were in Florida, New Jersey, New York and Afghanistan (see para 26 of the judgment Stanley Burnton LJ citing para 199 of the judgment of Hamblen J, and para 59-60 of the judgment Stanley Burnton LJ). Stanley Burnton LJ said that it was implicit that service by these methods was not permitted by the law in which service was to be effected, because if they had been no order under CPR 6.15 would have been required. I understand that to be a reference to CPR 6.40(3)(c).

41. The Court of Appeal considered that CPR 6.15 did give the court power to order service out of the jurisdiction by alternative methods. The relevant paragraphs of the judgments are paras [66]-[69] of the judgment of Stanley Burnton LJ and paras [113]-[115] of the judgment of Rix LJ, with both of whom Wilson LJ (as he then was) agreed (para [72]). Rix LJ also agreed with Stanley Burnton LJ (para [112]). Stanley Burnton LJ reviewed the authorities demonstrating that an order involving service out of the jurisdiction is an exercise of sovereignty within a foreign state, since the order requires a person served to participate in litigation in what for him is a foreign state, if he is to defend himself. So for an English court to order service by a method which is not permitted by the state in which service is effected “should be regarded as exceptional, to be permitted in special circumstances only” (para 65).
42. The judgments continue as follows:

“[66] It follows, in my judgment, that while the fact that proceedings served by an alternative method will come to the attention of a defendant more speedily than proceedings served under the Hague Convention is a relevant consideration when deciding whether to make an order under CPR r 6.15, it is in general not a sufficient reason for an order for service by an alternative method.

[67] Quite apart from authority, I would consider that in general the desire of a claimant to avoid the delay inherent in service by the methods permitted by CPR r 6.40, or that delay, cannot of itself justify an order for service by alternative means. Nor can reliance on the Overriding Objective. If they could, particularly in commercial cases, service in accordance with CPR r 6.40 would be optional; indeed, service by alternative means would become normal....

[68] Service by alternative means may be justified by facts specific to the defendant, as where there are grounds for believing that he has or will seek to avoid personal service where that is the only method permitted by the foreign law, or by facts relating to the proceedings, as where an injunction has been obtained without notice, or where an urgent application on notice for injunctive relief is required to be made after the issue of proceedings. In the present case, ...

[69] This does not mean that a Claimant cannot bring proceedings to the attention of a defendant by email, fax or other more speedy means than service pursuant to CPR r 6.40.

The Claimants could have done so in the present case. But, as I have indicated, service is more than this. In my view, the judge confused this possibility with service itself...

[113] It may be that orders permitting alternative service are not unusual in the case of countries with which there are no bilateral treaties for service and where service can take very long periods, of up to a year (cf *Marconi v PT Communications International Ltd* [2004] EWHC 129 (Comm), [2004] 1 Lloyd's Rep 594 (David Steel J) at 44-45). In the present case, that did not apply to any of the defendants, and I would prefer to leave such cases out of account. The rule, CPR 6.15(1), expressly requires "good reason", and it may be that some flexibility should be shown in dealing with such cases, especially where litigation could be prejudiced by such lengthy periods. However, in *Knauf* this court observed that mere desire for speed was unlikely to amount to good reason. As it is, the second defendant was a US company, the first and fourth defendants could be served in the USA, all in accordance with the Hague Convention, and the third defendant, a company incorporated in Afghanistan could, it seems, be served under Afghanistan law and therefore pursuant to CPR 6.40 by registered post and courier to its registered business address. Therefore the Claimants did not require more than about two months for service. In such a case, I agree that some special circumstance is needed to amount to good reason: after all, any case of service out earns the Claimant an additional two months for service (the difference between the standard initial period of four months in a case of service within the jurisdiction and six months in the case of a claim form for service outside the jurisdiction)....

[115] Finally in this context, the possible lacuna highlighted in para 6.15.7 of *The White Book 2010* may be noted".

43. Para 6.15.7 of *The White Book 2010* is in the same form as in the 2011 edition, in that it sets out parts of para [25] of the judgment of Andrew Smith J. So the "possible lacuna" highlighted is the observation by Andrew Smith J as to whether the CPR now contains a power for the court to order service out of the jurisdiction by an alternative method. But it seems clear from paras [66] and [68] ("Service by alternative means may be justified by facts specific to the defendant") that the court did not consider that there is in fact such a lacuna. However, the decision is obiter for the further reason that, in the words of Stanley Burnton LJ (at para [70]), the Court held there was no good reason in that case for granting permission to serve the defendants by alternative methods.
44. In *Abela* at para [69] Sir Edward Evans-Lombe notes that the approach of Andrew Smith J in *Brown* differed in the approach of Nicol J in *GMC*, Nicol J appearing to accept the submission that CPR 6.15 ought to be construed as being capable of extension to service outside the jurisdiction. So Sir Edward Evans-Lombe read the

judgment of Nicol J in the same way as I do. Sir Edward Evans-Lombe at para [70] nevertheless adopted the view of HHJ Chambers QC.

45. Since the Court of Appeal said at para [57] that they addressed the point having heard full argument upon it, it seems to me that I am either bound to follow, or at least ought to follow, the view of the Court of Appeal, notwithstanding that what they said was obiter. In any event, while according respect to the reasons given by Andrew Smith J, they too were obiter. HHJ Chambers QC and Sir Edward Evans-Lombe, thought that they ought to follow the reasoning of Andrew Smith J, but they did not have to consider, as I do, a conflicting view expressed by the Court of Appeal.
46. The Court of Appeal did not give its reasons for disagreeing with Andrew Smith J, but it seems to me that the reason given by HHJ Chambers QC in para 64 of his judgment is a good one (albeit he felt unable to adopt it). He noted that in CPR 6.15(1) the rule refers specifically to “by this Part” and not to “this Section”. Those clear words in the body of the rule seem to me to leave no room for a different interpretation based on the words of the title to the rule, in particular when the words of the title do not unambiguously refer to service within the jurisdiction. It is true that the title to Section II is “Service of the Claim Form in the Jurisdiction”, but those words do not in my judgment suffice to override the plain meaning of the words of CPR 6.15(1) when referring to “the Part”.
47. It is a further argument in favour of finding the power in CPR 6.15, rather than in CPR 6.37, that only CPR 6.15 includes sub-rule (4), which requires the order of the court made under the rule to specify the matter set out in sub-paragraphs (a), (b) and (c) of that sub-rule.
48. There must of course be “good reason” within the meaning of CPR 6.15(1). As Stanley- Burnton LJ said at para [68] of his judgment, service by alternative means may be justified by facts specific to the defendant. He then gave examples, which are clearly not exhaustive. In the present case the fact specific to the First and Second Defendant is that they have expressly consented to the service of the order by e-mail, and I would infer, would if they had been asked, have probably consented to service of the claim form by the same means. In the case of the Third Defendant, their website invites service by e-mail.
49. In this connection Mr Nicklin invites comparison with the provisions for service within the jurisdiction in CPR 6.3(1)(d) and Practice Direction 6A para 4.1(1) and (2) (b).
50. CPR 6.3(1)(d) provides as follows (under the heading Service Of The Claim Form In The Jurisdiction Or In Specified Circumstances Within The EEA):

“6.3 (1) A claim form may (subject to Section IV of this Part and the rules in this Section relating to service out of the jurisdiction on solicitors, European Lawyers and parties) be served by any of the following methods
—...

(d) fax or other means of electronic communication in accordance with Practice Direction 6A; ...”

51. Practice Direction 6A para 4.1(1) provides as follows (under the heading “Service Within The United Kingdom”)

“Service by fax or other electronic means

4.1 Subject to the provisions of rule 6.23 ... (6), where a document is to be served by ... electronic means -

(1) the party who is to be served ... must previously have indicated in writing to the party serving –

(a) that the party to be served ...is willing to accept service by ... electronic means; and

(b) the ... e-mail address or other electronic identification to which it must be sent; ...”.

52. CPR r 6.23(6) provides:

“Where a party indicates in accordance with Practice Direction 6A that they will accept service by electronic means other than fax, the e-mail address or electronic identification given by that party will be deemed to be at the address for service.”

Conclusion

53. It is for these reasons that I held that I had power to order the service upon the Defendants in the United States of America by e-mail at the e-mail addresses they each had notified to the Claimant’s solicitors, by correspondence in the case of the First and Second Defendants, and by its website in the case of the Third Defendant. But in future claimants should put before the court evidence as to whether that method is permitted by the law of the country in which the claim form is to be served (or a good reason for not doing so), since if it is, service by an alternative method will be unnecessary.