Neutral Citation Number: [2018] EWHC 2674 (Admin)

Case No: HQ18M02313

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12 October 2018

Before :

KAREN STEYN QC
(sitting as a Deputy High Court Judge)

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Between :

BVC	**Claimant**
- and -	
EWF	**Defendant**

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Gervase de Wilde (instructed by **Taylor Hampton Solicitors**) for the Claimant
The Defendant did not appear and was not represented

Hearing date: 5 October 2018

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Judgment Approved

Karen Steyn QC :

A. Introduction

1. The Defendant applies for an order (a) setting aside purported service of the Claim form and accompanying Particulars of Claim and (b) discharging the interim injunction granted on 27 June 2018 (and continued on 4 July 2018). The grounds on which the Defendant makes this application are that (i) the Court has no jurisdiction to try the claim (or alternatively should not exercise any jurisdiction it may have) and (ii) service of the claim was invalid.

2. In support of his application, the Defendant has provided evidence in the form of two confidential witness statements given by him, together with exhibits. He also submitted a skeleton argument and draft order for the hearing, but he did not attend and was not represented.

3. The Claimant filed evidence in response to the application in the form of a confidential third witness statement given by the Claimant's solicitor, Ms Anna Johnston, together with exhibits. The Claimant was represented at the hearing by Mr Gervase de Wilde.

4. The hearing before me was held in public. In this judgment, bearing in mind that it will be available publicly, I have avoided referring to any details that might lead to the identification of the Claimant or the Defendant.

B. The facts and procedural background

5. This is a claim for damages for misuse of private information and harassment. On 27 June 2018, the Claimant made an urgent, *ex parte*, application for an interim injunction to restrain the threatened publication of private information concerning the Claimant, in particular on "*the Website*" identified in the Claimant's First Confidential Witness Statement in these proceedings.

6. Following a private *ex parte* hearing, Nicklin J granted an interim injunction on 27 June 2018 with a return date of 4 July 2018. The order of 27 June 2018 required the Claimant to serve the Order and the Claim Form as soon as reasonably practicable and, in any event, by 4.30pm on Thursday 28 June 2018; and permitted service to be given by means of email to the Defendant's identified email addresses.

7. At 18.54 on 27 June 2018, the Claimant's solicitor sent an email to the Defendant, by way of service, attaching the Order, the Claim Form (together with a Response pack), the Claimant's application for an interim injunction, the confidential first witness statements of the Claimant and Ms Johnston, and a covering letter from the Claimant's solicitors. By further emails that evening and the following day, the Claimant's solicitors provided the Defendant with the exhibits to the Claimant's statement, the Confidential Annex A to the Order of 27 June 2018, the Claimant's solicitors' note of the hearing on 27 June 2018, and Mr de Wilde's written submissions for that hearing.

8. On 2 July 2018, the Claimant's solicitors sent the Defendant, by email, the Claimant's application for the interim injunction to be continued until trial or further order, reminding him that it would be heard on 4 July 2018.

9. The Defendant first made contact with the Claimant's solicitors, by email, on 4 July 2018 at 09.52. He wrote:

> *"I won't be able to attend the hearing today as I'm in Switzerland. I am not domiciled or resident in England. Your client was well aware of this.*
>
> *I have returned the acknowledgment of service and will be making submissions to the court later this month.*
>
> *I undertake to abide by the terms of the injunction while they remain in place."*

10. The Defendant followed this up with a further email at 13.31 on 4 July, very shortly before the hearing was due to begin, in which he said:

> *"It is my position that the purported service is not valid as I was not in the United Kingdom. I will be providing evidence with my application to challenge jurisdiction.*
>
> *I note that no evidence has been provided that any alleged act took place in England and Wales or that any harm occurred there. Neither your client or myself is domiciled or resident in the jurisdiction."*

11. At the public hearing on 4 July 2018, Nicklin J adjourned the return date until a date to be fixed no later than 26 October 2018 and continued the interim injunction until the return date or further order. That hearing was held in public.

12. The Defendant filed an Acknowledgment of Service on 12 July 2018, indicating again his intention to challenge the Court's jurisdiction. The application before me, by which the Defendant challenges jurisdiction and contends that the purported service was invalid, is dated 24 July 2018 and it was issued on 31 July 2018. The Defendant served the application on the Claimant's solicitors on 23 August 2018.

C. Extension of time

13. Rule 11 of the Civil Procedure Rules ("CPR") provides:

> *"(1) A defendant who wishes to –*
>
> > *(a) dispute the court's jurisdiction to try the claim; or*
> >
> > *(b) argue that the court should not exercise its jurisdiction,*
>
> *may apply to the court for an order declaring that it has no such jurisdiction or should not exercise any jurisdiction which it may have.*
>
> *(2) A defendant who wishes to make such an application must first file an acknowledgment of service in accordance with Part 10.*
>
> *(3) A defendant who files an acknowledgment of service does not, by doing so, lose any right that he may have to dispute the court's jurisdiction.*
>
> *(4) <u>An application under this rule must</u> –*
>
> > *(a) <u>be made within 14 days after filing an acknowledgment of service</u>; and*
> >
> > *(b) be supported by evidence.*
>
> *(5) If the defendant –*
>
> > *(a) files an acknowledgment of service; and*
> >
> > *(b) does not make such an application within the period specified in paragraph (4),*
>
> *he is to be treated as having accepted that the court has jurisdiction to try the claim."* (emphasis added)

14. The Defendant's application was issued 19 days after he filed his acknowledgment of service. Accordingly, he requires an extension of time and relief from the sanction imposed by CPR r.11(5).

15. Although the Defendant has not made an application pursuant to CPR r.3.9, or otherwise, for an extension of time, Mr de Wilde made clear at the outset of the hearing that the Claimant did not resist the granting of relief from sanction and of an extension of time.

16. In the absence of an application from the Defendant, I have to consider whether it would be appropriate for me to grant such relief of my own initiative, applying CPR rules 3.2(a), 3.3 and 3.9.

17. In *Denton v TH White Ltd – Practice Note* [2014] 1 WLR 3926 Lord Dyson MR and Vos LJ held at [24]:

> *"A judge should address an application for relief from sanctions in three stages. The first stage is to identify and assess the seriousness and significance of the 'failure to comply with any rule, practice direction or court order' which engages rule 3.9(1). If the breach is neither serious nor significant the court is unlikely to need to spend much time on the second and third stages. The second stage is to consider why the default occurred. The third stage is to evaluate 'all the circumstances of the case, so as to enable [the court] to deal justly with the application including [factors (a) and (b)]'."*

18. It is readily apparent, from the application, skeleton argument and witness statement that the Defendant has submitted, that he is intelligent, literate and able to address legal issues. Nevertheless, he is unrepresented and, in contending that he brought his application to challenge the court's jurisdiction in time, he has misunderstood the effect of the rules (or, perhaps, it would seem, worked from an out-of-date version).

19. In the circumstances of this case, the delay in issuing his application has had no material impact on the litigation, as the Claimant very fairly acknowledged (without prompting), or on other court users. Given that the Claim Form was served on the Defendant in Switzerland, he could have taken 21 days from 29 June 2018 to file his Acknowledgment of Service and, if he had done so, his application would have been filed well within the 14 days set by CPR r.11(4).

20. As I have said, the reason for the default appears to have arisen from a misunderstanding of the applicable rule.

21. In all the circumstances, I consider it appropriate to grant the Defendant permission, retrospectively, to file his application to challenge the Court's jurisdiction on 31 July 2018. In particular, I have had regard to the interests of justice, bearing in mind the significance of the Defendant's application and the immaterial nature of the breach, as well as the requirement that litigation should be conducted efficiently and at proportionate cost.

D. <u>Jurisdiction</u>

22. The Claimant is a dual national, having naturalised as a British citizen when he was living and working here, and having retained the nationality of his birth. He is currently living and working in a South-East Asian country, of which he is not a national, but where he

has a permanent right of residence. I shall refer to the country in which he was born as State A and the country in which he is now living as State B.

23. The question whether the Court has jurisdiction was raised by the Defendant at the hearing on 27 June 2018. However, the Claimant's evidence was that to the best of his knowledge the Defendant, who is a British citizen, "*currently lives and works in England*". On this understanding, Nicklin J was satisfied that it was plainly arguable that jurisdiction arose, enabling the grant of an interim injunction, whilst making clear that if jurisdiction was challenged the issue could be revisited.

24. The Defendant's evidence is that he currently lives and works in Switzerland, and he has submitted evidence to demonstrate that he was in Zürich on 27 June 2018 when the Claim and accompanying documents were served on him by email.

25. Article 2(1) of the Convention on Jurisdiction and the Recognition and Enforcement of Civil and Commercial Matters (2007) ("the Lugano Convention"), to which Switzerland and the UK are parties, provides:

> *"Subject to the provisions of this Convention, persons domiciled in a State bound by this Convention shall, whatever their nationality, be sued in the courts of that State."*

26. This is the general rule that persons domiciled in a Convention State shall (whatever their nationality) be sued in the courts of that State. Article 4(1) of Regulation (EU) No 1215/2012 ("the recast Judgments Regulation") is to the same effect for persons domiciled in a Member State of the European Union.

27. Article 3(1) of the Lugano Convention provides that persons domiciled in a Convention State may be sued in the courts of another State (i.e. other than the State in which they are domiciled) only as provided by the rules set out in Sections 2 to 7 of Title II to the Convention (i.e. Articles 5-24). Article 5(1) of the recast Judgments Regulation is, again, to the same effect for persons domiciled in an EU Member State.

28. Article 5(3) of the Lugano Convention provides by way of special jurisdiction that:

> *"A person domiciled in a State bound by this Convention may, in another State bound by this Convention, be sued:*
>
> *...*
>
> *3. in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur; ...".*

29. Article 7(2) of the recast Judgments Regulation is (and its predecessor, Article 5(3) of the 1968 Brussels Convention was) to the same effect save that it refers to Member States of the EU rather than States bound by the Lugano Convention. The meaning of this provision has been considered by the Court of Justice of the European Union ("the CJEU") on a number of occasions.

30. The Claimant's primary case on jurisdiction was, originally, that the Defendant is domiciled in this jurisdiction and so the general rule applies. However, at the hearing, although Mr de Wilde criticised the gaps in the Defendant's evidence and noted that there were significant questions regarding the Defendant's domicile, he did not pursue the argument that the Defendant is domiciled in this jurisdiction. Mr de Wilde sensibly acknowledged that it would not have been possible for the Court to make such a finding on the basis of the untested written evidence.

31. The Defendant's evidence is that he is domiciled in another Lugano Convention State (namely, Switzerland), therefore the question arises whether the courts of England and Wales have jurisdiction in accordance with Article 5(3) of the 2007 Lugano Convention.

32. In *eDate Advertising GmbH v X* (Cases C-509/09 and C-161/10) [2012] QB 654, the CJEU observed that it is settled case law that the rule of special jurisdiction laid down by way of derogation from the principle of jurisdiction of the courts of the place of domicile of the defendant, is based on the existence of a particularly close connecting factor between the dispute and the courts of the place where the harmful event occurred (or may occur). This close connecting factor justifies the attribution of jurisdiction to those courts for reasons relating to the sound administration of justice and the efficacious conduct of proceedings.

33. In *Shevill v Presse Alliance SA* (Case C-68/93) [1995] 2 AC 18 the CJEU noted that the expression "*place where the harmful event occurred*" is intended to cover both (a) the place where the damage occurred and (b) the place of the event giving rise to it. Those two places could constitute a significant connecting factor from the point of view of jurisdiction, since each of them could, depending on the circumstances, be particularly helpful in relation to the evidence and the conduct of proceedings.

34. As the CJEU observed in the *eDate* case at [42], in relation to the application of those two connecting criteria to a case of defamation by means of a newspaper article distributed in several contracting states,

> *"the victim may bring an action for damages against the publisher either before the courts of the contracting state of the place where the publisher of the defamatory publication is established, which have jurisdiction to award damages for all of the harm caused by the defamation, or before the courts of each contracting state in which the publication was distributed and where the victim claims to have suffered injury to his reputation, which have jurisdiction to rule solely in respect of the harm caused in the state of the court seised: see Shevill's case, para 33."*

35. In the *eDate* case, the CJEU had to consider how to give effect to these connecting criteria in the context of online publication, where distribution is, in principle, universal. The CJEU held:

> *"48. The connecting criteria referred to in para 42 of the present judgment must therefore be adapted in such a way that the person who has suffered an infringement of a personality right by means of the Internet may bring an action in one forum in respect of all of the damage caused, depending on the place in which*

> *the damage caused in the European Union by that infringement occurred. Given that the impact which material placed online is liable to have on an individual's personality rights might best be assessed by the court of the place where the alleged victim has his centre of interests, the attribution of jurisdiction to that court corresponds to the objective of the sound administration of justice, referred to in para 40 above.*
>
> *49. The place where a person has the centre of his interests corresponds in general to his habitual residence. However, a person may also have the centre of his interests in a member state in which he does not habitually reside, in so far as other factors, such as the pursuit of a professional activity, may establish the existence of a particularly close link with that state.*
>
> *…*
>
> *52 …article 5(3) of the Regulation must be interpreted as meaning that, in the event of an alleged infringement of personality rights by means of content placed online on an Internet website, the person who considers that his rights have been infringed has the option of bringing an action for liability, in respect of all the damage caused, either before the courts of the member state in which the publisher of that content is established or before the courts of the member state in which the centre of his interests is based. That person may also, instead of an action for liability in respect of all the damage caused, bring his action before the courts of each member state in the territory of which content placed online is or has been accessible. Those courts have jurisdiction only in respect of the damage caused in the territory of the member state of the court seised."* (emphasis added)

36. Mr de Wilde contended that the Court has jurisdiction on three bases, namely:

    (1) The Court has jurisdiction in respect of all the damage caused on the basis that the Claimant has his "*centre of interests*" in this jurisdiction;

    (2) Alternatively, the Court has jurisdiction in respect of the damage caused in this jurisdiction, on the basis that a real and substantial tort was, or would but for the interim injunction have been, committed within this jurisdiction; and

    (3) As a further alternative, the Claimant relied on Article 31 of the Lugano Convention.

The relevant threshold

37. Where jurisdiction under the Lugano Convention (or the recast Judgments Regulation) is challenged, it is sufficient for the applicant to demonstrate a good arguable case that the English courts have jurisdiction on some basis under the relevant Convention or the Judgments Regulation: see *Canada Trust Co v Stoltzenberg* [1998] 1 WLR 547.

38. The reason the court applies this threshold was explained by Waller LJ, giving the leading judgment, in the *Canada Trust* case at 555C-G in these terms:

> *"…what the court is endeavouring to do is to find a concept not capable of very precise definition which reflects that the plaintiff must properly satisfy the court that it is right for the court to take jurisdiction. That may involve in some cases considering matters which go both to jurisdiction and to the very matter to be argued at the trial, e.g. the existence of a contract, but in other cases a matter which goes purely to jurisdiction, e.g. the domicile of a defendant. The concept also reflects that the question before the court is one which should be decided on affidavits from both sides and without full discovery and/or cross-examination, and in relation to which therefore to apply the language of the civil burden of proof applicable to issues after full trial is inapposite. … It is also right to remember that the "good arguable case" test, although obviously applicable to the ex parte stage, becomes of most significance at the inter partes stage where two arguments are being weighed in the interlocutory context which, as I have stressed, must not become a "trial." "Good arguable case" reflects in that context that one side has a much better argument on the material available. It is the concept which the phrase reflects on which it is important to concentrate, i.e. of the court being satisfied or as satisfied as it can be having regard to the limitations which an interlocutory process imposes that factors exist which allow the court to take jurisdiction."* (emphasis added)

(i) The Claimant's centre of interests

39. The Claimant relies on the following matters in support of his contention that his centre of interests is in this jurisdiction:

    (1) Although not currently living in this jurisdiction, he has lived the majority of his adult life here, and was living here until 2012;

    (2) He has pursued the professional activity of practising clinical and research-based medicine in this jurisdiction, including working in a number of major hospitals around the UK;

    (3) He trained as a postgraduate doctor in this jurisdiction and retains his registration with the General Medical Council (albeit, he is not currently licensed to practise in the UK);

    (4) His career as a researcher has been based on publication in academic journals either published or based in the UK;

    (5) The Claimant continues to present his work at European conferences, where he continues to meet colleagues from this jurisdiction; and

    (6) There are connections between the Claimant's friends and colleagues in this jurisdiction and those in his current place of domicile.

40. As Mr de Wilde submitted, the importance of professional activity in assessing a person's centre of interests is underlined by the CJEU's extension of the doctrine in *Bolagsupplysningen OÜ v Svensk Handel AB* (Case C-194/16) [2018] 3 WLR 59 to a case concerning a legal person, in which the Court focused on "*commercial reputation*" and "*economic activities*". The CJEU held at [40]-[42]:

"40 As to the identification of the centre of interests, the court has stated that, with regard to a natural person, this generally corresponds to the member state of his habitual residence. However, such a person may also have his centre of interests in a member state in which he does not habitually reside, in so far as other factors, such as the pursuit of a professional activity, may establish the existence of a particularly close link with that state: the eDate case [2012] QB 654, para 49.

41 As regards a legal person pursuing an economic activity the centre of interests of such a person must reflect the place where its commercial reputation is most firmly established and must, therefore, be determined by reference to the place where it carries out the main part of its economic activities. While the centre of interests of a legal person may coincide with the place of its registered office when it carries out all or the main part of its activities in the member state in which that office is situated and the reputation that it enjoys there is consequently greater than in any other member state, the location of that office is, not, however, in itself, a conclusive criterion for the purposes of such an analysis.

42 Thus, when the relevant legal person carries out the main part of its activities in a member state other than the one in which its registered office is located it is necessary to assume that the commercial reputation of that legal person, which is liable to be affected by the publication at issue, is greater in that member state than in any other and that, consequently, any injury to that reputation would be felt most keenly there. To that extent, the courts of that member state are best placed to assess the existence and the potential scope of that alleged injury, particularly given that, in the present instance, the cause of the injury is the publication of information and comments that are allegedly incorrect or defamatory on a professional site managed in the member state in which the relevant legal person carries out the main part of its activities and that are, bearing in mind the language in which they are written, intended, for the most part, to be understood by people living in that member state." (emphasis added)

41. The Defendant disputes the Claimant's contention that he has his centre of interests in this jurisdiction, relying in particular on the following matters:

    (1) The Claimant has not lived or worked in this jurisdiction since August 2012;

    (2) The Claimant no longer has a licence to practise medicine in the UK;

    (3) The Claimant has been habitually resident and working in State B since August 2014, he is licensed to practise medicine there, and he has obtained Permanent Residence;

    (4) The Claimant's immediate family reside in State A and his relationships with them are "*very important to the Claimant and much closer than any relationships he has had with anyone in England and Wales*";

    (5) The Claimant has retained his citizenship of State A and he is licensed to practise medicine there; and

    (6) The Claimant has spent about 33 years of his life living in various countries other than England and Wales, including States A and B.

42. I note the Defendant also submits that State A does not recognise the Claimant's dual nationality. That may be so, but it does not detract from the point that as far as this Court is concerned the Claimant is a British national.

43. In essence, the Defendant's submission amounts to a contention that the Claimant's centre of interests is in State B, or perhaps State A, rather than in this jurisdiction. However, the focus of the Lugano Convention is on the allocation of jurisdiction in Lugano Convention States. It is common ground that the Defendant is domiciled in a Lugano Convention State. In those circumstances, the question is whether he should be sued in Switzerland (pursuant to the general rule) or whether the Claimant is entitled to bring proceedings in another Lugano Convention State (pursuant to the specific jurisdiction rules). This focus is apparent in paragraphs 49 and 52 of the *eDate* case (see §35 above) and in paragraphs 40 and 42 of the *Bolagsupplysningen* case (see §40 above).

44. In my judgment, the Claimant clearly has a good arguable case (in the sense of a much better argument on the available material) that this jurisdiction is the Lugano Convention State in which he has the centre of his interests. Although he is not currently living here, he is a British national and he has spent many years of his adult life living, working and building his professional and personal reputation in this jurisdiction. Any injury to his reputation by reason of the publication of the Website, which is in English, would undoubtedly be felt more keenly in this jurisdiction than in any other Lugano Convention State.

45. I would also observe that the close connecting factors to this jurisdiction have the effect that attribution of jurisdiction to this Court accords with the aim of ensuring sound administration of justice and efficacious conduct of proceedings: see the *eDate* case at [40] and [48] and the *Bolagsupplysningen* case at [42].

(ii) Real and substantial tort

46. In the *eDate* case, the CJEU made clear that a person may bring his action before the courts of each Member State (or in the context of the Lugano Convention, each State that is bound by that Convention) in the territory of which content placed online is or has been accessible.

47. Mr de Wilde relied on Tugendhat and Christie, *The Law of Privacy and the Media* (3rd ed., 2016), at §13.56, where the authors state under the heading "*When does the English Court have jurisdiction?*":

> *"In the English common law of defamation each individual publication is a separate cause of action and publication is considered to take place where the words are heard or read. This approach has been adopted in privacy claims. <u>In privacy, as in defamation claims, the court will assume jurisdiction provided the tort committed within its territory is 'real and substantial'.</u> This need not involve mass publication, and the court will have jurisdiction even if publication elsewhere dwarfs that which occurs in England; the English courts have so far consistently rejected the 'single-publication' rule applied in the United States."* (emphasis added)

48. Mr de Wilde submits, and I find, that even if this Court did not have jurisdiction on the basis of the Claimant's centre of interests, the Claimant has proved to the required standard a real and substantial tort committed within this jurisdiction, namely, the cause of action in respect of misuse of private information. If it were necessary to do so, I would reject the Defendant's challenge to the Court's jurisdiction on this alternative, more limited basis.

(iii) Article 31 of the Lugano Convention

49. Mr de Wilde raised Article 31 of the Lugano Convention as a further alternative basis on which the Court could find jurisdiction in his oral submissions. Article 31 provides:

> *"Application may be made to the courts of a State bound by the Convention for such provisional, including protective, measures as may be available under the law of that State, even if, under this Convention, the courts of another State bound by this Convention have jurisdiction as to the substance of the matter."*

50. As the argument was only raised orally, and the Defendant did not attend the hearing, it is not a point that the Defendant has addressed. Given that I have found jurisdiction on the two bases referred to above, it is unnecessary to consider whether the Claimant would be entitled to rely on Article 31 to support the continuation of the interim injunction in circumstances where no proceedings have been brought before any other Lugano Convention State, and the Claimant has not expressed any intention to do so.

E. Service

51. The Defendant seeks a declaration that the purported service of the Claim Form and accompanying Particulars of Claim on 27 June 2018 was invalid and an order setting aside such purported service. The reference to Particulars of Claim is a mistake, as none was served.

52. The Claim Form, and the Order of Nicklin J dated 27 June 2018, were served on the Defendant by email on 27 June 2018. Nicklin J had granted the Claimant permission, pursuant to CPR r.6.15 and 6.27, to effect service of those documents by alternative method, namely by means of email. However, such permission was granted on the understanding that the Defendant was within the jurisdiction and service would be effected within the jurisdiction.

53. In fact, it is clear that the Defendant was in Zurich, Switzerland, on 27 June 2018 when he received the email by which the Claim Form and the Order were served on him.

54. In circumstances where the court has the power to determine a claim under the Lugano Convention (as I have found is the case here), and the defendant is domiciled in a Lugano Convention State (which it is common ground is the case), CPR r.6.33 provides that a claimant may serve the claim form out of the jurisdiction without the permission of the court.

55. The methods by which service may be effected are prescribed by CPR r.6.40. In particular, the rules have the effect that service on a defendant in Switzerland should be effected in accordance with the Hague Service Convention. Article 5 of the Hague

Service Convention provides that the Central Authority of the State addressed shall itself serve the document or shall arrange to have it served by an appropriate agency.

56. Switzerland is divided into cantons, and designates the cantonal authorities as Central Authorities under the terms of the Hague Service Convention. Requests for the service of documents may also be addressed to the Federal Justice and Police Department in Bern, which will forward them to the appropriate Central Authority.

57. Service on the Defendant was not effected in accordance with the permitted methods of service. Nicklin J had granted permission for service to be effected by email, but that was on the understanding that the Defendant was within the jurisdiction and so it did not constitute permission to serve the Defendant *out of the jurisdiction* by email.

58. CPR r.6.15 provides:

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

59. CPR r.6.27 provides:

> *"Rule 6.15 applies to any document in the proceedings as it applies to a claim form and reference to the defendant in that rule is modified accordingly."*

60. CPR r.6.16(1) provides:

> "*The court may dispense with service of a claim form in exceptional circumstances.*"

61. The Claimant seeks an order pursuant to CPR r.6.15(2) (and 6.27), regularising the service by email that was effected on 27 June 2018, or alternatively an order pursuant to CPR r.6.16(1) dispensing with the requirement to serve the Claim Form.

62. Although CPR r.6.15(2) requires "*good reason*" to authorise service by an alternative method, the Claimant acknowledged that in this context the threshold is higher. As Stanley Burnton LJ explained in *Cecil v Bayat* [2011] 1 WLR 3086 at [61], service is more than a means of bringing proceedings to the attention of the defendant: "*It is an exercise of the power of the court. In a case involving service out of the jurisdiction, it is an exercise of sovereignty within a foreign state.*"

63. Having reviewed the authorities at [62] to [64], he continued at [65]:

> *"In modern times, outside the context of the European Union, the most important source of the consent of states to service of foreign process within their territory is to be found in the Hague Convention (in relation to state parties to it) and in bilateral conventions on this matter. Because service out of the jurisdiction without the consent of the state in which service is to be effected is an interference with the sovereignty of that state, service on a party to the Hague Convention by an*

alternative method under CPR r.6.15 should be regarded as exceptional, to be permitted in special circumstances only.' (emphasis added)

64. The desire to avoid the delay inherent in service by the methods permitted by CPR r.6.40 cannot of itself justify an order for service by alternative means: *Cecil v Bayat* at [67]. Stanley Burnton LJ gave the following guidance, at [68], as to the kind of circumstances which may be sufficiently exceptional and special to justify such an order:

> *"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."* (emphasis added)

65. It is readily apparent that the threshold is high for making an order retrospectively that the service effected by email out of the jurisdiction, in a State party to the Hague Service Convention, was good service. Nevertheless, I consider that this high threshold has been met in the circumstances of this case. In particular:

    (1) The Defendant had composed the Website under the Claimant's name and sent it "*live*" on the internet, on the publicly accessible Wordpress platform, on or around 10 June 2018.

    (2) The Website was publicly accessible for nine days, with the risk that its prominence would increase (as a result of searches undertaken) and result in dissemination, or further dissemination, of the Claimant's private information.

    (3) The Defendant placed the Website behind password protection following communication with the Claimant on 19 June 2018. However, it continued to be published on Wordpress, with the threat that (a) the password could be removed at any time, resulting in the Claimant's private information being available to the world or (b) that the Defendant would disseminate the Website to mutual contacts or publicly via his social media profiles.

    (4) As the Court recognised on 27 June 2018 when permitting the Claimant to make the application for an interim injunction at a private hearing, on an *ex parte* basis, there was a risk that if the Claimant attempted to engage with the Defendant (through his lawyers or otherwise) before obtaining an order, the Defendant might have pre-empted the order by making the threatened disclosures.

    (5) In *Cecil v Bayat* the Court of Appeal recognised that circumstances such as these, where urgent injunctive relief has been obtained without notice, were the kind of circumstances that could potentially be regarded as exceptional or special. In my judgment, in this case, service of the proceedings out of the jurisdiction by email was the only effective means of protecting the Claimant's legal rights.

(6) Although service out of the jurisdiction is more than a means of bringing proceedings to the attention of the defendant, it is material to note that the email communication to the Defendant brought the proceedings very effectively to his attention and enabled him to make the application that he has made challenging the Court's jurisdiction.

66. For these reasons, I will make an order pursuant to CPR r.6.15(2) and r.6.27 that the steps already taken to bring the Claim Form and the Orders of 27 June 2018 and 4 July 2018 to the attention of the Defendant by an alternative method, namely, sending those documents to him by email, constitute good service.

H. Conclusion

67. For the reasons given above, I grant the Defendant relief from sanctions and an extension of time to bring his application. I dismiss the Defendant's application challenging the Court's jurisdiction and seeking to set aside service of the Claim Form. I have invited the parties to make written submissions (in the absence of agreement) on the appropriate form of order and directions.