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Neutral citation number: [2022] EWHC 282 (Ch)

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

No. BL-2021-001605

Rolls Building
Fetter Lane
London, EC4A 1NL

Date: Tuesday, 18 January 2022

Before:

HIS HONOUR JUDGE HODGE QC

(Sitting as a Judge of the High Court)

B E T W E E N :

LEKOIL LIMITED — Claimant

- and -

OLALEKAN AKINYANMI — Defendant

MR IMRAN BENSON (instructed by **Rosling King LLP**) appeared on behalf of the Claimant and Respondent

MR DANIEL PICCININ (instructed by **Proskauer Rose LLP**) appeared on behalf of the Defendant and Applicant

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APPROVED J U D G M E N T

(Via Microsoft Teams)

HIS HONOUR JUDGE HODGE QC:

1 This is my extemporary judgment on an interim application in proceedings between Lekoil Limited (as claimant) and Mr Olalekan Akinyanmi(as defendant) pending in the Business List of the Business and Property Courts of England and Wales under claim number BL-2021-001605.

2 On 8 September 2021 the claimant issued a claim form seeking to recover some US$803,000, equivalent to a little over £580,000 sterling, from the defendant pursuant to a loan agreement dated 9 December 2014, as varied by an addendum agreement dated 17 December 2020. The particulars of claim begin by identifying the parties. The claimant is a Cayman Islands company listed on the Alternative Investment Market of the London Stock Exchange. It is an oil and gas exploration and production company, with its business focused in Africa. The defendant is the claimant's former chief executive officer. He was appointed on 1 January 2012 and was dismissed from his role on 2 June 2021. The defendant also held a number of other positions with group companies of the claimant, including a subsidiary, Lekoil Management Services (UK) Limited. That is not a UK company but it does have a registered place of business in England and Wales at Old Broad Street in London. However, as a consequence of the defendant's dismissal from the claimant company, the defendant had resigned as a director of that entity on 20 June 2021.

3 The particulars of claim go on refer to the 2014 initial loan agreement and the December 2020 addendum. They set out the terms of the original loan agreement and assert that it was governed by English law. It is said that the intention was therefore to accede to the jurisdiction of the English court to determine any disputes arising out of the loan agreement. In fact, the loan agreement contained no choice of law clause. The governing law was only addressed in the addendum agreement, clause 6 of which provided that the addendum agreement should be

governed by and construed in accordance with English law. By the preceding clause 6, except as expressly amended in the addendum, all other terms and conditions of the loan agreement were to remain unchanged. Neither agreement contains any jurisdiction clause. The particulars of claim allege there are failures to repay the loan agreement, as varied by the later addendum agreement, and assert that a total of some US$803,000 is overdue and owing to the claimant as at 6 September 2021.

4 The defendant is and was at all material times resident in the State of New Jersey in the United States of America. It was therefore necessary for the claimant to seek permission to serve the proceedings on the defendant at his address in New Jersey. That application was made on 6 September 2021 and was granted by an order of Master Kaye, dated 9 September 2021. That application was supported by a witness statement from the claimant's solicitor, Ms Georgina Squire, of Rosling King LLP, dated 7 September 2021. She exhibited some 145 pages of documents within exhibit GNS1.

5 The defendant has issued an application, dated 1 November 2021, to set aside Master Kaye's order giving permission to serve proceedings out of the jurisdiction, setting aside service of those documents, and declaring that the English court has no jurisdiction to try the claim against the defendant. It is said that permission to serve the claim form outside the jurisdiction should not have been granted because England and Wales is not the proper place in which to bring the claim. The proper forum is said to be New Jersey. It is also said that the claimant failed to comply with its duty of full and frank disclosure.

6 It is accepted by the defendant that the claimant has shown that it has a good arguable case that the claim falls within the jurisdictional gateway in para.3.1(6)(c) of Practice Direction 6B on the footing that the addendum agreement on which the claimant sues is governed by English law. The defendant also accepts that there is a serious issue to be tried. The sole live

issue on jurisdiction is the defendant's contention that England and Wales is not the proper place in which to bring this claim. In other words, it is said that Master Kaye should not have given permission to serve the claim form out of the jurisdiction because she should not have been satisfied that England and Wales was the proper place in which to bring the claim, as required by CPR 6.37(3).

7 That provision of the Civil Procedure Rules codifies the long-standing English law doctrine of *forum conveniens*. I have been referred to the judgment of Lord Mance in the Supreme Court in *VTB Capital PLC v Nutratek International Corporation* [2013] UKSC 5; [2013] 2 AC 337, in particular at para.18 where the ultimate over-arching principle is said to be that if a court is not satisfied that England is clearly the appropriate forum, then permission to serve out must be refused or set aside.

8 The full basis upon which the defendant contends that England is not the proper forum is set out in rider A to the application notice. It is also said, for reasons set out at paras.29 to 34 of that rider, that the claimant has notably failed in its duty of full and frank disclosure so that the court should exercise its discretion to set aside Master Kaye's order as an appropriate sanction for such breaches.

9 The evidence in support of the defendant's application is contained within his witness statement of 1 November 2021, exhibiting various documents as OA1. Evidence in answer is set out in the first witness statement of Mr Anthony Hawkins, an English and Australian qualified lawyer and interim executive chairman of the claimant, dated 23 December 2021, together with exhibit AJH1.

10 The defendant is represented by Mr Daniel Piccinin (of counsel) and the claimant is represented by Mr Imran Benson (also of counsel). Both have produced detailed written skeleton arguments which I have read and both have addressed me at this remote hearing.

The hearing bundle runs to some 970 pages and there is a further bundle of almost 400 pages containing relevant case law and practitioner text authorities.

11 In short, what is said by Mr Piccinin for the defendant is that this present dispute should be determined in the courts of New Jersey where the defendant lives. It has no sufficient connection with the courts of England and Wales, and they are certainly not the appropriate forum for entertaining this dispute. There are already proceedings pending in the courts of New Jersey which were the subject of a complaint filed by the defendant on 20 August 2021. That complaint is principally founded upon breaches of the terms of the defendant's appointment as the claimant's chief executive officer; but the complaint includes relief which is said to be closely connected with the present claim because it seeks a binding declaration that the defendant owes no outstanding balance on the loan on which the claimant sues because the amount owed by the defendant to the claimant should be, and should have been, applied towards the repayment of the loan pursuant to the loan agreement and its addendum. It is the failure to draw that head of claim to the attention of Master Kaye that forms the principal ground of material non-disclosure.

12 The New Jersey proceedings were issued less than a fortnight after a pre-action protocol letter of claim sent by the claimant's solicitors to the defendant. The claimant invites the court to infer that the New Jersey complaint was filed in response to that letter. The claimant asserts that there was a breach of the pre-action protocol procedure by the defendant and a failure to engage with the threatened proceedings in this jurisdiction. The claimant has filed an application to have the New Jersey proceedings dismissed on the footing that the appointment agreement, which the defendant is seeking to enforce in New Jersey, is the subject of an LCIA arbitration clause which makes it subject to arbitration in London.

13 I am satisfied that I should approach this application without regarding the existence of the New Jersey proceedings as determinative of its outcome. That is because of the pending strike-out application, on which I understand judgment to be awaited; but also because I am satisfied that the defendant should derive no litigation advantage from having filed the New Jersey complaint in response to the pre-action protocol letter. For the claimant, Mr Benson submits that it would discourage claimants from invoking the pre-action protocol procedure if they could anticipate that a defendant could derive a litigation advantage from issuing proceedings in a foreign jurisdiction in response, and by way of alternative to engaging properly in the pre-action protocol procedures. Mr Piccinin, on the other hand, submits that a pre-action protocol letter should not operate effectively as an anti-suit injunction, preventing a recipient of such a letter from instituting proceedings in a foreign jurisdiction.

14 In my judgment, the appropriate way of dealing with the matter is not to treat the existence of the New Jersey proceedings as determinative of the outcome of this application because the court is presently in no position to determine whether those proceedings are going to continue in the face of the application to enforce the arbitration provisions in the appointment letter; and because I consider that no litigation advantage should be derived from the defendant having effectively pre-empted the issue of the present claim by issuing his own proceedings in New Jersey.

15 I must focus upon the real question, which is whether the claimant has properly satisfied the court that England and Wales is the proper place in which to have brought the present claim. In his skeleton argument, Mr Benson has identified the real question as whether England is clearly or distinctly the appropriate forum and the proper place to bring this claim. He submits that this cannot be answered in a vacuum. The only rival candidate is New Jersey.

16 At para.32 of his skeleton argument, Mr Benson identifies a number of factors which Mr Piccinin addressed in his oral submissions. The first is that the claimant, although a Cayman Islands incorporated entity, is said to have a substantial English connection. It is listed on the Alternative Investment Market of the London Stock Exchange and, as such, is subject to English regulation and judicial dispute resolution. The claimant is said to have a deep bench of English professional advisors, in particular a UK nominated advisor (or NOMAD), as is required for a company listed on the AIM. The relationship of that company with its NOMAD is absolutely critical, and far more important than any other professional relationship. There is a director who lives in England and a subsidiary which has an English bank account. It is said that England is the claimant's home jurisdiction in the context of international energy exploration companies which have global businesses operating in different countries.

17 Mr Piccinin submits that this is in reality a case of a Cayman Island company heading up an African oil business. Mr Piccinin cites para.9 of rider A to the application notice. He emphasises the claimant's limited connections to England. Its sole connection is that it is listed on the AIM; but it has no assets or business, and no employees or operations, and not even a bank account, in this country. It has had a bank account in New Jersey, although that is apparently in the process of being closed down. England is not the claimant's home jurisdiction. All the claimant does in England is to raise equity capital there, with the assistance of English professional advisors.

18 The second factor relied upon by Mr Benson is that although the defendant lives in New Jersey, he spends about 200 nights a year out of the United States. For about five years, he used to own a property in London; and it is said that his carefully drafted witness statement does not say that he did not live in it. In 2020 he spent three or four months in the UK, and he visits that country every year. He has a UK bank account and is said to be hardly a stranger to this country.

19 In response to that, Mr Piccinin has directed me to what the defendant has to say about his personal position at paras.59 to 64 of his witness statement. He is a dual national of the United States and Nigeria and he is not a British citizen. He has lived in the United States for over twenty years, since 1998. Having previously lived in California from 2000 to 2004 and, before that, for two years in Massachusetts, the defendant moved to Princeton, New Jersey in 2004, and he has therefore lived there for some seventeen years. It is where his family house is situated. All four of his children were born and schooled in the United States; and that is where he pays taxes, as a US tax resident. The defendant usually travels regularly to Nigeria. In the past year he has spent more time in New Jersey because of Covid and the resulting travel restrictions. Typically, though, it is not unusual for him to spend 200 days outside the United States. When a business is going through a development cycle, he has to be in Nigeria, but otherwise he is in the United States. Even when spending a lot of time out of the United States, it is not spent in the United Kingdom, where typically the defendant would spend maybe a couple of weeks a year.

20 In 2020 the defendant did spend more time than usual in the UK, arriving in August and working there until October or November; but that was because of the need to isolate for fourteen days each time the defendant moved from the country. 2020 was said to be unusual, and the defendant does not remember the last time he spent that much time in the UK. He says that he has owned property on and off in Nigeria. He does not own any property in England or Scotland. He had bought a house in London in 1996, which he had sold five years later when he was in the US, and thus twenty years ago. He also used to own an apartment in Aberdeen, where he lived from 1996 to 1998, but he also sold that when he moved to the US. He still has a bank account with Clydesdale Bank, but it is said to be dormant and maybe generates a few pennies each year in interest.

21 Mr Benson's third point, which Mr Piccinin describes as his best, is that the addendum has an English law clause. That is an important factor. That clause is said expressly to have varied the loan agreement, which had contained no choice of law clause. Mr Piccinin points to the fact that the original draft addendum agreement had contemplated a Nigerian choice of law clause but, for reasons unexplained, that was changed to an English choice of law clause. Mr Piccinin disputes that the English law clause expressly varied the loan agreement. It applies only to the addendum agreement.

22 Mr Piccinin has taken me to observations in the authorities on the relevance of an English choice of law clause. At para.46 of *VTB Capital* Lord Mance observed that the governing law - in that case English law- is, in general terms, a positive factor in favour of trial in England because it is generally preferable, other things being equal, that a case should be tried in the country whose law applies. But Lord Mance went on to observe that that factor is of particular force if issues of law are likely to be important, and if there is evidence of relevant differences in the legal principles or rules applicable to such issues in the two countries in contention as the appropriate forum.

23 Neither of those considerations applied in the case before Lord Mance. Mr Piccinin has pointed to the fact that in that case the claims were in deceit and conspiracy, the conspiracy alleged being to obtain finance by the deceit. Accepting that the governing law of both alleged torts was, to English eyes, English, there was said to be nothing to show that Russian law would reach any different conclusion. The parties were able to plead and rely on English law in the Russian courts; but even if there were reason to think that a Russian court would regard Russian law as governing the alleged torts, there was nothing to suggest that Russian law did not recognise and impose tortious liability for deceit, and for conspiracy to commit a deceit, on bases for material purposes equivalent to those which would be recognised under English law. It was unlikely that it did not, and no evidence had been adduced that it did not. It would

have been for the claimant to have adduced evidence on all those points in support of its case that England was the appropriate forum if it could do so.

24 In the present case, there is no reason to think that New Jersey would apply any different legal principles to those under English law. The only relevant area of law in the present case is likely to be the potential existence and nature of a *Spiliada* or *Braganza* type duty under which the defendant will be contending that the claimant was required not to exercise its contractual discretion with regard to the payment of bonuses to the defendant arbitrarily, irrationally or capriciously. That, Mr Piccinin submits, is a matter readily capable of proof by expert evidence from English lawyers in the courts of New Jersey.

25 Mr Benson's fourth point is that the satellite disputes are also subject to English law. However, Mr Piccinin points out that this satellite litigation, so called, is currently taking place in the New Jersey courts, and the claimant is seeking to have those proceedings stayed because of the LCIA London arbitration clause. So the claimant is seeking to keep the dispute which it has raised in this claim quite separate from the matters raised in the New Jersey proceedings.

26 Mr Benson's fifth point is that the loan agreement was initially entered into in order to provide funding to indirectly support the share price of the claimant company on the Alternative Investment Market. The first extension of the term of the loan agreement was made on the advice of the then nominated advisor; and the second extension, and the addendum agreement, were put in place to satisfy concerns expressed by a new prospective nominated advisor in London, whose appointment was necessary in order to get the suspension in trading of the claimant's shares on the Alternative Investment Market lifted. Mr Benson submits that the broader commercial circumstances underlying the loan are clearly London focused.

27 Mr Piccinin acknowledges this but he says that it is of no legal relevance. The circumstances in which the loan came to be made are irrelevant to the issues in dispute between these parties. The issue is with regard to how the loan was to be repaid, and in particular whether it was to come from bonus payments due to the defendant from the claimant. That is merely part of the background history, and it does not affect the outcome or determination of the present claim, and thus is not a relevant factor.

28 The sixth factor relied upon by Mr Benson is that although the loan was denominated in US dollars, it could be repaid in Nigerian naira. No bank account was specified for repayment. The claimant company's US bank account has been closed and its remaining US dollar account is in Dominica. Mr Piccinin submits that the ability to repay the loan in Nigerian currency does not point in favour of jurisdiction on the part of the English courts. There is no express facility to repay in pounds sterling. The liability of the debtor under the loan agreement is referenced and determined in US dollars.

29 Mr Benson also points out that the claimant wants to be paid through its London solicitors. He says that the claimant has a common law right to nominate the place of payment and submits that the breach of contract of loan therefore occurred in London. Mr Piccinin says that that is nonsense. Nothing in the pre-action protocol letter nominated London as the place of payment. The pre-action protocol letter merely provided, in para.1.1, that the solicitors, Rosling King, have been instructed by the claimant to obtain payment of the debt under the loan agreement and addendum from the defendant; and, in para.6.1, it was said that payment details would be provided upon request. There is no express instruction to pay in London; and, in any event, the breach of the repayment obligation had pre-dated the pre-action protocol letter. Payment should have been made to the lender where it is based, in the Cayman Islands.

30 The next point taken by Mr Benson is that the English courts permit costs recovery, unlike the courts of New Jersey where the position, in terms of recovery, is much more limited. It is therefore said that the claimant will suffer financial prejudice if forced to litigate there. Mr Piccinin says that this is a very weak argument. He has taken me to a passage in the current edition of **Dicey & Morris** (at para.12-038) where the learned editors note that although it has been held that a claimant may overcome the case for a stay if the foreign court's approach to the awarding of costs consumes the fruits of recovery and renders any victory largely pyrrhic, such a conclusion would tend to undermine the general *Spiliada* principle and should be accepted, if ever, only in very rare cases.

31 Mr Piccinin notes that this was not even mentioned as a factor in the application to serve out, and that there is good reason for this in that Mr Hawkins's evidence does not come close to suggesting that the ordinary costs of pursuing a claim in New Jersey would consume the fruits of recovery or render any victory pyrrhic. There is simply no evidence that this is one of those rare cases where victory in New Jersey would be a pyrrhic victory. Mr Benson accepted that this was not one of his stronger points.

32 Mr Benson points out that the New Jersey proceedings were only instituted because of the defendant's abuse of the pre-action protocol procedure. He submits that it would be monstrous if this court were to give any weight to such proceedings, especially where the likelihood is that they will shortly be stayed. No contract ever applied New Jersey law, or the law of any other state of the United States, to the contractual relations between the parties. Mr Piccinin's point is that if these proceedings properly belong to New Jersey, there can be nothing wrong in the defendant having issued there.

33 Mr Benson's final point is that the debt claim itself is a simple one. There are no contested facts and it is hard to see how any disclosure or evidence is likely to be relevant. Any reliance

on any alleged breach of the terms of the defendant's employment as chief executive officer of the claimant is subject to an arbitration clause and so cannot be deployed as a shield in response to this claim. Mr Piccinin's point is that that defence should be determined in the same place as the employment dispute.

34 Mr Piccinin submits that the defendant is domiciled in New Jersey and is entitled to be sued there unless English jurisdiction is more appropriate. That is not the case. The loan is denominated in US dollars, it was made by a Cayman Islands company, which is the parent company of a Nigerian oil producing enterprise. This case has absolutely nothing to do with England except for the fact that the law of England is the governing law of the addendum; but, in all the circumstances of the present case, that is a weak factor.

35 As Lord Lloyd-Jones explained in *Brownlie v FS Cairo (Nile Plaza) LLC* [2021] UKSC 45; [2021] 3 WLR 1011, at para.78, the ultimate objective should be:

> "…to identify the forum in which the case can be suitably tried for the interests of all the parties and for the ends of justice."

The burden rests with the claimant to persuade the court that England and Wales is the proper place in which to bring the claim.

36 I have made it clear that I do not consider that the defendant should derive any advantage from the fact that there are proceedings pending in the courts of New Jersey which he has instituted, for the reasons I have given; but in my judgment, that does not alter the fact that it is in New Jersey that the defendant is resident and that he has no real, present connection with England and Wales. The claimant's capital is listed on the Alternative Investment Market of the London Stock Exchange; but I am not persuaded that that fact renders this jurisdiction the proper place in which to bring this claim. In my judgment, the English choice of law clause in the addendum agreement is not a sufficient factor either. Otherwise, it would be sufficient

for a claimant, in order to found jurisdiction in the English courts, simply to be able to show that the contract on which it was suing was governed by English law. That is not the case. There is the extra jurisdictional hurdle that a claimant must satisfy the court that England and Wales is the proper place in which to bring the claim.

37 I accept, for the reasons that Mr Piccinin has given, that Mr Benson's suggested reasons, on analysis, are not sufficient. I accept Mr Piccinin's submission that the court must look at the overall centre of gravity of this dispute to determine where it should be heard. That centre of gravity is not England. In my judgment, there is nothing to displace the presumption that the defendant should be sued in the place where he resides, and where he has the closest connection, and where any judgment will fall to be enforced. As Mr Piccinin has pointed out, enforcement of the judgment was clearly a factor that weighed in the minds of the claimant when rejecting any notion of proceeding in Nigeria: see para.6.2 of Ms Squire's first witness statement. It is clear that any judgment against the defendant will need to be enforced in New Jersey, where he is resident; and that is the appropriate forum in which he should be sued.

38 I am satisfied that Master Kaye should not have granted permission to serve out of the jurisdiction. I in now way criticise her for giving such permission. She had not been alerted to all of the matters that have been put before me. Indeed, it does seem to me that there was a lack of full and proper disclosure in the way in which the matter was put before her. Mr Benson has acknowledged that Ms Squire went too far in stating, in para.6.1, that in their other dealings the parties had always chosen English law as the governing law in agreements between them. In the shareholders agreement, which is specifically referenced at sub-para.6.1.2, the relevant governing law was that of Nigeria, and not England.

39 However, I would not have regarded that matter alone as amounting to a sufficient failure of full and frank disclosure such as to lead to the setting aside of the grant of leave. What I do,

however, regard as a failure in the duty of full and frank disclosure is the way in which the New Jersey complaint was presented at para.7.1 of Ms Squire's witness statement. There she refers to the complaint, and she exhibits a copy at pp.49 to 100 of GNS1. In fact, the complaint extended only to some twenty-two pages, and not the fifty-one pages that appear, because of the reference to documents accompanying the complaint.

40 Ms Squire drew the court's specific attention to the certification to the complaint, identifying the page number. She says that there the defendant acknowledges that he is aware of the claimant's intention to bring English court proceedings. She then goes on to say that this complaint relates to a separate matter, being the defendant's employment and dismissal by the claimant, a matter which is governed by his employment contract with the claimant, which itself has an English governing law clause. She then exhibits that employment contract, and identifies where the governing law clause is to be found. She concludes:

> "Given the English governing law and English arbitration jurisdiction of the employment agreement, the claimant will be filing a motion to dismiss the complaint should it be served."

41 What Ms Squire did not do, having drawn attention to specific pages of the exhibit, was also to draw the Master's attention to pp.20 and 22 of the complaint, where the defendant specifically asserts his entitlement to a declaration that he does not owe any outstanding balance on the loan because the amount he is owed by the claimant is greater than the outstanding balance on the loan; and that the amount he is owed should be, and should have been, applied towards the repayment of the loan pursuant to the loan agreement. That should have been brought specifically to the Master's attention because it does contradict Ms Squire's assertion that the complaint relates to a separate matter.

42 I do regard that as a material omission in Ms Squire's witness statement that renders her description of the New Jersey complaint inaccurate. I was taken to the judgment of Bryan J

in the case of *The Libyan Investment Authority v JP Morgan Markets Limited* [2019] EWHC 1452 Comm). In particular, I was taken to the principles to be applied to breaches of full and frank disclosure at paras.92 and following. At para.97 Bryan J set out the guidance given by Toulson J in an earlier case:

> "The starting point is that an applicant for an order on a without notice application must make full and frank disclosure of all material facts, that is, facts known to the applicant which might reasonably be taken into account by the judge in deciding whether to grant the application… It is for the court to determine what is material according to its own judgment and not the assessment of the applicant…"

If an applicant is aware of matters which might reasonably cause the judge to have any doubt whether he should grant permission to serve out of the jurisdiction, those are relevant matters and ought to be disclosed.

43 I have no doubt that knowledge that in the New Jersey proceedings the defendant was asserting that he did not owe the loan, and that the claimant should have applied sums towards the repayment of the loan, is something which might reasonably have caused Master Kaye to have some doubt whether she should grant permission to serve out of the jurisdiction. Therefore that ought to have been disclosed to her. It is not sufficient that it appears from the complaint when the specific passage in the complaint was not drawn to the Master's attention, unlike other specific matters which were referred to by page number.

44 In my judgment, there was a failure of full and frank disclosure. It is unnecessary, in view of the conclusion I have already expressed, for me to say whether that alone would have been regarded by me as sufficient to justify the setting aside of the permission to serve outside the jurisdiction. Had there been full and frank disclosure in relation to the New Jersey proceedings, it might well have led Master Kaye not to have granted permission. However, she might have taken the view that she should disregard the New Jersey proceedings as having been brought in response to the pre-action protocol letter. It is not necessary for me to decide

whether I would have taken the view that this matter alone would have justified the setting aside of the grant of permission to serve out of the jurisdiction since I have formed the view that that permission should be set aside for other reasons.

45 In my judgment, this is simply not a case where England is clearly the appropriate forum. That does not necessarily mean that New Jersey is a more appropriate forum; but it is the place where the defendant is resident, and therefore the place where, presumptively, he should be sued, unless England is a more appropriate forum. I am satisfied that it is not, and therefore there should be no permission to serve outside the jurisdiction. I will therefore accede to the present application. I will set aside the order giving permission to serve outside the jurisdiction. I will set aside the purported service of the proceedings; and I will determine that the English court has no jurisdiction to hear the claim on the basis that it is not clearly the appropriate forum. That concludes this extemporary judgment.

CERTIFICATE

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