Neutral Citation Number: [2024] EWHC 856 (KB)

Case No: KB-2023-003290

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17 April 2024

Before :

Master Fontaine
(sitting in retirement)

- -

Between :

Mohammed Ibrahim	**Claimant**
- and -	
AXA Belgium	**Defendant**

- -
- -

Sarah Prager KC (instructed by **Stewarts LLP**) for the **Claimant**
Bernhard Doherty (instructed by **Clyde &Co LLP**) for the **Defendant**

Hearing date:
27 March 2024

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APPROVED JUDGMENT

Handed down at 10:30am on 17 April 2024.

Master Fontaine :

1. This was the hearing of the Defendant's application for relief from sanction, and for a declaration that the court should not exercise its jurisdiction over the claim and for a stay of the claim. The application is supported by the witness statement of Kim Bracewell dated 23 February 2024 and the first and second witness statements of Luc-Robert Willems dated 21 and 27 February 2024. It is responded to by the second witness statements of Scott Rigby dated 25 March 2024 and the witness statement of the Claimant dated 12 March 2024. The Claimant also relies upon a letter from Karel Mul dated 13 March 2024. The Defendant also relies on a further statement from Mr Willems in reply dated 20 March 2024.

2. The Claimant has made an application for judgment pursuant to CPR 14.4 dated 12 February 2024, supported by the first witness statement of Scott Rigby dated 27 February 2024. The parties have agreed that the determination of this application will depend upon the court's decision in respect of the Defendant's application.

Factual and Procedural background

3. The claim is for damages for personal injury sustained by the Claimant in a road traffic accident in Belgium on 15 March 2019. The Claimant was aged 53 at the date of the accident and is now aged 58. He sustained a head injury and orthopaedic injuries as a pedestrian crossing a road at Riglaan in Zaventem near Brussels airport. At the time of the accident the Claimant was employed as an aircraft maintenance engineer and was in Belgium in the course of his employment. A chronology of relevant events following the accident is set out as an Annex to this judgment.

The Defendant's application for an extension of time for making an application for a stay on *forum non conveniens* grounds

4. The Defendant seeks a declaration that this court should not exercise jurisdiction over the claim on *forum non conveniens* grounds, and a stay of proceedings. CPR 11.1(4) applies to the application to challenge jurisdiction on *forum non conveniens* grounds, so the application must be made within 14 days of filing the acknowledgement of service. The application was made 30 days after filing the acknowledgement of service. The Defendant acknowledges that as it has not complied with the time limits for making an application under CPR 11 and it seeks an extension of time for making such an application. It is common ground that the same considerations apply to the application for an extension as those that apply to applications for relief from sanction under CPR 3.9, namely the guidance given by the Court of Appeal in *Denton v T. H. White Limited* [2014] EWCA Civ 906.

5. The witness statement of Kim Bracewell deals with this application at §§4-11. The response of the Claimant to this evidence is at §§41-49 of Rigby 1. I will address the evidence and submissions in relation to each of the three strands of the guidance in *Denton* in order to determine whether the application should be granted.

6. Ms Bracewell realistically accepts that the default is a significant one. Mr Doherty, Counsel for the Defendant, accepted that submitting that a delay of 30 days was capable of being a serious and significant default, but points to approaches taken in authorities to suggest that such a delay may not necessarily constitute a serious and significant default. In *Le Gueval-Mouly v AIG Europe Ltd* [2016] EWHC 328 (Comm) Hickinbottom J. held that a 22 day delay was not serious or significant at [36] – [37], stating that the question depended upon the context and the facts of the specific case. The Defendant points out that, similarly to the reasons relied upon in *Le*

Gueval-Mouly, the progress of this litigation has not been affected by the 30 day delay.

7. The Claimant originally relied upon a 114 day delay, clearly much more significant, from the date when the proceedings were originally served, 18 October 2023, following an agreement by Mr Murray of Clyde & Co, solicitors for the Defendant, to accept service by email. However, it became apparent that although Mr Murray had agreed in a telephone call with Mr Rigby to accept service at his personal email address, he had not done so in writing, and the wording on the end of the Clyde & Co email states that service by email, when agreed, must be at a particular dedicated email address, and that was not done in relation to the proceedings sent by email on 18 October 2023. Accordingly, applying CPR 6.3 (1)(d) and PD6A 4.1 (1) the purported service on 18 October 2023 was not good service. Ms Prager KC for the Claimant sensibly conceded this point when she became aware of it. Further there was an agreement by the Claimant to an extension of time for filing an acknowledgement of service and defence following the subsequent service on 10 January 2024, so the earlier period of delay from 18 October 2023 was effectively subject to that agreement.

8. The Defendant also relies on the jurisprudence supporting the fact that an application for a stay on jurisdictional grounds can be made at any time in the proceedings, by contrast to an application seeking an order that the court has no jurisdiction. Here the Defendant accepts that the English court has jurisdiction over the claim, but seeks a stay on *forum non conveniens* ground, namely that there is another more appropriate jurisdiction for the claim. The distinction between an application making a challenge to the jurisdiction of this court and one seeking a stay on jurisdictional grounds was

highlighted by the Privy Council in *Texan Management v Limited v Pacific Electric Wire & Cable Company Limited* [2009] UKPC 46.at [59] – [62] and [68]. At [70] – [71] Lord Collins said:

> "70. But these provisions do not sit easily with applications for stays. For example, circumstances may change and a defendant may wish to apply for a stay well after the proceedings have commenced on the ground that the claimant has subsequently commenced proceedings in another jurisdiction for the same or similar relief, or the claimant may wish to apply for a stay of proceedings on grounds unconnected with the international character of the proceedings,…
>
> 71. In such cases the defendant will not have been in a position to apply for a stay at the outset of proceedings…."

And at [73]:

> "The overall effect is this. A defendant served within the jurisdiction who has reasons for applying for a stay on *forum non conveniens* grounds at that time should normally make the application under…. CPR Part 11……The court has a power to extend the time for compliance with any rule.. even if the application for extension of time is made after the time for compliance has passed: …. CPR r.26.1(2)(k)……"

9. However the Defendant accepts that CPR 11.1(4) applies to the time limit within such application must be made. In any event, as Ms Prager KC pointed out, in this case there had been no change of circumstances such as those envisaged in *Texan Management* at [70] above, and the Defendant was in a position to apply for a stay at the outset of proceedings. The Defendant relies on the fact that the Defendant was unaware of the English proceedings as a change of circumstances, but in my view it is unlikely that the Privy Council in *Texan Management* envisaged that a defendant's own mistake or inefficiency would constitute a change in circumstances, particularly where the Defendant's agent, AXA UK, was well aware of the English proceedings and had instructed English solicitors to act on behalf of the Defendant.

10. My view is that that such a failure to abide with the strict time limit imposed by Part 11, relating to such an important issue as the jurisdiction of this court, is a serious or significant breach. A challenge to the jurisdiction of the court by a defendant, whether on substantive grounds or *forum non conveniens* grounds, would have serious consequences for a claimant if it succeeded. It would force a claimant in this jurisdiction to discard their claim, and potentially incur irrecoverable costs. They would have to pursue their claim in a jurisdiction which is likely to be unfamiliar to them and where the language may not be one they know. Although it is correct that the delay of 30 days did not overly prejudice the Claimant, who has been able to respond fully to the application, that is not a complete answer to the breach, as otherwise breaches of the time limit in Part 11 would be easily excused, which is not the intention, in my view, given the limited 14 day time limit. In this case the Defendant's solicitors are a large city firm with an international practice. They had been instructed in the claim since 16 August 2023 and had agreed to accept service on 10 October 2023, and been aware that service would be made by email since 18 October 2023. In the event valid service was made on 10 January 2024, and an extension of time granted by the Claimant for filing and service of acknowledgement of service and defence, so they had ample notice. Those circumstances suggest that the breach was serious and significant. However, even if I am wrong in coming to that conclusion it is appropriate to consider the other stages of *Denton*.

11. It is also accepted by the Defendant that there is no good reason for the breach. The explanation is that there was a misunderstanding or breakdown in communications between AXA UK, through whom Clyde & Co receive their instructions, and the Defendant AXA Belgium. No details are provided in the evidence as to how such a fundamental misunderstanding could have arisen, how the Defendant could have

failed to alert their own solicitors in these proceedings that it had instigated proceedings in respect of the same accident in Belgium, or been unaware that proceedings had been brought in England. In the absence of any fuller explanation I do not conclude that there was a good reason for the failure.

12. With regard to the third strand of the *Denton* guidance, all the circumstances, in my judgment the following circumstances are relevant:

    (i) A defence has been filed, though that is a relatively neutral factor, in my view. There is no issue as to submission to the jurisdiction, as the fact that the English court has jurisdiction over the claim is not challenged, only whether it is the most appropriate forum for the proceedings.

    (ii) The failure to notify the Claimant in advance of the intention to institute proceedings in Belgium when the Defendant had been corresponding with the Claimant or his English solicitors since March 2019, and when it should have been aware from August 2023 that proceedings had been commenced in England, when it had instructed English solicitors in that claim, had given no instructions to those solicitors to challenge jurisdiction or apply for a stay, and waited until January 2024 to bring proceedings in Belgium. The Defendant was also aware that the Claimant had undergone examination by English medical experts and had produced reports for the purpose of the proceedings, and had incurred costs in so doing.

    (iii) The failure to notify Clyde & Co of the institution of proceedings in Belgium, as referred to above.

(iv) The lack of a proper explanation to this court as to how this situation has arisen. I note that Ms Bracewell says at §9 c. i.: "*The selection of the appropriate forum for the trial of the case is an important matter.*" and refers to Mr Willems' statement where he "*sets out the importance Belgian law attaches to the exclusive jurisdiction of courts specified by Belgian law.*" If that is the case it seems remarkable that no thought was apparently given to this during the period when the Defendant first corresponded with the Claimant in March 2019 until shortly before proceedings in Belgium were issued in January 2024.

(v) The fact that there are proceedings in the Police Court in Belgium, a specialist court dealing with road traffic accidents, and the other factors concerning the appropriate jurisdiction (which I consider below in relation to the Defendant's application for a stay). It was submitted by the Defendant that this court should not shut out a foreign defendant from making an application to allow this court to consider which is the more appropriate jurisdiction. But the Defendant is shut out only by reason of its own conduct. It had the same opportunity as any other foreign defendant to make an application, and it had the advantage of having English solicitors already instructed and dealing with the English proceedings, so I cannot conclude that this is a factor which assists the Defendant.

13. In these circumstances, even if the breach was not significant in that it has not caused any significant prejudice to the Claimant's progression of the litigation, I consider that because of the lack of any good reason for the breach and the circumstances in which

the breach came about, relief from sanction should not be granted, and an extension of time for making the stay application will not therefore be granted.

14. As the parties have fully argued the stay application, and in the event that I am wrong in my conclusion in respect of the application for an extension, I will deal with the stay application.

The Defendant's application for a declaration that this court should not exercise jurisdiction over the claim on *forum non conveniens* grounds, and for a stay of proceedings.

15. The starting point for a stay on *forum non conveniens* grounds remains the judgment of Lord Templeman in *Spiliada Maritime Corporation v Cansulex Ltd (The Spiliada)* [1987] AC 460; see 464H-465A:

> "Where the plaintiff is entitled to commence his action in this country, the court, applying the doctrine of forum non conveniens will only stay the action if the defendant satisfies the court that some other forum is more appropriate. Where the plaintiff can only commence his action with leave, the court, applying the doctrine of forum conveniens will only grant leave if the plaintiff satisfies the court that England is the most appropriate forum to try the action. But whatever reasons may be advanced in favour of a foreign forum, the plaintiff will be allowed to pursue an action which the English court has jurisdiction to entertain if it would be unjust to the plaintiff to confine him to remedies elsewhere."

16. As the above citation shows, there is effectively a two stage test established by *The Spiliada*. First, a defendant has the burden of showing a foreign court is clearly and distinctly the more appropriate forum for the trial of the claim. If that is shown, the court will ordinarily grant a stay unless the claimant can establish that there are circumstances by reason of which justice requires that a stay should not be granted: per Lord Goff at 478E.

17. The Defendant accepts that it has the burden of demonstrating that Belgium is the appropriate forum for the claim brought by the Claimant, because the jurisdiction is based upon service upon the Defendant in this jurisdiction, by its solicitors having accepted service: see *Charlton v Deffert* [2022] EWHC 2378 (KB).

18. The primary factors linking the case to Belgium are the fact that the Defendant is a company domiciled in Belgium, and the tort occurred in Belgium. The latter factor means that the governing law is Belgian law: see Willems 3 at §7. Other factors relied upon by the Defendant are:

    (i) The driver of the car is domiciled in Belgium, and the car is registered in Belgium.

    (ii) The Belgian proceedings also include two other parties besides the Claimant and the Defendant, namely, the Community of Zaventem and Brussels Airport Company NV. It is said that one or other of those parties or both, is responsible for the road and the pedestrian crossing where the accident occurred. Mr Willems in his third witness statement at §4 addresses the fact that the Belgian proceedings will involve ascertaining the appropriate degrees of contribution of each party to the Claimant's damages, as the Defendant "… *is considering that the pedestrian crossing is not adequately indicated, marked and accentuated by public lights…..The driver had only a limited speed of 20km/h but couldn't anticipate the pedestrian crossing in time*." A claim against one or both of those parties for a contribution will not be possible in the English proceedings.

    (iii) Belgian law places great weight on the exclusive jurisdiction of the relevant Belgian Police Court in relation to traffic accidents occurring in Belgium. Mr

Willems addresses this in some detail in his third witness statement at §§8-14. It is submitted that this should properly be taken into account.

(iv) No witnesses from England are required to give evidence in the Belgian proceedings: Willems 1 §17.

(v) The enforcement of a Belgian judgment in Belgium is a simple matter, whereas, post Brexit, the enforcement of an English judgment is not straightforward: Willems 3 at §18.

(vi) It is possible to instruct additional medical experts in Belgian proceedings. The medical expert nominated by the court will determine whether additional medical expert evidence in other specialist medical areas is required: Willems 3 at §19. Mr Willems considers that the Claimant's expert in Belgian law, Mr Mul, has oversimplified the procedure applied in the Belgian court at page 4 of his letter, where he states "*The chances that a second expert will be charged are minimal*." in this particular case The reason that the Belgian court nominates an independent expert is so that complete objectivity is maintained, and it is submitted that the process is less adversarial than the English law approach.

(vii) The Claimant signed a statement made in Dutch very shortly after the accident at the police station. Mr Willems states in his third statement at §21 (c) that no interpreter was present and the Claimant did not ask to use English.

(viii) The Claimant should be able to travel to Belgium for medical examinations. He travelled to Brussels and to several other countries in Europe for work on eight occasions in 2019 and 2020, commencing only 2 months after the

accident. There is no medical evidence that suggests that he is unable to travel. If the Claimant needs assistance from someone in order to travel, and that is recognised as necessary the costs will be refunded as damages: Willems 1 §17.

19. The Claimant submits that there are more factors in favour of pursuing the English proceedings than the Belgian proceedings:

(i) The Claimant and his family were resident in England at the time of the accident and remain resident in this jurisdiction. All of the Claimant's lay and expert witnesses are in England, as are both parties' solicitors.

(ii) The language of the trial in Belgium will be Dutch, which the Claimant does not speak or understand, and Mr Willems's evidence is wrong to assert otherwise: the Claimant's witness statement at §§40-43 confirms this, and states that all his communications whilst working with others in Europe have been in English.

(iii) The Claimant's level of pain and psychological problems have increased since the time of his travels on business to Europe in 2019 and 2020, such that he would feel very vulnerable and afraid of travelling to Belgium for medical examinations and for the trial: his witness statement addresses this at §§15-39.

(iv) The courts in England would be more than capable of applying the law of Belgium to the causation and quantum issues in the claim and has substantial experience in applying foreign law. The court would be assisted by experts in Belgian law instructed by each party, who could give evidence by video link.

(v) The claim by Mr Willems that the Police Court of Vilvoorde is the only court with jurisdiction over the claim is a procedural rule, i.e. an internal question of court allocation rather than a jurisdictional rule operating internationally so as to deprive the English court of jurisdiction: see Mul page 2. Mr Mul states that the allocation of traffic accident claims to the Police court "*...is a matter of internal competence, not really a matter of public order*." The Hague Convention applicable to traffic accidents referred to by Mr Willems says nothing about jurisdiction, only about applicable law.

(vi) There are restrictions in the Belgian courts as to how many medical experts can be appointed, as Willems 3 at §19 suggests that reports from at most three subsidiary experts would be permitted, and the experts would not be questioned, but only comments made on their reports. Mr Mul (at page 40) agrees that the court appointed expert may "*..ask for assistance of a specialist in a specific matter*", but is of the view that "*The chances that a second expert will be charged are minimal.*" in respect of the type of injuries suffered by the Claimant. He gives an example of a neurosurgeon being instructed in the case of brain injury, as the type of injury where an additional expert might be instructed. The English courts are able to consider a range of opinions, and in a case such as this would not be likely to consider that jointly instructed experts would be appropriate. The medical evidence available to the English court would therefore be more comprehensive than would be the case in the Belgian court.

(vii) If the Claimant obtains judgment on the admission of liability he will be able to seek further interim payments (a voluntary interim payment of £30,000 has

been made by the Defendant). There is no suggestion in the evidence of either Mr Willems or Mr Mul that this would be possible in the Belgian proceedings.

(viii) The Claimant has the benefit of a funding arrangement with his English solicitors, so is able to defer payment of his legal representatives' fees until the end of the case. As he is no longer able to work this is of considerable importance to him. In Belgium the maximum costs he would be able to recover would be fixed costs of a maximum of €42,000, plus reasonable travelling costs, and any shortfall would have to be made up from his damages: Willems 3 at §21 (d). Further, the Claimant has already incurred considerable legal costs, relying on the Defendant's apparent willingness to submit to the English jurisdiction.

(ix) Mr Mul's letter of 13 March 2024, states that although a UK judgment, post Brexit, can no longer be directly enforced in Belgium, but a Belgium judgment authorising the enforcement can be obtained by a process of exequatur, a process that will usually take between 6 months and 1 year.

Discussion

20. The issue of jurisdiction is raised in Mr Willems' evidence in Willem 2 at §§12-15, where he appears to suggest that as a matter of Belgian law by bringing a claim against the insurer in England the Claimant is in breach of an applicable Belgian public order law, not just a breach of Belgian law procedure, but as the Claimant's leading counsel pointed out, this is not asserted in the Defence, and is disputed by the Claimant's expert. It was also submitted on behalf of the Claimant that if that were the case, it would be a breach of the Fourth Motor Insurance Directive, so would therefore be unlikely. I have not concluded that the Belgian court has exclusive

jurisdiction, as this is not asserted by the Defendant in its Defence or in submissions. However, I recognise and respect the fact that the Belgian justice system considers the internal jurisdiction of the specialist Police Courts as important, as a matter of both efficient administration and of specialist expertise, as would be the case in most jurisdictions where judges of specialist courts are able to develop expertise in the area of law of that specialist court.

21. As is clear from the summary above, there are factors in favour of and against each jurisdiction, but the law is clear that the court should only stay a claim brought as of right in this jurisdiction if a defendant can show that a foreign court is clearly and distinctly the most appropriate forum for the trial of the claim.

22. In *FS Cairo (Nile Plaza) LLC v Lady Brownlie* [2021] UKSC 45 at [79], Lord Lloyd-Jones (with whom Lord Reed, Lord Briggs and Lord Burrows agreed) said:

> "The discretionary test of forum non conveniens, well established in our law, is an appropriate and effective mechanism which can be trusted to prevent the acceptance of jurisdiction in situations where there is merely a casual or adventitious link between the claim and England."
>
> And at [82]:
>
> "The wider reading of damage within the meaning of the tort gateway, which I favour, does not confer on all claimants in personal injury cases a right to bring proceedings in the jurisdiction of their residence. The courts will be astute in ascertaining whether the dispute has its closest connection with this jurisdiction and the principle of forum non conveniens will provide a robust and effective mechanism for ensuring that claims which do not have their closest connection with this jurisdiction will not be accepted here."

23. In *Brownlie* at [83] the majority of the Supreme Court accepted that where pain, suffering, loss of amenity and permanent disability suffered by a claimant resident in this jurisdiction in a road accident that occurred in another jurisdiction: "*The damage is in a very real sense sustained in the jurisdiction.*"

24. The place of the tort is of course an important factor, but the comments in *VTB Capital plc v Nutritek International Corp and ors* [2013] UKSC 5 by Lord Mance at [51] are relevant:

> "The place of commission is a relevant starting point when considering the appropriate forum for a tort claim. References to a presumption are in my view unhelpful. The preferable analysis is that, viewed by itself and in isolation, the place of commission will normally establish a prima facie basis for treating that place as the appropriate jurisdiction. But, especially in the context of an international transaction like the present, it is likely to be over-simplistic to view the place of commission in isolation or by itself, when considering where the appropriate forum for the resolution of any dispute is. The significance attaching to the place of commission may be dwarfed by other countervailing factors."

25. At paragraphs [57] to [61] the court made it clear that "*a wider view is necessary when considering the appropriate forum*", than just the place where the tort was committed and what law governed it, and that a court must consider the issues in the particular case and where the factual focus is likely to be.

26. The judgment in *VTB* has been applied in other cases. In *Klifa v Slater* [2022] EWHC 427 (QB) at [19] *Charlton v Deffert* [2022] EWHC 2378 (KB) at [5], and *Moore v MACIF* Mayor's and City of London CC at [38] before HHJ Hellman 25.10.22.

27. The links of the tort to Belgium are primarily the place of the accident and the place of domicile of the Defendant and the driver. But these are of much less importance in a case where liability for the accident is admitted, and no allegation of contributory negligence is made, as no evidence on the circumstances of the accident will need to be considered in relation to the Claimant's claim. If the Defendant wishes to pursue contribution claims against other parties, presumably they can either join them to the English proceedings or continue their claims against them in the Belgian proceedings once the quantum claim has been determined.

28. The other important factor is the governing law. Although it is obviously preferable for judges in the jurisdiction where that law is applied to determine a claim subject to the law of that jurisdiction, it is not uncommon for judges in the High Court of this jurisdiction to determine a claim where the governing law is that of another jurisdiction, assisted by foreign law experts. In this case it may be relatively straightforward, where only causation and quantum are in issue, and quantum of damages in respect of the injuries under Belgian law is based on a tariff system. It appears that compensation for economic loss is also awarded: see page 5 of Mr Mul's letter.

29. Although all the disclosure is based in England, this would be confined to causation and quantum, and can presumably be provided electronically, so this is not a compelling factor for either jurisdiction.

30. No witnesses of fact would be required to travel to Belgium to give evidence, on the basis of Mr Willem's evidence, not disputed by Mr Mul.

31. There is a difference of approach to medical evidence in Belgium and the UK, as is addressed by the Claimant's submissions in Paragraph 19 (vi) above. I do not conclude that the Belgium court's approach would necessarily disadvantage the Claimant in this case, but I do have some concerns that the range of permitted expert evidence may be more limited which could adversely affect the Claimant in relation to the issue of causation, as I explain below.

32. It is apparent from the report of his orthopaedic expert Mr Peter Hull dated 10 May 2022 that the Claimant's physical injuries were not of the most severe. They are described as a head injury, right knee pain caused by a medial collateral ligament tear, right neck, shoulder, arm pain and neurological symptoms and back pain. The

Claimant was released from hospital on the same day as the accident and returned to the UK by Eurostar the following day, with assistance from friends and family. The orthopaedic report makes it clear that the Claimant's symptoms are more than would be expected on the basis of the imaging findings, (MRI and X ray), and that there is likely to be interplay between psychological aspects and pain aspects. Mr Hull states that he would not expect that the orthopaedic injuries would not have any major long term consequences apart from the occasional aching and discomfort, and would not have prevented a return to work. With regard to the head injury, it was stated that whilst the MRI brain scan was reported as normal, further investigation from a neurological expert was advised. It is said that if the Claimant's ongoing symptoms are accident related he would have current and future care needs and a care expert is suggested.

33. The expert report from Dr Glyn Towlerton on pain conditions and prognosis, dated December 2023, concludes that the Claimant has a pain condition following a life changing event that is likely to continue, and prospects for substantial improvement in his pain are unlikely but within the range of possible outcomes. Further treatment including pain physiotherapy and psychotherapeutic input are recommended.

34. The Belgian court would to be able to instruct additional experts, but it seems unlikely from the evidence of both experts in Belgian law that experts in all the fields of specialism recommended by Mr Hull and Dr Towlerton would be permitted, namely orthopaedics, potentially neurology, pain and pain management, psychology and care.

35. It is apparent that there will be a significant issue between the parties in relation to causation, namely as to whether the deterioration in the Claimant's condition after 2020 was caused wholly or in part by the effects of the accident, and that is an issue

where the court would be assisted by expert evidence in the particular disciplines recommended by the English medical experts, in my view.

36. It is clear from the evidence of both Mr Willems and Mr Mul that, as one would expect, enforcement of a Belgium judgment in Belgium would be easier and quicker than enforcement of an English judgment in Belgium, particularly post Brexit. That is a relatively neutral factor, in that it has not deterred the Claimant from preferring the jurisdiction of his home court. Further, one might expect that the Defendant, part of a substantial international insurance group, would not require a judgment of this court to proceed through an enforcement process, and that they would honour the judgment of the English court, particularly in circumstances where apparently lack of communication between the Defendant in Belgium and AXA UK has caused the situation of dual proceedings to arise at this late stage, almost 5 years after the accident.

37. I do not conclude that the Defendant has demonstrated that the Belgian court is the more appropriate forum in this case. Causation and quantum issues concern primarily medical evidence and save for the Claimant's initial examination in a Brussels hospital following the accident, all his treatment and expert evidence has been in this jurisdiction. It would in my view be preferable for that to be considered in an English court, with assistance from Belgian expert witnesses in advising how the court's conclusions should be addressed under Belgian law. I note in the case of *Wood v Foyer Assurance SA* [2023] EWHC 1193 (KB) the judge had no difficulty in applying Belgian law to a fatal accident claim where the accident had occurred in Belgium, where liability was denied, and in the alternative contributory negligence was alleged.

38. In any event, if I am wrong in that conclusion, I consider that, applying the second test formulated by Lords Templeman and Goff in *Spiliada*, it would be unjust to the Claimant to confine him to pursue his claim to the Belgian police court, for the reasons that follow.

39. Although the Defendant relies upon the fact that the Claimant was able to travel to various European countries in 2019 and 2020 to support its submissions that he would be able to travel to Belgium for medical examinations and for the trial, it is apparent from the evidence of Mr Hull and Dr Towlerton that his physical injuries have led to unresolved pain issues and likely psychological problems that may have caused his current very limited living conditions, his limited mobility, his increased pain and care needs. The requirement to travel to Belgium for further medical examinations and for the trial would therefore be disadvantageous to him.

40. On the issue between the parties as to whether the Claimant understands Dutch, I consider that the Claimant's evidence is more credible. Mr Willems' evidence appears to be based upon his supposition as to what occurred in the police station. The Claimant's evidence is that he does not speak or understand Dutch, and that all his dealings with counterparts in Europe have been in English. It would be unusual to find someone for whom English is a first language who could speak and understand Dutch reasonably fluently unless perhaps they had a Dutch or Belgian parent or had lived or worked in the Netherlands or Belgium for a long period. The Claimant would be disadvantaged at trial, where the language of the court would be Dutch, and he would have to rely entirely on interpreters, and he may to some extent be disadvantaged in his dealings with Belgian medical experts. He may be

disadvantaged, again to some extent, in dealing with his legal representative in Belgium, and in operating in an unfamiliar environment.

41. The Claimant has incurred legal costs and disbursements in England, and it has not suggested by the Defendant that it would compensate him for those costs and disbursements if the proceedings were to be stayed. The Defendant has submitted that the Claimant entered into a CFA after the Brexit transition period, and his solicitors should have been aware that it was always open to the Defendant to seek a stay in favour of the Belgian court. However, the Defendant was dealing with the intended claim in England from 14 December 2020, when his letter of claim was acknowledged by AXA UK, who continued to act as agent for the Defendant in relation to the claim. There was no suggestion from that time until 18 January 2024, when the Claimant was served with the Belgian writ of summons, without prior notification, that the Defendant intended to challenge the High Court as the most appropriate forum. Accordingly the Defendant has by that omission led the Claimant to incur no doubt further significant costs in pursuing his claim in this jurisdiction.

42. The Claimant is also likely to have to make up any shortfall in legal costs in the Belgian proceedings from his damages, where there is no suggestion that similar funding arrangements to those he has with his English solicitors would be available.

43. I therefore conclude that the Defendant's application be dismissed.

ANNEX

Chronology

DATE	EVENT
15.03.19	C injured in road traffic accident in Belgium. C a pedestrian crossing a road at Riglaan in Zaventem near Brussels airport when struck by a car which was insured by D.
21.3.19	C contacted by D in relation to the accident by phone and email, the latter stating that D's instructions were to lead the file to "a friendly settlement".
11.09.20	C's previous solicitors (Din Solicitors) contact AXA UK.
23.03.21	AXA UK notify Din Solicitors that it has instructions from AXA that it admits liability.
11.04.22	CFA with Stewarts signed after C ceased to instruct Din Solicitors.
16.08.23	D's solicitors Clyde & Co. confirm to Stewarts that they are instructed by D, but not to accept service of proceedings.
21.08.23	Claim form issued seeking damages in excess of £300,000, naming AXA Belgium as D averring applicability of Belgian law. On the same date, D's solicitors give an address for service in Belgium.
08.09.23	Master Dagnall gives permission to serve out of the jurisdiction.
10.10.23	D's solicitor confirms that they are now nominated to accept service.
18.10.23	C sends claim form and associated documents to D's solicitor by email.
19.10.23	Certificate of service filed.
23.11.23	D's solicitor offers dates for assessment by D's proposed orthopaedic expert and offer a £30,000 interim payment.
14.12.23	D instructs Belgian lawyer to issue proceedings in Belgium, but D's solicitors in UK not informed.
15.12.23	D makes interim payment of £30,000.
10.01.24	C's solicitor emails pointing out no defence served. Response was that proceedings had not been served. Email of 18.10.23 re-sent by C's solicitor and acknowledged by D's solicitor, stating that original email missed. Acknowledgment of Service, notice

	of acting and consent order re extending time for filing defence all sent. AOS checked box "I intend to defend all of this claim."
15.01.24	Writ of summons issued by D against (1) Municipality of Zaventem and (2) C to appear at the Police Court of Vilvoorde on 22.02.24.
17.01.24	Defence signed admitting liability and putting C to proof of injuries, losses and expenses.
18.01.24	Defence served by email. No jurisdictional point taken.
18.01.24	Belgian writ of summons served on C directly.
26.01.24	Letter from C's solicitor to D's English solicitors sending copy of Belgian writ which had been served on C directly. This is the first D's English advisers know of the Belgian proceedings.
30.01.24	AXA Belgium write to the Defendant's Belgian lawyer to say that they have no knowledge of the proceedings in England.
13.02.24	Application notice issued by C for judgment pursuant to CPR 14.4 following D's admission of liability.
19.02.24	Belgian lawyer instructed by C files statement of case in Belgian proceedings referring to English proceedings already issued where D has not challenged English court's jurisdiction, seeks dismissal of Belgian claim and continuation of the claim in England.
22.02.24	First hearing of Belgian case. Case adjourned to 25.04.24.
23.02.24	D's application for relief from sanction, declaration and stay on grounds that the English Court is not the appropriate forum.
26.02.24	Order of Master Dagnall adjourning C's application for judgment to be heard with D's application for a stay, and giving directions.
27.02.24	Hearing of applications before Master Fontaine.
25.04.24	Date for next hearing in Belgian case, at which time the court is due to rule *inter alia* on C's request that the Belgian claim be stayed or dismissed in favour of the English claim.