Trinity Term
[2013] UKSC 44
On appeal from: [2011] EWCA Civ 1571

JUDGMENT

Abela and others (Appellants) *v* Baadarani (Respondent)

before

Lord Neuberger, President
Lord Clarke
Lord Sumption
Lord Reed
Lord Carnwath

JUDGMENT GIVEN ON

26 June 2013

Heard on 10 and 11 April 2013

Appellant	*Respondent*
Clive Freedman QC Tim Penny (Instructed by PCB Litigation LLP)	Andrew Onslow QC Paul Greatorex (Instructed by M&S Solicitors Ltd)

LORD CLARKE (with whom Lord Neuberger, Lord Reed and Lord Carnwath agree)

Introduction

1. The question for decision in this appeal is whether there has been good service of the claim form in this action on the respondent.

2. This is an appeal against an order of the Court of Appeal (Arden, Longmore and McFarlane LJJ) made on 15 December 2011 in which they set aside the orders of a number of judges and, in particular, an order of Sir Edward Evans-Lombe ("the judge") made on 28 January 2011 in which he declared, pursuant to CPR 6.37(5)(b) and/or 6.15(2), that the steps taken on 22 October 2009 to bring the claim form to the attention of the respondent amounted to good service of the claim form. The Court of Appeal held that the judge should not have made that declaration, that various extensions of the validity of the claim form for service should not have been granted, that the respondent had not been properly served with the claim form and that it followed that the claim must be dismissed. The principal issue in this appeal is whether the Court of Appeal was correct to hold that the judge should not have declared that the events of 22 October 2009 amounted to good service of the claim form.

The claims

3. As stated in the agreed statement of facts and issues, the underlying claim is for damages for fraud in connection with a contract for the purchase of shares in an Italian company called Gama SpA ("Gama"), made in March 2002, between the third appellant, as purchaser, and the respondent and Cicines Holdings Ltd ("Cicines"), as vendors, for a total consideration of US$14m. The contract expressly provided that it was governed by English law and contained a non-exclusive English jurisdiction clause. The appellants claim that the shares were worthless or worth far less than the amount paid for them. The claim alleges that the fraud involved corruption on the part of a Mr Haan, a lawyer for the appellants, who acted for them in connection with the sale and is said also to have acted secretly for the respondent without the appellants' knowledge.

4. The claim form in this action was issued on 30 April 2009, following the settlement of an action ("the Haan action") by the appellants against Mr Haan and a firm of solicitors ("Hammonds") who were said to be vicariously liable for the

torts of Mr Haan, in order to recover such part of the moneys paid under the contract as were not recovered in that action. The background facts are set out in some detail by the judge at paras 2 to 12 of his judgment of 28 January 2011, [2011] EWHC 116 (Ch). It is not necessary to set them out here, save to note that the action against Mr Haan and Hammonds came to trial on 11 March 2009 and was settled after eight days by a payment by the defendants in that action to the appellants of a sum which included costs. The claims in this action mirror those in the Haan action, although, if this action were to succeed, credit would presumably have to be given for sums recovered in the Haan action.

5. The causes of action pleaded in this action are fraudulent misrepresentation and/or conspiracy and/or dishonest assistance and/or unconscionable bargain and/or undue influence, arising out of the alleged bribery and corruption of Mr Haan in order to bring about the contract for the purchase of shares in Gama in March 2002. They are summarised by the judge at para 19 of his judgment. The claims were brought against both the respondent and Cicines, but Cicines is not a party to this appeal.

Permission to serve the proceedings out of the jurisdiction and the claimants' attempts to serve them

6. It follows from the fact that the claim form was issued on 30 April 2009 that its validity for service out of the jurisdiction would expire after six months, on 29 October 2009. The appellants took no steps for some three and a half months until they instructed counsel to settle the particulars of claim in mid-August 2009. The particulars of claim were signed on 9 September 2009 and on 14 September 2009 an application for permission to serve the proceedings on the respondent outside the jurisdiction was made to Morgan J, without notice to the respondent. Both the particulars of claim and a detailed skeleton argument were put before the court. Morgan J was satisfied that there was a good arguable case for service out of the jurisdiction and for the extension of the validity of the claim form. By an order made on 14 September 2009, he gave permission under CPR 6.36 and 6.37 to serve the claim form and all other documents upon the respondent at an address at Farid Trad Street in Beirut in Lebanon ("the Farid Trad Street address"). He extended the time for serving the claim form from 29 October 2009 until 31 December 2009 and, to the extent required, gave permission to serve the claim form and documents by alternative means, namely by personal service of an untranslated copy of all the documents at the Farid Trad Street address.

7. The evidence before Morgan J comprised the first and second witness statements of Mr Mascarenhas of the appellants' solicitors and the first witness statement of the appellants' Lebanese lawyer, Mr Houssami. The evidence in support of the application included the following. The address in the claim form

was in fact that of the respondent's lawyer in Beirut. The respondent's home address was believed to be the Farid Trad Street address, which was the appropriate address for service if he was to be served personally. That belief was based on what Mr Houssami had been told by individuals not identified in his witness statement and, more importantly, on the fact that he had previously effected service of legal proceedings there in late 2006 or early 2007 by leaving the documents with the respondent's wife. Lebanon was not a party to any bilateral convention on service of judicial documents and, in particular, the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (1965) (Cmnd 3986) (the "Hague Service Convention") did not apply. Service of originating process through the judicial authorities or the British Consulate would be likely to take several months.

8. The appellants' evidence is that Mr Houssami used a notary to seek to serve the respondent by causing a service agent or clerk to attend at the Farid Trad Street address over a period of four consecutive days between 7 am and 4 pm, which were official working hours. The respondent could not be located at that address. The respondent denies that he lived there. However, on 22 October 2009, an untranslated copy of the claim form, which was in English, together with other relevant documents were delivered to the offices of Mr Azoury, who was the respondent's Lebanese lawyer in Beirut. This was not the method of service authorised by the order of Morgan J, although on the respondent's application to set aside the various orders of the court, including the order of Morgan J, which came before the judge, the appellants contended that it amounted to good service on the respondent under Lebanese law. However, the Court of Appeal resolved this issue against the appellants, and there is no appeal against that decision.

9. The appellants continued to try to effect service through diplomatic channels at the Farid Trad Street address. They also obtained Arabic translations of the documents for service and a request for service out was delivered to the Foreign Process Section of the High Court on 19 November 2009 together with certified translations. There were some delays and, shortly before a hearing before Sales J on 16 December 2009, the appellants' solicitors were told by the Foreign and Commonwealth Office that service through diplomatic channels in Lebanon might take a further three months from receipt of the documents.

10. On 16 December Sales J heard a further without notice application and granted a four-month extension of the validity of the claim form from 31 December 2009 until 30 April 2010 so as to enable service to take place at the Farid Trad Street address through diplomatic channels. The use of diplomatic channels caused further delays. Under cover of a letter dated 11 February 2010, Mr Azoury communicated with the appellants' solicitors and returned the documents received by him on 22 October 2009. In the letter he noted that the address for service in the order of 14 September 2009, namely the Farid Trad

Street address, was not that of the respondent, who had not to his knowledge ever lived there or had any connection with it. He further said that he had never had instructions to accept service of documents other than in connection with the Lebanese proceedings (referred to in para 15 below) and that the respondent had confirmed that that was the case. He gave no indication where the respondent could be served.

11. On 17 February 2010, the appellants' solicitors, PCB Litigation ("PCB"), replied to the letter dated 11 February asserting that Mr Azoury held a general power of attorney to act on behalf of the respondent in any legal proceedings, that the respondent had expressly elected Mr Azoury's office as a domicile in the power of attorney and that the proceedings were validly served under Lebanese law. If that was not accepted, they asked Mr Azoury to provide them with the respondent's usual address and to agree a date and time for service on the respondent. Mr Azoury replied that the general power of attorney could only be used to authorise him to represent the respondent when expressly instructed to do so. He did however add that the respondent would instruct English solicitors, which he did in the form of M&S Solicitors ("M&S"). Correspondence ensued between PCB and M&S during which M&S made it clear that it was the respondent's case that he had no obligation to accept service of the proceedings, to make himself available for service or to provide an address for service. No agreement was reached.

12. By an application notice dated 22 March 2010, the appellants applied without notice under CPR 6.15 and/or 6.37(5)(b) for an order (1) that the steps already taken to serve the claim form amounted to good service; and/or (2) that the appellants be permitted to serve the claim form and other documents by alternative means, namely upon the respondent's English or Lebanese solicitors; and (3) that the time for service of the claim form be extended. Correspondence between the parties ensued and the application was adjourned by David Richards J. The adjourned application came on for hearing before Lewison J on 14 April 2010 on notice to M&S, who wrote a detailed letter dated 25 March which was put before the court at their request.

13. Lewison J made a number of orders on 14 April 2010. They included, by paragraph 1, (without prejudice to paragraph 2) a further extension of the time for serving the claim form to 30 June 2010 and, by paragraph 2 (without prejudice to paragraph 1) an order permitting the appellants to serve the claim form by alternative means, that is by service on the respondent's English or Lebanese solicitors. The order extending time for service was made in case the alternative service order was set aside. In addition the judge adjourned the appellants' application for an order that the steps already taken on 22 October 2009 to bring the claim form to the attention of the respondent amounted to good service. He adjourned that application generally but gave the appellants permission to restore

it. Lewison J gave a short judgment, to which I will refer below, which is of some importance because it was subsequently incorporated *in extenso* into the judgment of the judge on the subsequent hearing *inter partes*. In the event, service was duly effected by alternative means on the respondent's English solicitors in accordance with the order of 14 April 2010 and the respondent acknowledged service on 1 May 2010.

Inter partes hearing

14. On 21 May 2010 the respondent issued an application to set aside the various orders that had been made in the action. The application came before the judge, who heard it over four days from 7 December 2010. He gave judgment on 28 January 2011. He set out the background facts in detail between paras 1 and 19. He considered first the respondent's application to set aside the order of Morgan J giving permission to serve out of the jurisdiction. He first rejected the respondent's submission that there was no real issue between the parties which it is reasonable for the court to try under CPR 6.37(2). The respondent relied on two grounds, first that the effect of the settlement of the Haan action was to settle the appellants' claims against the respondent and, second, that the claims were time-barred. The judge held at paras 28 and 29 that the settlement agreement did not have that effect. As to limitation he held that, although the cause of action accrued on 26 March 2002 and would thus be time-barred as being more than six years before the issue of the claim form on 30 April 2009, the appellants had a good arguable case that they did not discover the fraud until 26 June 2003 or, alternatively May 2003, and that they could not have discovered it with reasonable diligence before 1 May 2003. It followed that the judge held that the appellants had a good arguable case that the claims were not time barred when the claim form was issued on 30 April 2009. The judge discussed this point in detail between paras 30 and 37 of his judgment.

15. The judge further rejected the respondent's case that England was not the *forum conveniens* and that permission to serve out should be refused under CPR 6.37(3). The judge discussed this point, again in detail, at paras 38 to 56. He concluded the point in favour of the appellants. He noted at para 54 that the appellants had given an undertaking to Morgan J not to pursue the claims in these proceedings in an action in Lebanon, which was both criminal and civil and (as explained by the judge at para 11) included the claims advanced in this action. None of these issues is relevant to this appeal.

16. The judge thus did not reach the service issues until para 57 of his judgment. The respondent applied for orders setting aside the various orders extending time for service of the claim form, by Morgan J from 29 October to 31 December 2009, by Sales J from 31 December 2009 to 30 April 2010 and by

Lewison J from 30 April 2010 to 30 June 2010. He also applied for an order setting aside Lewison J's order permitting service by alternative means on the respondent's Lebanese and English lawyers. The appellants cross-applied for a declaration that in the events which had happened there had been good service of the claim form on the respondent and for an order further extending the time to enable the claim form to be served through British Consular channels should the previous extensions of time stand but the order for alternative service made by Lewison J be set aside.

17. The judge considered first the appellants' cross-application for a declaration. This was in effect the restoration of the appellants' application for a declaration that the steps already taken amounted to good service which Lewison J had adjourned. The judge granted the application and, as stated above, made a declaration, pursuant to CPR 6.37(5)(b) and/or 6.15(2), that the steps taken on 22 October 2009 to bring the claim form to the attention of the respondent amounted to good service of the claim form.

The CPR

18. The provisions of the CPR that are relevant for present purposes are these:

> "**Service of the claim form by an alternative method or at an alternative place**
>
> 6.15
>
> (1) Where it appears to the court that there is a good reason to authorise service by a method or at a place not otherwise permitted by this Part, the court may make an order permitting service by an alternative method or at an alternative place.
>
> (2) On an application under this rule, the court may order that steps already taken to bring the claim form to the attention of the defendant by an alternative method or at an alternative place is good service.
>
> (3) An application for an order under this rule-
>
> (a) must be supported by evidence; and (b) may be made without notice.
>
> (4) An order under this rule must specify –
>
> (a) the method or place of service; (b) the date on which the claim form is deemed served; and (c) the period for - (i) filing an acknowledgment of service; (ii) filing an admission; or (iii) filing a defence.

Power of the court to dispense with service of the claim form

6.16
(1) The court may dispense with service of a claim form in exceptional circumstances.
…

Application for permission to serve the claim form out of the jurisdiction

6.37

…

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

…

(b) it may –

(i) give directions about the method of service; and
(ii) give permission for other documents in the proceedings to be served out of the jurisdiction.

Methods of service - general provisions

6.40
(1) This rule contains general provisions about the method of service of a claim form or other document on a party out of the jurisdiction.

…

Where service is to be effected on a party out of the United Kingdom

(3) Where a party wishes to serve a claim form or other document on a party out of the United Kingdom, it may be served-

(a) by any method provided for by-

(i) rule 6.41 (service in accordance with the Service Regulation);
(ii) rule 6.42 (service through foreign governments, judicial authorities and British Consular authorities); or
(iii) rule 6.44 (service of claim form or other document on a State);

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

(c) by any other method permitted by the law of the country in which it is to be served.

(4) Nothing in paragraph (3) or in any court order authorises or requires any person to do anything which is contrary to the law of the country where the claim form or other document is to be served.

…

Service of a claim form

…

7.5(2) Where the claim form is to be served out of the jurisdiction, the claim form must be served in accordance with Section IV of Part 6 within 6 months of the date of issue.

Extension of time for serving a claim form

7.6

(1) The claimant may apply for an order extending the period for compliance with rule 7.5.

(2) The general rule is that an application to extend the time for compliance with rule 7.5 must be made

(a) within the period specified by rule 7.5; or (b) where an order has been made under this rule, within the period for service specified by that order.

(3) If the claimant applies for an order to extend the time for compliance after the end of the period specified by rule 7.5 or by an order made under this rule, the court may make such an order only if (a) the court has failed to serve the claim form; or (b) the claimant has taken all reasonable steps to comply with rule 7.5 but has been unable to do so; and (c) in either case, the claimant has acted promptly in making the application.

(4) An application for an order extending the time for compliance with rule 7.5 - (a) must be supported by evidence; and (b) may be made without notice."

19. As the judge noted at para 66, before him the question was raised whether rule 6.15(2) could be used, as it is used in respect of issues as to service in proceedings where the parties are within the jurisdiction, retrospectively to accept the parties' actions as constituting good service where the defendant is outside the jurisdiction. It was conceded before this court that rule 6.15(2) can be so used.

20. For my part, I would accept that that concession was correctly made. The judge was to my mind correct to hold in para 71 that, just as the power under rule 6.15(1) prospectively to permit alternative service in a service out case is to be found in rule 6.37(5)(b)(i) or is to be implied generally into the rules governing service abroad (because that must have been the intention of the drafter of the 2008 amendments to CPR rule 6), so rule 6.37(5)(b)(i) is to be construed as conferring the power, via rule 6.15(2), retrospectively to validate alternative service in such a case, or such a power is to be implied generally into the rules governing service abroad. In any event, the contrary was not contended before this court.

21. In para 72 the judge, in my opinion correctly, added that the power retrospectively to validate alternative service in a service out case involves consideration of whether events in the foreign country in question were capable of constituting proper service of the proceedings "in the sense that the court can be satisfied that the proceedings have been properly brought to the attention of the defendant". As I will explain, that is an important point in the context of this appeal.

22. The appellants' argument is that the court had power under rule 6.15(2) to make an order that steps already taken to bring the claim form to the attention of the respondent by an alternative method constituted good service. The steps taken were the delivery of the claim form and other documents, including the particulars of claim, at Mr Azoury's office in Beirut on 22 October 2009, which was within the initial six months' validity of the claim form.

23. Orders under rule 6.15(1) and, by implication, also rule 6.15(2) can be made only if there is a "good reason" to do so. The question, therefore, is whether there was a good reason to order that the steps taken on 22 October 2009 in Beirut to bring the claim form to the attention of the respondent constituted good service of the claim form upon him. The judge held that there was. In doing so, he was not exercising a discretion but was reaching a value judgment based on the evaluation of a number of different factors. In such a case, the readiness of an appellate court to interfere with the evaluation of the judge will depend upon all the circumstances of the case. The greater the number of factors to be taken into account, the more reluctant an appellate court should be to interfere with the decision of the judge. As I see it, in such circumstances an appellate court should only interfere with that decision if satisfied that the judge erred in principle or was wrong in reaching the conclusion which he did.

24. It is important to note that rule 6.15 applies to authorise service "by a method or at a place not otherwise permitted" by CPR Part 6. The starting point is thus that the defendant has not been served by a method or at such a place otherwise so permitted. It therefore applies in cases (and only in cases) where

none of the methods provided in rule 6.40(3), including "any other method permitted by the law of the country in which it is to be served" (see rule 6.40(3)(c)), has been successfully adopted. The only bar to the exercise of the discretion under rule 6.15(1) or (2), if otherwise appropriate, is that, by rule 6.40(4), nothing in a court order must authorise any person to do anything which is contrary to the law of the country where the claim form is to be served. So an order could not be made under rule 6.15(2) in this case if its effect would be contrary to the law of Lebanon. Although it was held that delivery of the claim form was not permitted service under Lebanese law, it was not suggested or held that delivery of the documents was contrary to Lebanese law or that an order of an English court that such delivery was good service under English law was itself contrary to Lebanese law.

The judgment at first instance

25. As stated above, the judge set out Lewison J's judgment *in extenso*. At para 59 the judge identified the parts of the evidence which had been before Lewison J and he then quoted paras 2 to 4 of the judgment as follows:

> "2. The underlying claim raises serious allegations of fraud against the Defendant, Mr Baadarani; who is a Lebanese national. Attempts have been made to serve via the Consular authorities in the Lebanon in accordance with CPR Part 6, rule 42. Those attempts have proved very difficult, not least, because there is considerable uncertainty about the method by which service should be effected which, according to the evidence, goes back to a Treaty of the 1920s between the Lebanon and France. Nonetheless, the claim form and its accompanying documents were, to use a neutral word, delivered to Mr Baadarani's Lebanese lawyer, who holds a power of attorney, which enables him to conduct proceedings, including proceedings in this jurisdiction. on Mr Baadarani's behalf. That lawyer signed for the papers and retained them for some four months before returning them. According to the claimant's Lebanese expert, that amounts to good service under Lebanese law. Nonetheless, Mr Baadarani appears to be denying that he has been properly served and has declined to provide an address for service.
>
> 3. In addition to delivery of those papers to the Lebanese lawyer, Mr Baadarani has instructed a firm of English solicitors called M & S Solicitors Ltd, who have taken up the cudgels on his behalf and so far as the evidence goes, have themselves at least had sight of the claim form and the other relevant documents. They have written a long letter of 25 March 2010, which has been placed before me and

to which Mr Penny, who appears on behalf of the claimant, has quite properly referred. The points made in that letter have been addressed in the fifth witness statement of Mr Mascarenhas, which I have read.

4. The purpose of service of proceedings, quite obviously, is to bring proceedings to the notice of a defendant. It is not about playing technical games. There is no doubt on the evidence that the defendant is fully aware of the proceedings which are sought to be brought against him, of the nature of the claims made against him and of the seriousness of the allegations.

The provisions of CPR rule 6.37(5) say that the court may, in giving permission to serve out of the jurisdiction:

'Give directions about the method of service.'

That is a quite general provision and, as it seems to me, would ordinarily mean that the court would make directions, which did not involve one of the prescribed methods of service dealt with by rule 6.40 and following. In other words, it is inherent in rule 6.37(5)(b)(i) that the court may make directions about alternative methods of service. Where the court is dealing with service of proceedings within the jurisdiction the court also has the power to declare that steps already taken to bring the proceedings to the notice of a defendant should count as good service. Mr Penny did at one stage submit that the same power applied to service out of the jurisdiction, but in the light of an interchange between him and me he is not pressing that submission and I am not ruling for or against it. I will adjourn that part of the application notice in case it becomes a live issue at a later date."

26. In para 60 the judge noted a number of points derived from Lewison J's judgment which he observed were based, not on the appellants' evidence, but on the evidence of Mr Azoury and on the respondent's solicitors' letter of 25 March 2010. In particular Lewison J found, not only that Mr Azoury retained the documents delivered on 22 October 2009, but that they or a copy of them had been in the hands of the respondents' English lawyers prior to writing their long letter of 25 March 2010. Lewison J found that the respondent must have been fully aware of the contents of the claim form. The judge concluded that such a finding of fact seemed to him inevitably to follow from Lewison J's other findings, which, because of their source, were in his judgment unchallengeable.

27. For present purposes, the critical part of the reasoning of the judge is in paras 73 and 74 of his judgment. They are in these terms:

> "73. In my judgment, the declaration sought by the claimants in this case should be made. The evidence before Lewison J and before me is sufficient to demonstrate that this is an appropriate case for the use of the power. The principal reasons for doing so are that the method of service through diplomatic channels in Lebanon has proved impractical and any attempt to pursue it further will lead to unacceptable delay and expense. B has demonstrated that he is unwilling to co-operate with service of the proceedings by disclosing his address in the Lebanon, but, and most importantly, it is clear that B, through his advisers, is fully apprised of the nature of the claim being brought.
>
> 74. The delivery of the claim form and supporting documents to B's Lebanese lawyer on 22 October 2009, which I have found is to be treated as good service of the proceedings, took place during the initial six-month period of validity of the claim form. Accordingly, my conclusion means that the three orders for extension of the validity of the claim form were unnecessary and I need not deal with the question of whether those orders are to be set aside as the first defendant contends. Nor need I deal with the claimants' application for a yet further extension of that validity."

28. The judge thus determined the issue of service on the basis that there was good reason for making the declaration sought under CPR rule 6.15(2). In short he held that there was a good reason to order that the steps taken to deliver the documents to Mr Azoury's offices in Beirut on 22 October 2009 and thus to bring the documents to the respondent's attention amounted to good service on him.

The Court of Appeal - discussion

29. The respondent appealed to the Court of Appeal against the making of that declaration. It appears to me that the central question on that appeal ought to have been whether the judge was entitled to make the declaration and that the appeal should have turned on the question whether, having afforded the decision of the judge appropriate respect, the Court of Appeal concluded that he erred in principle or was wrong in reaching the conclusion which he did.

30. However, that does not seem to have been the focus of the argument in the Court of Appeal. In the Court of Appeal Longmore LJ, with whom McFarlane and Arden LJJ agreed, first considered and, at paras 5 to 8, rejected the first ground of appeal, which again asserted that England was not the appropriate forum for these proceedings. The respondent has not sought to argue that point in this court.

31. As to service, Longmore LJ referred to some of the evidence in detail at paras 11 to 16. He then referred to the judgment and, in particular, to the declaration at para 17. At para 18 he said this:

> "It would be unusual (to say the least) for a judge to validate a form of service which was not valid by local law. It must follow that, although he does not spell it out, the judge must by implication be taken to have decided that the service which took place was valid by Lebanese law because he also decided that he would and should retrospectively validate the service that had taken place."

It was submitted by Mr Freedman QC on behalf of the appellants that the judge did not hold, either expressly or by implication, that the delivery of the documents on 22 October 2009 was good service under Lebanese law.

32. I would accept Mr Freedman's submission. The judge did not hold in paras 73 and 74 that there was good service under Lebanese law. If he had so held, there would have been no need for the declaration granted by the judge because the service would have been good service as service "by any other method permitted by the law of the country in which it is to be served" (see rule 6.40.(3)(c)), which in this case was of course Lebanon. As already explained, an order under rule 6.15(2) may only be made where there is a good reason to authorise service by a method or at a place not otherwise permitted by Part 6. The judge could, therefore, not have made the declaration if he had taken the view that the delivery of the documents on 22 October was good service under Lebanese law. Moreover, it is in my opinion clear from the first sentence of para 74 that the judge was not holding that the delivery was good service under Lebanese law but that it was "to be treated as good service" under English law pursuant to CPR 6.15(2).

33. The question is whether the judge was entitled to hold that there was a good reason to order that the delivery of the documents to Mr Azoury on 22 October 2009 was to be treated as good service. Whether there was good reason is essentially a matter of fact. I do not think that it is appropriate to add a gloss to the test by saying that there will only be a good reason in exceptional circumstances. Under CPR 6.16, the court can only dispense with service of the claim form "in exceptional circumstances". CPR 6.15(1) and, by implication, also 6.15(2) require

only a "good reason". It seems to me that in the future, under rule 6.15(2), in a case not involving the Hague Service Convention or a bilateral service treaty, the court should simply ask whether, in all the circumstances, there is good reason to order that steps taken to bring the claim form to the attention of the defendant is good service.

34. This is not a case in which the Hague Service Convention applies or in which there is any bilateral service convention or treaty between the United Kingdom and Lebanon. In the courts below, the case was argued throughout on that basis and, although there was a hint in the argument before this court that that might not be the case, it was accepted that the appeal should be determined on that basis. It follows that an alternative service order does not run the risk of subverting the provisions of any such convention or treaty: cf the reasoning of the Court of Appeal in *Knauf UK GmbH v British Gypsum Ltd* [2002] 1 WLR 907, paras 46 to 59 and *Cecil v Bayat* [2011] EWCA Civ 135, [2011] 1 WLR 3086, paras 65 to 68 and 113. In particular, Rix LJ suggested at para 113 of the latter case that it may be that orders permitting alternative service are not unusual in the case of countries with which there are no bilateral treaties for service and where service can take very long periods of up to a year. I agree. I say nothing about the position where there is a relevant convention or treaty.

35. As stated above, in a case of this kind the court should simply ask itself whether, in all the circumstances of the particular case, there is a good reason to make the order sought. It should not be necessary for the court to spend undue time analysing decisions of judges in previous cases which have depended upon their own facts.

36. The mere fact that the defendant learned of the existence and content of the claim form cannot, without more, constitute a good reason to make an order under rule 6.15(2). On the other hand, the wording of the rule shows that it is a critical factor. As the editors of the 2013 edition of the White Book note (vol 1, para 6.15.5), rule 6.15(2) was designed to remedy what were thought to be defects as matters stood before 1 October 2008. The Court of Appeal had held in *Elmes v Hygrade Food Products plc* [2001] EWCA Civ 121 that the court had no jurisdiction to order retrospectively that an erroneous method of service already adopted should be allowed to stand as service by an alternative method permitted by the court. The editors of the White Book add that the particular significance of rule 6.15(2) is that it may enable a claimant to escape the serious consequences that would normally ensue where there has been mis-service and, not only has the period for service of the claim form fixed by CPR 7.5 run, but also the relevant limitation period has expired.

37. Service has a number of purposes but the most important is to my mind to ensure that the contents of the document served, here the claim form, is communicated to the defendant. In *Olafsson v Gissurarson (No 2)* [2008] EWCA Civ 152, [2008] 1 WLR 2016, para 55 I said, in a not dissimilar context, that

> "… the whole purpose of service is to inform the defendant of the contents of the claim form and the nature of the claimant's case: see eg *Barclays Bank of Swaziland Ltd v Hahn* [1989] 1 WLR 506, 509 per Lord Brightman, and the definition of 'service' in the glossary to the CPR, which describes it as 'steps required to bring documents used in court proceedings to a person's attention...'"

I adhere to that view.

38. It is plain from paragraph 73 of his judgment quoted above that the judge took account of a series of factors. He said that, most importantly, it was clear that the respondent, through his advisers was fully apprised of the nature of the claim being brought. That was because, as the judge had made clear at para 60, the respondent must have been fully aware of the contents of the claim form as a result of it and the other documents having been delivered to his lawyers on 22 October in Beirut and communicated to his London solicitors and to him. As Lewison J said at para 4 of his judgment (quoted above):

> "The purpose of service of proceedings, quite obviously, is to bring proceedings to the notice of a defendant. It is not about playing technical games. There is no doubt on the evidence that the defendant is fully aware of the proceedings which are sought to be brought against him, of the nature of the claims made against him and of the seriousness of the allegations."

I agree.

39. In addition the judge had regard to the fact that service through diplomatic channels in Lebanon had proved impractical and that any attempt to pursue it further would lead to unacceptable delay and expense. Furthermore, the judge noted that the respondent was unwilling to co-operate with service of the proceedings by disclosing his address in the Lebanon. While I accept the submission made on behalf of the respondent that he was not under a duty to disclose his address, his refusal to co-operate does seem to me to be a highly relevant factor in deciding whether there was a good reason for treating as good

service the delivery of the documents in Beirut within the six months' validity of the claim form in circumstances in which the documents came to his knowledge.

40. It was submitted that the judge did not have regard either to the three and a half month delay between the time the appellants issued the claim form and the time they instructed counsel to settle particulars of claim or to the fact that the claim was time-barred. I would not accept those submissions. It is true that he did not expressly refer to either point in the part of his judgment dealing with service but I do not think that he can have been unaware of either point. As to the time bar, the judge was plainly well aware of it. Indeed, he discussed the limitation defence in detail between paras 30 and 33. The significance of the time bar defence was in the minds of the parties and the judge throughout. The judge thought that there was good reason for making an order under rule 6.15(2) notwithstanding that defence and was, in my view, entitled to take that view. As to the three and a half months delay, the judge must have been aware of it. It seems to me to be likely that he took the view that, given the difficulties which faced the appellants in serving the claim form, the delay made no difference. He was entitled to do so. The critical points were that the documents were delivered within the six months' validity of the claim form and brought to the respondent's attention and that service via diplomatic channels had proved impracticable.

41. In these circumstances I do not think that the judge made an error of principle. He correctly directed himself that the question was whether there was a good reason to order under rule 6.15(2) that the steps already taken to bring the claim form to the attention of the respondent constituted good service. He answered that question in the affirmative and was entitled to reach that conclusion.

42. The Court of Appeal did not focus on the reasoning of the judge. The essential reasoning of the Court of Appeal is set out in the judgment of Longmore LJ at paras 22 to 32. He considered first (between paras 22 and 28) whether service on Mr Azoury was good service under Lebanese law and concluded at para 29 that it was not. As I indicated above, the appellants do not challenge that conclusion.

43. There are five respects in which I respectfully disagree with the conclusions reached by the Court of Appeal. The first is that referred to in paras 31 and 32 above, namely that the judge did not decide that there had been valid service of the claim form under Lebanese law.

44. The second is related to the first. In paras 22 and 23 Longmore LJ said this:

> "22. [CPR 6.37(5)(b)(i)] authorises the court therefore to make an order for alternative service pursuant to CPR 6.15(1) and also to make such an order with retrospective effect pursuant to CPR 6.15(2). Nevertheless the exercise of this power is liable to make what is already an exorbitant power still more exorbitant and I am persuaded by Mr Greatorex that it must indeed be exercised cautiously and, as Stanley Burnton LJ said in *Cecil v Bayat* [2011] 1 WLR 3086, para 65, should be regarded as exceptional. It would, therefore, usually be inappropriate to validate retrospectively a form of service which was not authorised by an order of an English judge when it was effected and was not good service by local law. CPR 6.40 permits three methods of service including service through the British Consular authorities and any additional method of service should usually not be necessary. The fact that CPR 6.40(4) expressly states that nothing in any court order can authorise or require any person to do anything contrary to the law of the country in which the document is to be served does not mean that it can be appropriate to validate a form of service which, while not itself contrary to the local law in the sense of being illegal, is nevertheless not valid by that law.
>
> 23. It follows that a claimant who wishes retrospective validation of a method of service in a foreign country must (save perhaps where there are adequate safeguards which were not present in this case) show that the method of service which is to be retrospectively validated was good service by the local law. Service on Mr Azoury would not be regarded as good service on Mr Baadarani as a matter of English law merely because Mr Azoury was clothed with a general power of attorney. Can Mr Freedman show that the position is any different in Lebanese law?"

45. I do not agree that for the court to make an order under rule 6.15(2) is "to make what is already an exorbitant power still more exorbitant". I recognise of course that service out of the jurisdiction has traditionally been regarded as the exercise of an exorbitant jurisdiction. That is a consideration which has been of importance in determining whether permission to serve out of the jurisdiction should be granted, although in this regard I agree with the approach set out by Lord Sumption in his judgment. In any event, in this case, it is now accepted that it was proper to serve the claim form out of the jurisdiction. The rules as to the method of service set out above seem to me to have the legitimate sensibilities of other states in mind. It is for that reason that CPR 6.40(4) provides that nothing in CPR 6.40(3) or in any court order authorises or requires any person to do anything

which is contrary to the law of the country of service. I have already expressed my view that the order recognising the delivery of the claim form as alternative service under English law is not contrary to Lebanese law. Moreover it was not in breach of any convention or treaty but merely recognised that the claim form (and other documents) had been brought to the attention of the respondent. I do not think, therefore, that in a case not involving the Hague Service Convention or a bilateral service treaty, an order under rule 6.15(2) must be regarded as "exceptional" or, indeed as suggested in para 29 of Longmore LJ's judgment, that there must be a "very good reason" for it. As already stated, the CPR do not so provide. They merely require good reason.

46. My third reason for disagreeing with the Court of Appeal concerns para 23 of Longmore LJ's judgment, where he says that a claimant who wishes the court retrospectively to validate alternative service abroad must "(save perhaps where there are adequate safeguards which were not present in this case)" show that the method used was good service under the local law. As noted above, that would render rule 6.15(1) and (2) otiose. Without the words in brackets, the proposition in para 23 would not be correct. It is not however clear to me what safeguards the court had in mind. In any event, for the reasons already stated, Longmore LJ was wrong in my view to suggest that a court needs a "very good reason" to make an order under rule 6.15(2) where the steps taken did not constitute valid service under local law.

47. The fourth reason arises out of the Court of Appeal's reliance upon the fact that the appellants did not issue the claim form until nearly the end of the limitation period. At para 29 of his judgment, Longmore LJ stated:

> "29. Since, therefore, Mr Azoury had no authority in fact to accept service and since he did not, in any event, purport to do so, the delivery of the claim form and associated documentation to him did not, in my view, constitute good service in Lebanese law. I do not, therefore, think that the judge should have retrospectively validated that service as alternative service to that directed by Morgan J unless there was very good reason to do so. The only reason to do so was to avoid the claim becoming time-barred, which is not in itself a good reason (let alone an exceptional reason) for preserving a stale claim. Mr Freedman submits that both personal service and service through diplomatic channels had become impossible, but that impossibility (as to which there was very little evidence) has only arisen as a result of the dilatory way in which the claimants have pursued the English claim. They were asking for trouble by only issuing their claim form shortly before the limitation expired. If the claim form had been issued say four years earlier, and a diligent process server had been instructed, Mr Baadarani might well have been served at one of the

> three address identified by Mr Houssami in his witness statement and the order of Morgan J would have been complied with. Four years might even have been long enough for diplomatic channels to be effective but it is not suggested that Mr Baadarani could only be served in that manner. If it really was proving impossible to effect service over that long period, an application for alternative service could still have been made well before the six year period had expired and no retroactive gymnastics would have been necessary."

48. As I read para 29, the delay prior to the issue of the claim form was a significant part of the reasoning of the Court of Appeal, although, as I understand it, it was not a point taken on behalf of the respondent. I would accept the submission that (save perhaps in exceptional circumstances) events before the issue of the claim form are not relevant. The focus of the inquiry on an issue of this kind is not and (so far as I am aware) has never been on events before the issue of the writ or claim form. The relevant focus is upon the reason why the claim form cannot or could not be served within the period of its validity. The judge held that there was an issue to be tried on the question whether the appellants' claim was time-barred. In resolving the issues of service, the court had therefore to treat the claim form as issued in time.

49. This brings me to a consideration of the facts and to the fifth respect in which I respectfully disagree with the Court of Appeal. In para 31 Longmore LJ said this:

> "31. In the present case both the evidence of the fact (if it be a fact) that Mr Baadarani did in fact reside at the suggested address and the evidence of the attempt to serve him there was very meagre. That evidence does not, in my judgment, show that there was such an ineffective attempt at service to constitute a good reason for not serving him at that address in such a way as to justify even an original order for alternative service pursuant to CPR 6.15(1) let alone an order that a form of service unilaterally chosen by the claimants should be deemed to be good service pursuant to CPR 6.15(2)."

50. It appears that the respondent did not in fact reside at the Farid Trad Street address. However, there is no reason to think that the appellants did not genuinely think that he did. Moreover there is no evidence that they could have found out what his address was, especially in circumstances where he was refusing to tell them where he lived. If he did not live at the Farid Trad Street address, further attempts to serve him there would have proved fruitless.

51. In these circumstances, the judge was entitled to reach the conclusions of fact which he did. As the judge explained, there were difficulties in serving the claim form, the appellants cannot be blamed for failing to ascertain his address, especially in circumstances in which the respondent instructed his lawyers to refuse to tell the appellants what it was. Moreover, the claim form was delivered to Mr Azoury's office within the period of its validity, with the result that it came to the attention of the respondent. In all these circumstances he held that there was a good reason to grant the declaration. In my opinion there is no legitimate basis on which to interfere with that decision.

CONCLUSION

52. For these reasons I would allow the appeal and restore the declaration made by the judge. In these circumstances the other issues argued on the appeal do not arise.

LORD SUMPTION (with whom Lord Neuberger, Lord Reed and Lord Carnwath agree)

53. In his judgment in the Court of Appeal, Longmore LJ described the service of the English Court's process out of the jurisdiction as an "exorbitant" jurisdiction, which would be made even more exorbitant by retrospectively authorising the mode of service adopted in this case. This characterisation of the jurisdiction to allow service out is traditional, and was originally based on the notion that the service of proceedings abroad was an assertion of sovereign power over the Defendant and a corresponding interference with the sovereignty of the state in which process was served. This is no longer a realistic view of the situation. The adoption in English law of the doctrine of *forum non conveniens* and the accession by the United Kingdom to a number of conventions regulating the international jurisdiction of national courts, means that in the overwhelming majority of cases where service out is authorised there will have been either a contractual submission to the jurisdiction of the English court or else a substantial connection between the dispute and this country. Moreover, there is now a far greater measure of practical reciprocity than there once was. Litigation between residents of different states is a routine incident of modern commercial life. A jurisdiction similar to that exercised by the English court is now exercised by the courts of many other countries. The basic principles on which the jurisdiction is exercisable by the English courts are similar to those underlying a number of international jurisdictional conventions, notably the Brussels Convention (and corresponding regulation) and the Lugano Convention. The characterisation of the service of process abroad as an assertion of sovereignty may have been superficially plausible under the old form of writ ("We command you…"). But it

is, and probably always was, in reality no more than notice of the commencement of proceedings which was necessary to enable the Defendant to decide whether and if so how to respond in his own interest. It should no longer be necessary to resort to the kind of muscular presumptions against service out which are implicit in adjectives like “exorbitant”. The decision is generally a pragmatic one in the interests of the efficient conduct of litigation in an appropriate forum.

54. For these reasons I cannot share the starting point from which the Court of Appeal approached the present case. I consider that the appeal should be allowed for the reasons given in the judgment of Lord Clarke.