[2015 Gib LR 196]

HUDSON v. LAWTON

SUPREME COURT (Jack, J.): May 28th, 2015

Civil Procedure—service of process—address for service—to comply with CPR, r.6.23(3), party not required to reside, carry on business or regularly collect mail at address provided for service—Gibraltar address sufficient for defendant who moves to UK after proceedings started

The claimant sued the defendant to recover a debt of £19,500 plus £750 in respect of interest and costs.

The parties formerly lived together as man and wife. Before the relationship broke down, the claimant paid the defendant £19,500 to enable him to buy a car. The defendant did not repay the money but he assigned to the claimant his interest in the lease of a restaurant.

The claimant brought proceedings against the defendant to recover the money. He gave formal notice of an address in Gibraltar for service upon himself as a litigant in person. He then moved from Gibraltar to the United Kingdom. He sent an email to the claimant's solicitors informing them of this and gave them the address of an hotel in Manchester to which they could direct correspondence, but he did not provide formal notice of change of address for service and he did not establish a permanent residence or place of business in the United Kingdom.

The claimant applied to strike out the defence pursuant to the Civil Procedure Rules, r.3.4(2)(c) on the basis that he had breached his obligations under the CPR, r.6.23 by failing to serve a formal notice of change of address after he left Gibraltar.

Held, dismissing the application:

(1) The defendant was not in breach of his obligations under r.6.23 of the CPR (construed to apply to Gibraltar by reading "Gibraltar" in place of "the United Kingdom" and treating the United Kingdom as included within "any EEA state") and his defence would therefore not be struck out. Rule 6.23(2)(a) and (b) did not apply because he was a litigant in person. Rule 6.23(2)(c) did not apply because there was no evidence that he was residing or carrying on business at any particular address in Gibraltar or any EEA state. Rule 6.23(3) therefore applied to him (paras. 11–12).

(2) The defendant was not in breach of r.6.23(3) because he had provided an address for service in Gibraltar before he moved to the United

Kingdom. To comply with r.6.23(3), it was not necessary that he resided or carried on business at the address provided for service in Gibraltar, nor was it a requirement that he regularly collected mail at that address. If he did not regularly collect mail there, that was at his own risk (para. 12).

(3) If the defendant had breached r.6.23, the court, in the exercise of its discretion under r.3.4(2)(c), would have refused to strike out his defence. His recent correspondence with the claimant's solicitors indicated that he intended to attend the trial and had an arguable defence to the action. It would therefore be disproportionate to strike out his defence. The fact that it would be more difficult to enforce a judgment against him now that he was living in the United Kingdom was not a relevant consideration (para. 14).

(4) Although it was not argued, there might be an issue as to whether the different treatment of lawyers and litigants in person in r.6.23(2) complied with the EU Service Regulation. Under r.6.23(2)(a) and (b), lawyers were permitted to provide any business address for service, which appeared to include a Post Office box or other accommodation address, whereas litigants in person were only permitted to provide the address of their actual place of residence or business for service under r.6.23(2)(c). It might be arguable that litigants in person should be entitled or required to provide an address for service where they could be reached even if this was not their place of residence or business (para. 13).

Case cited:

(1) *Alder* v. *Orlowska*, CJEU, December 19th, 2012, Case C-325/11, unreported, referred to.

Legislation construed:

Civil Procedure Rules (S.I. 1998/3132), r.6.23: The relevant terms of this rule are set out at para. 10.

J. Phillips for the claimant;
The defendant did not appear and was not represented.

1 **JACK, J.:** This is an application dated May 12th, 2015 seeking to strike out the defendant's defence pursuant to the Civil Procedure Rules, r.3.4(2)(c) and for the consequential entry of judgment with costs.

2 The parties formerly lived together as man and wife. The claimant is the proprietor of the well-known restaurant, The Landings, on Queensway Quay. The lease on the restaurant premises was originally taken in joint names. In December 2011, when their relationship was already in difficulty, the claimant paid the defendant £19,500 so that he could purchase a classic Ferrari motor car. After the parties' relationship broke down, the defendant assigned his interest in the lease of the restaurant to the claimant. He has not repaid any part of the £19,500.

3 The claimant instructed debt collectors to get in the £19,500, but the defendant refused to pay. In consequence, on June 14th, 2014, the claimant issued the current proceedings claiming the £19,500, as well as £750 in respect of the fees of the debt collectors, interest and costs. The defendant instructed Triay & Triay to represent him and a defence was served.

4 On February 27th, 2015, the defendant gave notice that Triay & Triay had ceased to act for him. He gave an address in Grand Ocean Plaza, Ocean Village, Gibraltar for service upon himself as a litigant in person.

5 Subsequently, the defendant resigned from the Royal Gibraltar Police ("the RPG") and left Gibraltar for the United Kingdom. In an email of May 20th, 2015, timed at 11.30 a.m., sent to the claimant's solicitor, the defendant said:

> "Let me also clarify to you that the reason for leaving Gibraltar and giving up an unblemished career with the RGP is not to avoid a court hearing nor your client's unfounded and ridiculous claims, which any sensible person could see have been constructed out of jealousy and anger. It is that I have family and personal matters to deal with. I would also like to set straight for the record that the RGP were and are fully supportive of my position and would still keep my position even if this issue did go to trial. I am also between locations at the moment, but feel free to use the Premier Inn [at an address in Manchester] as an address."

6 No formal notice of change of address for service was served.

7 Mr. Phillips, who appeared for the claimant, argued that the defendant was in breach of his obligations in not serving a formal notice of change of address after he left Gibraltar. No other breaches are relied upon in support of the current application. The action has progressed to date in a satisfactory manner, with disclosure being provided by the defendant (albeit by document not by list) and witness statements being exchanged. The matter is now listed for final hearing on June 25th, 2015. Save for the bundles (which are the claimant's responsibility), it is fully ready for trial.

8 No application for summary judgment has been made. There appear to be three issues. (a) Did the parties intend to enter legal relations when the £19,500 was advanced? (b) Was the assignment of the lease to the claimant intended to settle her claim in respect of the £19,500? (c) Does the claimant have any cause of action against the defendant in respect of the debt collectors' fees? I proceed on the basis that these matters are all triable.

9 Rule 3.4(2) of the CPR provides that "[t]he court may strike out a statement of case if it appears to the court . . . (c) that there has been a failure to comply with a rule, practice direction or court order." The only

breach relied on is the defendant's failure to give notice of change of address for service.

10 The first question is therefore whether the defendant is in breach at all. Rule 6.23 of the CPR, so far as material, provides:

> "(1) A party to proceedings must give an address at which that party may be served with documents relating to those proceedings. The address must include a full postcode or its equivalent in any EEA state (if applicable) unless the court orders otherwise . . .
>
> (2) Except where any other rule or practice direction makes different provision, a party's address for service must be—
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> (a) the business address either within the United Kingdom or any other EEA state of a solicitor acting for the party to be served; or
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> (b) the business address in any EEA state of a European Lawyer nominated to accept service of documents; or
>
> (c) where there is no solicitor acting for the party or no European Lawyer nominated to accept service of documents—
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> (i) an address within the United Kingdom at which the party resides or carries on business; or
>
> (ii) an address within any other EEA state at which the party resides or carries on business . . .
>
> (3) Where none of sub-paragraphs (2)(a), (b) or (c) applies, the party must give an address for service within the United Kingdom . . .
>
> (4) Subject to the provisions of Section IV of this Part (where applicable), any document to be served in proceedings must be sent or transmitted to, or left at, the party's address for service under paragraph (2) or (3) unless it is to be served personally or the court orders otherwise."

11 In the current case, the defendant is now acting as a litigant in person. Rule 6.23(2)(a) and (b) therefore have no application. In r.6.23(2)(c), it is necessary to read "Gibraltar" for "the United Kingdom" and to treat the United Kingdom as another EEA (European Economic Area) state. There is no evidence that the defendant is residing at any particular address in the United Kingdom, still less that he is carrying on business in the United Kingdom, thus r.6.23(2)(c)(ii) has no application. On the claimant's own case, the defendant no longer resides or carries on business in Gibraltar, so r.6.23(2)(c)(i) does not apply.

12 It follows, in my judgment, that r.6.23(3) applies. However, the defendant has given an address for service in Gibraltar. He has given the address at Ocean Village. For compliance with r.6.23(3), it is not necessary that the party reside or carry on business at the address. Nor is it a requirement that the party regularly collect mail at the address given for service. If he does not collect mail sufficiently regularly, that is at his risk. Accordingly, in my judgment, there is no breach of any "rule, practice direction or court order" on the defendant's part. The claimant's application stands to be dismissed.

13 For completeness, I should add that there may be an issue as to whether the different treatment of lawyers in r.6.23(2)(a) and (b) from that of litigants in person in r.6.23(2)(c) fully complies with the EU Service Regulation (Regulation (EC) No. 1393/2007): see *Alder* v. *Orlowska* (1). Lawyers can provide *any* "business address." This would appear to include a Post Office box or other accommodation address, so long as the address given is in the EEA. Litigants in person, by contrast, are limited to their *actual* place of residence or business. It may be arguable that a litigant in person should be entitled (or even required) to give an address (such as that of the Premier Inn in Manchester) within the EEA which is not their residence or place of business but where they can be reached. If that were right, then r.6.23(3) would have no application in the current case. However, Mr. Phillips addressed no argument to me based on the Service Regulation or on *Alder* and it would be quite unfair to make any finding that the defendant was in breach of r.6.23, when, on a straightforward reading of that rule, he was, in my judgment, in full compliance with r.6.23(3).

14 Even if I were wrong in my conclusion that there was no breach on the defendant's part, I would need to consider a second question as to whether I should nonetheless strike the defence out. In accordance with the overriding objective, in my judgment, I should not. The defendant's email of May 20th, 2015 shows that he is intending to attend the trial. The fact that it may be more difficult to enforce a judgment against the defendant now he is in the United Kingdom, instead of working in Gibraltar, is not, in my judgment, a relevant consideration. The defendant has an arguable defence to the action. It would be disproportionate to strike his claim out when he has in fact been in recent contact with the claimant's solicitor.

15 As to costs, Mr. Phillips argued that the defendant had been uncooperative, so that he should pay at least part of the costs of the current application. I disagree. The defendant was entitled to adopt the position which he did in relation to the application. He has not attended the hearing of the application, but that is readily explicable since he would have needed to fly back to Gibraltar for the hearing. The claimant has lost the

application. The defendant appears to have incurred no costs in connection with the current application, so I make no order for costs.

16 The order I make is therefore (1) that the application be dismissed; and (2) that there be no order for costs.

Application dismissed.
