UK Supreme Court Rules on Service Abroad

On June 26, the UK Supreme Court delivered its judgment in Abela and others (Appellants) v Baadarani (Respondent)

The Court issued the following press summary.

JUSTICES: Lord Neuberger (President), Lord Clarke, Lord Sumption, Lord Reed, Lord Carnwath

BACKGROUND TO THE APPEAL

This case concerns the circumstances in which a court may make an order retrospectively declaring that steps taken by a claimant to bring a claim form to the attention of a defendant should be treated as good service.

On 30 April 2009, Mr Abela and his two companies brought a claim for damages for fraud against Mr Baadarani in connection with a contract for the purchase of shares in an Italian company which the appellants contend were worthless, or were worth far less than the amount for which they were purchased. In September 2009, permission was granted for the claim form and all other documents to be served on Mr Baadarani at an address at Farid Trad Street in Beirut, Lebanon. No relevant bilateral treaty on service of judicial documents existed between the UK and Lebanon, and the Hague Service Convention was not applicable. Time for serving the claim form was extended until 31 December 2009 and permission was granted, if necessary, to serve Mr Baadarani personally at the Farid Trad Street address. The appellants gave evidence that they had used a notary to seek to serve Mr Baadarani at the Farid Trad Street address by instructing a service agent or clerk to attend that property over a period of four consecutive days. Mr Baadarani could not, however, be found. He denies that he has ever lived at the Farid Trad Street address.

On 22 October 2009 a copy of the claim form and other relevant documents were delivered to the offices of Mr Baadarani's Lebanese lawyer in Beirut, Mr Azoury. That method of service had not been authorised by the judge and it is accepted it that was not good service under Lebanese law; Mr Azoury said that he had never

been given instructions to accept service of documents on behalf of Mr Baadarani save in connection with certain Lebanese proceedings. Mr Azoury gave no indication of where Mr Baadarani could be served. Arabic translations of the relevant documents were delivered to the Foreign Process Section of the High Court in November 2009 together with certified translations. The appellants were informed in December 2009 that service on Mr Baadarani in Lebanon via diplomatic channels could take a further three months. In April 2010, Lewison J extended time for service of the claim form and granted permission for the claim form to be served on Mr Baadarani by alternative means, namely via his English or Lebanese solicitors. An application by the appellants that the steps already taken to serve Mr Baadarani be treated as good service was adjourned. Service was subsequently effected by alternative means on Mr Baadarni's English solicitors in May 2010.

Mr Baadarani applied to set aside the various orders that had been made to extend time for service of the claim form and also sought to set aside the order permitting alternative service via Mr Baadarani's English and Lebanese solicitors. That application did not need to be determined because Sir Edward Evans-Lombe made a declaration at the request of the appellants, pursuant to rules 6.37(5)(b) and/or 6.15(2) of the Civil Procedure Rules (CPR), that the steps taken on 22 October 2009 constituted good service of the claim form. The Court of Appeal reversed that decision and held that the various extensions of time for service of the claim form should not have been granted. The claim was, therefore, dismissed. Mr Abela and the other appellants appealed to the Supreme Court.

JUDGMENT

The Supreme Court unanimously allows the appeal. Lord Clarke gives the leading judgment.

REASONS FOR THE JUDGMENT

- CPR 6.15(2) can be used retrospectively to validate steps taken to serve a claim form even if the defendant is not within the jurisdiction [21, 22].
- Orders under CPR 6.15(1) and (2) can be made only if there is "good reason" to do so. The judge's conclusion that there was a good reason to make an order under 6.15(2) constituted a value judgment based on an evaluation of a number of different factors. An appellate court should be

reluctant to interfere with such a decision [23].

- The Court of Appeal was wrong to say that the making of an order under CPR 6.15(2) in a service out case is an "exorbitant" power. It is not appropriate to say that such an order may only be made in "exceptional" circumstances, at any rate in a case in which there is no danger of subverting any international convention or treaty. The test under CPR 6.15(2) is simply whether there is good reason to make such an order. [33, 34, 45, 53].
- CPR 6.15(2) applies only in cases where none of the methods of services permitted by CPR 6.40(3) have been successfully adopted, including any method of service permitted by the law of the country in which the defendant is to be served. A claimant seeking an order under CPR 6.15(2) is not, therefore, required to show that the method of service used was good service under local law. The Court of Appeal was, in any event, wrong to say that the judge had concluded that service of the documents on Mr Azoury was good service under Lebanese law; if the judge had reached that conclusion, there would have been no reason for him to make an order under CPR 6.15(2) [24, 32, 46].
- The only bar to the use of CPR 6.15(2), if otherwise appropriate, is the rule, under CPR 6.40(4) that nothing in a court order may authorise any person to do anything which is contrary to the law of the country where the claim form is to be served. Although delivery of the claim form and other documents to Mr Azoury was not good service on Mr Baadarani under Lebanese law, it has not been suggested that it was contrary to Lebanese law [24].
- 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 CPR 6.15(2). That is, however, a critical factor. Service has a number of purposes, but the most important is to ensure that the contents of the document served are communicated to the person served. [36].
- The fact that a claimant has delayed before issuing the claim form is not, save perhaps in exceptional circumstances, relevant when determining whether an order should be made under CPR 6.15(2). The focus must be on the reason why the claim form cannot or could not be served be served within the period of its validity [48].
- The judge was entitled to conclude that an order under CPR 6.15(2) was appropriate. The judge correctly took account of the fact that Mr

Baadarani, through his English and Lebanese lawyers, was fully apprised of the nature of the claim being brought against him. The claim form and other documents were delivered to him within the initial period of validity of the claim form. He also took account of the fact that service in Lebanon via diplomatic channels had proved impractical and that Mr Baadarani was unwilling to cooperate by disclosing his address to the appellants. Whilst Mr Baadarani had no obligation to disclose his address, his refusal to cooperate was a highly relevant factor in determining whether there was a good reason to make an order under CPR 6.15(2). The judge was entitled to take the view that an order under CPR 6.15(2) was appropriate notwithstanding the three and a half month delay between the issue of the claim form and the application for permission to service the claim out of the jurisdiction, and despite the fact that the claim against Mr Baadarani may be time barred [37, 39, 40].