Judgment 27/2012

Cobra Business Ventures Limited et al v Greenfield Capital Limited et al
Civil Action File No 1682(b)
Royal Court
9th July 2012

Unfair prejudice application and application for leave to effect service.

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 9th day of July 2012 before Richard James McMahon, Esquire Deputy Bailiff sitting alone

Between:

(1) COBRA BUSINESS VENTURES LIMITED
(2) BELMONT FUTURES LIMITED
(3) BRANDEN SYSTEMS LIMITED

("Petitioners")

and

(1) GREEN FIELD CAPITAL LIMITED
(2) ARTEMIS CORPORATE SERVICES LIMITED
(3) LAHOYAGP LIMITED
(4) ALEXEY EDUARDOVICH MILEEV
(5) SERGEY AFANSAEV
(6) OLEGS MIHALEVICS
(7) ANNA IOANNOU
(8) SKEVOULLA CHRYSOSTOMOU

("Respondents")

WHEREAS on the 14th June 2012 the Deputy Bailiff considered a challenge to an order dated 11th May 2012 granting leave to effect service on the Third to Eighth Respondents to the Petitioners' Application pursuant to sections 349 and 350 of the Companies (Guernsey) Law, 2008, by hand delivered post at the offices of Mourant Ozannes and also by registered post to a variety of addresses set out in the said Application by way of service out of the jurisdiction, and heard thereon Advocate Mark Gerard Ferbrache for the Petitioners and Advocate G. S. K. Dawes for the third and Fourth Respondents the Court this day handed down judgment in the terms attached hereto and

SET ASIDE or DISCHARGED that aspect of the said order of 11th May 2012 giving leave to serve on the Third Respondent by hand-delivered post at the offices of Mourant Ozannes.

S M D ROSS
Her Majesty's Deputy Greffier

Approved Text
09.07.2012

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

(ORDINARY DIVISION)

Between: **(1) COBRA BUSINESS VENTURES LIMITED**
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(3) BRANDEN SYSTEMS LIMITED

Petitioners

-and-

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(2) ARTEMIS CORPORATE SERVICES LIMITED
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(4) ALEXEY EDUARDOVICH MILEEV
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(7) ANNA IOANNOU
(8) SKEVOULLA CHRYSOSTOMOU

Respondents

Hearing date: 14th June 2012

Judgment handed down: 9th July 2012

Before: Richard James McMahon, Esq., Deputy Bailiff

Advocate for the Petitioners: **Advocate M G Ferbrache**
Advocate for the Third and Fourth Respondents: **Advocate G S K Dawes**

Cases & legislation referred to:

Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters of 15 November 1965
The Royal Court Civil Rules, 2007
Carlyle Capital Corporation Limited and others v Conway and others (unreported, 22 July 2011)
AK Investment CJSC v Kyrgyz Mobil Tel Limited [2011] 4 All ER 1027
The Companies (Guernsey) Law, 2008
Greene Wood & McLean LLP v Templeton Insurance Limited [2009] EWCA Civ 65
CPR Part 6
AES Ust-Kamenogorsk Hydropower Plant LLP v UST-Kamenogorsk Hydropower Plant JSC [2012] 1 All ER (Comm) 845
Provisional Version of the New Practical Handbook on the Operation of the Hague Service Convention, 2003
Cecil v Bayat [2011] 1 WLR 3086
Knauf UK GmbH v British Gypsum Ltd [2002] 1 WLR 907
Abela v Baadarani [2011] EWCA Civ 1571

Joint Stock Asset Management Company Ingosstrakh-Investments v BNP Paribas SA [2012 EWCA Civ 644
BNP Paribas SA v OJSC "Russian Machines" [2012] EWHC 1023 (Comm)
Cookney v Anderson (1863) 1 De G J & S 365, 380-81

Introduction

1. The Petitioners have applied, by way of an application dated 3 May 2012, for leave to effect service on the Third to Eighth Respondents to the Petitioners' Application pursuant to sections 349 and 350 of the Companies (Guernsey) Law, 2008, also dated 3 May 2012 (hereafter referred to as "the Unfair Prejudice Application"). The Third to the Eighth Respondents are all resident or domiciled outside the jurisdiction. The Petitioners' application seeks leave to effect service by hand delivered post at the offices of Mourant Ozannes and also by registered post to a variety of addresses set out in the application by way of service out of the jurisdiction.

2. I dealt with the application *ex parte* on 11 May 2012. Although it does not affect the Third and Fourth Respondents, if only for the sake of completeness, I should note that at that hearing Advocate Mark Ferbrache sought leave to amend the application with regard to the proposed addresses for the Fifth to the Eighth Respondents and such leave was then granted.

3. At the conclusion of that hearing, I made an Order *inter alia* granting leave to effect service of the Unfair Prejudice Application on the Third and Fourth Respondents by hand-delivered post at the offices of Mourant Ozannes. Such service had to be effected on or before 15 May 2012, with a return date of 18 May 2012. I adjourned sine die the paragraphs of the application seeking leave to effect service on the Third and Fourth Respondents by registered post but gave the Petitioners leave to apply. Although I gave very brief reasons for my decision, I indicated that I would provide written reasons following the hearing. Unfortunately, matters rather overtook me, and I had not managed to write up those reasons before the hearing on 14 June 2012. As far as possible, and as appropriate, I have incorporated them into this judgment.

4. Although not strictly relevant to the dispute about service between the Petitioners and the Third and Fourth Respondents, between 11 May 2012, when I granted the Petitioners leave to serve the Third to the Eighth Respondents in various ways, and the *inter partes* hearing on 14 June 2012, Counsel for the Fifth to Eighth Respondents attended Court on 1 June 2012. They did so only in limited capacities as they were not fully instructed. 1 June 2012 was the return date in respect of the service on those Respondents of the Unfair Prejudice Application under the terms of the 11 May 2012 Order.

5. In the Interlocutory Court on 18 May 2012, being the return date, Advocate Peter Ferbrache attended on behalf of the Third and Fourth Respondents in a limited capacity for the purpose of indicating that the Third and Fourth Respondents wished to challenge the lawfulness of the Order of 11 May 2012, in particular by reference to the requirements of the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters of 15 November 1965 (hereafter referred to as the "Hague Service Convention").

6. All concerned accepted that such a challenge is made by way of an *inter partes* hearing where the application is looked at afresh. I therefore directed the lodging of further material in accordance with a moderately tight timetable and fixed that hearing for 14 June 2012. The further materials lodged on behalf of the Petitioners and the Third and Fourth Respondents by Advocate Mark Ferbrache and Advocate Dawes respectively, and their oral submissions at the hearing, have clarified matters considerably and I am grateful to them for their assistance. At the conclusion of that hearing I reserved judgment.

Evidence

7. The Petitioners' application of 3 May 2012 was supported by the Third Affidavit of James Oldnall, a solicitor employed by Mishcon de Reya, sworn on 3 May 2012. In the original Skeleton Argument prepared by Advocate Mark Ferbrache dated 10 May 2012, reliance was also placed on the evidence filed in three Affidavits of Artur Gennadievich Perepelkin in support of applications made by the Petitioners (hereafter referred to as "the injunction proceedings"), which the Bailiff has heard. In particular, reference was made to paragraphs 43 to 50 of Mr Perepelkin's Third Affidavit, which was sworn in Moscow on 24 April 2012 and apparently re-sworn in London on 3 May 2012.

8. The relevant Affidavit evidence lodged following the *ex parte* hearing on 11 May 2012 comprises: the Fourth Affidavit of Mr Oldnall, sworn on 25 May 2012; the First Affidavit of Grigory Petrovich Chernyshov, which is signed but undated, although reference is subsequently made to it having been sworn on 29 May 2012; the Second Affidavit of Anthony Williams, sworn on 8 June 2012; the First Affidavit of Jonathan Wall, sworn on 8 June 2012; the First Affidavit of Vladimir Vladimirovich Yarkov, sworn on 13 June 2012; the Fifth Affidavit of Mr Oldnall, sworn on 13 June 2012; and the Second Affidavit of Mr Chernyshov, which is signed but remains unsworn. Mr Chernysov, a partner of White & Case LLC, of that firm's Moscow office, and Professor Yarkov have provided expert evidence about Russian law. Mr Wall has provided expert evidence about the law of the British Virgin Islands. In due course I will need to refer extensively to that evidence.

Background

9. The Unfair Prejudice Application relates to the affairs of the First Respondent, Green Field Capital Limited, a Guernsey-registered company. The First Respondent is administered by the Second Respondent, Artemis Corporate Services Limited, which is also a Guernsey-registered company. The Unfair Prejudice Application has been successfully served on the First and Second Respondents. It was returnable at the Ordinary Court on 11 May 2012. As a result, the Court is already seized of the Unfair Prejudice Application.

10. The shareholders in the First Respondent are the three Petitioners and the Third Respondent. The four corporate shareholders each have an equal 25% stake in the First Respondent. The four companies are beneficially owned by four Russian businessmen. The three Petitioners are owned respectively by Mr Perepelkin, Nikolay Alexandrovich Khvatov and Sergey Eduardovich Korendovich. The Third Respondent is beneficially owned by the Fourth Respondent, Alexey Eduardovich Mileev. The Petitioners are all incorporated and registered in the British Virgin Islands.

11. The Third Respondent is also incorporated and registered in the British Virgin Islands. Its registered office is at Morgan & Morgan Trust Corporation Ltd, Pasea Estate, P.O. Box 958, Road Town, Tortola, VG1110, British Virgin Islands. The address of the Fourth Respondent in Moscow, to which reference was made in the Petitioners' application, has been taken from the address he gave in documentation he has lodged in the injunction proceedings, which was certified as having been signed by Mr Mileev in the presence of a Notary. During the course of his submissions, Advocate Dawes helpfully confirmed that this address is where Mr Mileev resides and is also his registered place of residence. Mr Chernysov's First Affidavit confirms that "*all Russian citizens must have a registered place of residence*". This is the address used by a court to notify a person of the hearing at which service of a document in the Russian Federation under the Hague Service Convention will then be effected, which is a procedure to which I will return in due course.

12. For the purposes of considering service on the Respondents, it is relevant to note that the First Respondent has two subsidiaries, Fobo Holdings Limited and Narvi Ventures Limited, both of

which are incorporated and registered in the British Virgin Islands. Narvi Ventures Limited is wholly owned by the First Respondent, whereas Fobo Holdings Limited is 85.5% owned by the First Respondent. Fobo Holdings Limited itself has two subsidiaries, Eckersley Investments Limited and Barossa Limited, both of which are incorporated and registered in Cyprus. Mr Perepelkin's Third Affidavit explains that the Fifth to Eighth Respondents appear recently to have been appointed as directors of these four companies.

13. Those appointments arose because the former corporate director of those four subsidiary companies, Trident Trust Company (Cyprus) Limited, resigned in early April 2012. The Fifth Respondent's appointment relates to Narvi Ventures Limited; the Sixth Respondent's appointment relates to Fobo Holdings Limited; the Seventh Respondent's appointment relates to Barossa Limited; and the Eighth Respondent's appointment relates to Eckersley Investments Limited. Complaint 8 of the Unfair Prejudice Application relates to these purported appointments, alleging that they were made without proper authority. Paragraphs (11) to (14) of the prayer to the Unfair Prejudice Application seek express relief against the Fifth to the Eighth Respondents.

Participation in injunction proceedings

14. The Third and Fourth Respondents have appeared in the injunction proceedings, represented by Mourant Ozannes. By paragraph 2 of the Bailiff's Order dated 13 April 2012, the Third and Fourth Respondents gave an élection de domicile of 1 Le Marchant Street in respect of those proceedings. The Petitioners (as Applicants for the original injunction) undertook to commence substantive proceedings against the Respondents within two months of the original Order dated 4 April 2012. At that time, the only Respondents to the injunction proceedings were the First and Second Respondents to the Unfair Prejudice Application. By the beginning of May 2012, the Third and Fourth Respondents had been added as the Third and Fourth Respondents to the injunction proceedings and it was clarified on their behalves that the address for service in respect of them was being given for the purposes only of disputing jurisdiction and/or the applications in those injunction proceedings.

15. I was alive to that fact at the *ex parte* hearing on 11 May 2012. In the Second Affidavit of Anthony Williams, he expressly draws attention to the content of a Skeleton Argument filed in the injunction proceedings by Advocate Peter Ferbrache dated 2 May 2012. One development since the hearing on 11 May 2012, is that on 17 May 2012 the Bailiff handed down a written judgment in the injunction proceedings, in which it is recorded at para. [13] that:

> "*Advocate Peter Ferbrache appeared for the Third and Fourth Respondents on a limited basis explained in a skeleton argument dated 2 May.*"

16. It is unfortunate that I was not shown a letter dated 11 May 2012, sent by Advocate Williams of Mourant Ozannes to Advocate Mark Ferbrache by e-mail at 09:21 on 11 May 2012, because it set out the position of the Third and Fourth Respondents very forcefully. The second paragraph reads:

> "*Contrary to your letter, we do not have instructions to accept service "of any order(s) for leave to serve out of the jurisdiction". Therefore in respect of the proposed substantive proceedings, if leave is granted to serve out of the jurisdiction, your clients will be required to serve on Lahoyagp Limited and Mr Mileev directly, in accordance with proper process including adherence to the relevant provisions of the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters and the Russian Federations' reservation. Our client is not willing to agree any proposed directions in respect of service of the intended substantive proceedings unless and until leave*

has been granted and proper service has been effected on both Lahoyagp Limited and Mr Mileev."

Not only does this letter confirm that Mourant Ozannes did not, and does not, have instructions to accept service of the Unfair Prejudice Application, which I have always understood was the position, it raises the issue about the legal barriers to effecting service in the Russian Federation. The Hague Service Convention and, in particular, the reservation to Article 10 entered by the Russian Federation, which I will deal with in some detail later, was not addressed at the hearing on 11 May 2012. It should have been. For reasons which will become apparent, I regard it as essential on an application for leave to serve out of the jurisdiction for Counsel to alert the Court to any adverse consequences arising under the law of the place where service is sought to be effected which would, or even might, render the method for which leave has been sought unlawful or unworkable.

17. I have stressed the fact that the élection de domicile given by the Third and Fourth Respondents was expressly for a limited purpose because I do not regard the giving of an élection de domicile in one set of proceedings, even if related to other proceedings, as automatically entitling other parties to the first set of proceedings to rely on that élection de domicile to effect service in respect of any other proceedings. It is, however, potentially a factor to be taken into account in determining how service might best be effected on such a party. From 11 May 2012, it has been clear to me that the Third and Fourth Respondents have not instructed Mourant Ozannes to accept service on their behalves of any other proceedings. That position, therefore, pertains to the Unfair Prejudice Application. Accordingly, the Petitioners' Advocates could not simply have purported to effect service by HM Sergeant, or by any other means, on the Third and Fourth Respondents at Mourant Ozannes' offices.

18. In such circumstances, the Petitioners needed the leave of this Court to be able to effect service on the non-resident Respondents. Their application has been brought pursuant to rules 8 and 9 of the Royal Court Civil Rules, 2007. At both hearings Counsel were agreed that the first matter to resolve is whether it is appropriate to grant leave to serve out of the jurisdiction by reference to rule 8.

Service out of the jurisdiction

19. Rule 8 of the 2007 Rules provides:

> "*(1) The Court may give leave to effect service of a document out of the jurisdiction.*
> *(2) The Court shall not make an order under paragraph (1) unless satisfied (by affidavit or otherwise) that the matter to which the document relates-*
> *(a) is properly justiciable before the Court, and*
> *(b) is a proper one for service out of the jurisdiction.*
> *(3) An order of the Court under paragraph (1) shall state-*
> *(a) the form, manner and time in which, and conditions subject to which, service is to be effected, and*
> *(b) the minimum period which must elapse between the date of service and the date upon which the matter may be pursued.*
> *(4) Where the Court makes an order under paragraph (1), proof of service in accordance with the order shall be by affidavit or, where service was effected by the Sergeant, by the relation of the Sergeant.*"

20. The Court's approach to considering the principles to apply on an application for leave to serve out of the jurisdiction under rule 8 was explained by Deputy Bailiff Collas (as he then was) in Carlyle Capital Corporation Limited and others v Conway and others (unreported, 22 July 2011). Those principles are unaffected by the Court of Appeal's judgments in that case. In relation to evidence, the following guidance was given (at para. [15]):

> "*Very typically [applications for leave to serve out of the jurisdiction] are supported by the briefest of affidavits, usually sworn by the Advocate presenting the application. They address the very basic requirements of Rule 8 but invariably do not provide the information that would be required by an English court in order to comply with the more detailed requirements of the CPR and its Practice Directions. Frequently, the Advocate will express his opinion that the matter is properly justiciable before the Court and a proper one for service out of the jurisdiction without explaining the detailed reasons to support that conclusion. The arguments I have heard lead to the conclusion that on routine applications, many Advocates should be producing more detailed Affidavits to enable the Royal Court to take account of all the factors that it should properly consider*."

21. Mr Oldnall's Third Affidavit, which was the only evidence explicitly in support of the application lodged prior to the hearing on 11 May 2012, did not set out as fully as it might have done relevant material relating to the issues that I had to consider. However, as explained in Advocate Mark Ferbrache's initial Skeleton Argument, I could have regard to the evidence lodged in the injunction proceedings and, in particular, to the details provided about the background to the dispute between the Petitioners and the other parties, especially paragraphs 43-50 of Mr Perepelkin's Third Affidavit. The evidence has, of course, now been supplemented quite considerably.

22. Rule 8(2) of the 2007 Rules was addressed at para. [16] of the judgment in Carlyle:

> "*In rule 8, "properly" and "proper" are not explained and leave scope for interpretation. In my view, they require the Court to have regard to the legal principles governing service out of the jurisdiction in England. Hence, it is appropriate to have regard to the recent decision of the Privy Council on appeal from the Isle of Man, referred to by the Plaintiffs as AK Investment CJSC v Kyrgyz Mobil Tel Limited and by the non-resident Defendants as Altimo Holdings and Investment Limited v Kyrgyz Mobil Tel Limited [2011] UK PC7. The appeal involved consideration of the Manx High Court Rules which were also based on the former RSC Ord 11. The legal principles were set out in paragraph 71 of the judgment delivered by Lord Collins:*
>
> > *"71. On an application for permission to serve a foreign defendant (including an additional defendant to counterclaim) out of the jurisdiction, the claimant (or counterclaimant) has to satisfy three requirements: Seaconsar Far East Ltd. v Bank Markazi Jomhouri Islami Iran [1994] 1 AC 438, 453-457. First, the claimant must satisfy the court that in relation to the foreign defendant there is a serious issue to be tried on the merits, i.e. a substantial question of fact or law, or both. The current practice in England is that this is the same test as for summary judgment, namely whether there is a real (as opposed to a fanciful) prospect of success: e.g. Carvill America Inc. v Camperdown UK Ltd [2005] EWCA Civ 645, [2005] 2 Lloyd's Rep 457, at [24]. Second, the claimant must satisfy the court that there is a good arguable case that the claim falls within one or more classes of case in which permission to serve out may be given. In this context "good arguable case" connotes that one side has a much better argument than the other: see Canada Trust Co v Stolzenburg (No. 2) [1998] 1 WLR 547, 555-7 per Waller LJ, affd [2002] 1 AC 1; Bols Distilleries BV v Superior Yacht Services [2006] UKPC 45, [2007] 1 WLR 12, [26]-[28]. Third, the claimant must satisfy the court that in all the circumstances the Isle of Man is clearly or distinctly the appropriate forum for the trial of the dispute, and that in all the circumstances the court ought to exercise its discretion to permit service of the proceedings out of the jurisdiction.*""

23. Counsel agreed that the approach taken in Carlyle is now the accepted approach for this Court to take. Counsel were also agreed that, in general, the principles governing service out of the jurisdiction as a matter of Guernsey law operate in a similar way to the principles applicable to service out of the jurisdiction under the law of England and Wales (see also para. [14] in Carlyle). In accordance with that approach, following both of the hearings on 11 May and 14 June 2012, I have addressed my mind to the three requirements set out in AK Investments.

Serious issue to be tried

24. In relation to the first element, I take note of the fact that the Court has already satisfied itself that there is a serious issue to be tried between the Petitioners and the Respondents to the injunction proceedings. At the time of the hearing on 11 May 2012, this could be inferred from the granting of interlocutory injunctive relief where the American Cyanamid principles were treated as having been satisfied. By the time of the hearing on 14 June 2012, I had the benefit of the Bailiff's judgment of 17 May 2012 confirming (at para. [23]) his finding in that regard.

25. In relation to the Fifth to Eighth Respondents, I have already drawn attention to the fact that Complaint 8 of the Unfair Prejudice Application alleges that they have been unlawfully appointed as new directors of companies within the corporate structure beneath the First Respondent and that express relief is sought against each of them. I was satisfied, therefore, that the manner and nature of their appointments give rise to substantial questions of fact or law, or both, meaning that this first requirement was met by reference to them as well as generally.

Jurisdictional gateways

26. At para. 20 of his initial Skeleton Argument, Advocate Mark Ferbrache advanced four jurisdictional gateways drawn from the guidance offered by Practice Direction 6B supplementing Part 6 of the CPR:

    (a) the Unfair Prejudice Application is a claim in respect of a contract governed by Guernsey law;
    (b) the Unfair Prejudice Application is a claim which arises under a Guernsey statute;
    (c) in the Unfair Prejudice Application, the Applicants seek injunctions ordering the Respondents to refrain from doing acts within the jurisdiction; and
    (d) the overseas Respondents are necessary or proper parties to the Unfair Prejudice Application.

    However, as he acknowledged in para. 29, the third of those suggested gateways is only applicable in relation to the Third and Fourth Respondents. It was common ground that the Petitioners needed only to pass through any one of those gateways to meet the second of the requirements from AK Investments.

27. Taking the final jurisdictional gateway relied on by the Petitioners first, I need to decide whether the Respondents are necessary or proper parties to the Unfair Prejudice Application. Paragraph 3.1(3) of Practice Direction 6B provides that leave to effect service out of the jurisdiction may be given where-

    "*A claim is made against a person ('the defendant') on whom the claim form has been or will be served (otherwise than in reliance on this paragraph) and –*
    (a) there is between the claimant and the defendant a real issue which it is reasonable for the court to try; and
    (b) the claimant wishes to serve the claim form on another person who is a necessary or proper party to that claim."

28. At para. [23] of his judgment in Carlyle, Deputy Bailiff Collas cited with approval para. [73] of Lord Collins' judgment in AK Investment CJSC v Kyrgyz Mobil Tel Limited [2011] 4 All ER 1027, which considered the legal principles applicable to this gateway:

> "*The necessary or proper party head of jurisdiction is anomalous, in that, by contrast with the other heads, it is not founded upon any territorial connection between the claim, the subject matter of the relevant action and the jurisdiction of the English courts: see Tyne Improvement Comrs v Armement Anversois SA, The Brabo [1949] 1 All ER 294 at 298, [1949] AC 326 at 338 per Lord Porter. Pigott's Foreign Judgments and Jurisdiction (3rd edn, 1910) Pt III, p 238, said: 'This is perhaps the most important of the sub-rules, for it throws the net of jurisdiction over a wider area; and the principle of considering the nature of the cause of action which pervades the whole subject, appears here to be ignored.' Consequently as Lloyd LJ said in Golden Ocean Assurance Ltd v Martin, The Goldean Mariner [1990] 2 Lloyd's Rep 215 at 222:*
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> > *'I agree ... that caution must always be exercised in bringing foreign defendants within our jurisdiction under O. 11, r. 1(1)(c). It must never become the practice to bring foreign defendants here as a matter of course, on the ground that the only alternative requires more than one suit in more than one jurisdiction."*'

In my view, it is right that I should similarly apply those principles to my consideration of the issue.

29. As I have already pointed out, good service has been effected on the First and Second Respondents and they have provided an élection de domicile. This is not a case where some party has conveniently, and possibly artificially, been identified for the purpose of bringing the foreign parties before the Royal Court. On the face of the Unfair Prejudice Application, proceedings have been "*properly brought*" against the First and Second Respondents, raising a real issue to be tried by the Court. In my judgment, therefore, the first aspect of this gateway is clearly met.

30. In relation to the Third and Fourth Respondents, they are the fourth of the shareholders and the fourth of the beneficial owners respectively. Consequently, they are directly affected by the dispute encompassed within the Unfair Prejudice Application and several of the remedies sought by the Petitioners require the active participation of the Third and/or Fourth Respondents. Indeed, there is an overlap here with gateway (c), to which paragraph 3.1(2) of Practice Direction 6B refers, and I have no hesitation in concluding that the Third and Fourth Respondents are necessary or proper parties to the Unfair Prejudice Application, as well as being the subject of a claim made for an injunction ordering them to do or refrain from doing an act within the jurisdiction of Guernsey.

31. By way of further explanation, amongst the relief sought against the First Respondent is an order requiring steps to be taken to remove the directors of Narvi Ventures Limited and Fobo Holdings Limited and to appoint new directors. The Fifth and Sixth Respondents have apparently been appointed as directors of those companies and so, in my view, those two individuals are clearly necessary or proper parties to the issue to be tried relating to those appointments. Moreover, as I have already indicated, there are specific claims for injunctive relief against each of the Fifth to the Eighth Respondents. Those claims are brought in the context of the Unfair Prejudice Application, seemingly because of the link to the ultimate parent company in Guernsey and the way the group of companies is operated. Taking the claims at face value, on the evidence placed before me on 11 May 2012, I took the view that the Fifth to Eighth Respondents are necessary or proper parties to be convened in order to answer to those elements of the application and so was satisfied that this jurisdictional gateway was met in respect of them.

32. The first jurisdictional gateway advanced is that the dispute is in respect of a contract governed by Guernsey law. Section 20(3) of the 2008 Law, which was inserted by s. 3 of the Companies (Guernsey) Law, 2008 (Amendment) Ordinance, 2008, provides:

> "*Subject to the provisions of this Law, the memorandum and articles of a company are, from the time of incorporation, binding on the company and its members in all respects as if the memorandum and articles –*
>
> *(a) were comprised in an agreement duly executed by the company and each member, and*
>
> *(b) contained covenants on the part of the company and each member to observe all provisions thereof.*"

Prima facie, therefore, the dispute between the Petitioners and the First Respondent is a claim in respect of a contract, namely the memorandum and articles of the company, governed by Guernsey law. Indeed, the Third Respondent, as the fourth member of the First Respondent, is also a party to that contract, providing further support, if it is needed, for the conclusion that the dispute between the parties is in respect of a contract governed by Guernsey law.

33. The Fourth Respondent is not a party to that contract. (The same position applies to the Fifth to Eighth Respondents.) That in itself is not a barrier to relying on the contractual jurisdictional gateway because of the decision of the English Court of Appeal in Greene Wood & McLean LLP v Templeton Insurance Limited [2009] EWCA Civ 65, in which Longmore LJ said (at [18] and [19]):

> "*18. To say that, for a claim to be "in respect of a contract", it must be "in respect of a contract between the intended claimant and the intended defendant" is to add words to the rule which are not there. The commentary in Dicey, Morris and Collins Conflict of Laws, 14th ed (2006) 11-182 to 11-184 does not suggest any such requirement. Moreover since the Contracts (Rights of Third Parties) Act 1999, Parliament has contemplated cases in which a third party can sue on a contract made between two persons for his benefit. If such a contract is governed by English law (or, even, made or broken in England) why should the third party not be able to take advantage of sub-rule (5)(c) of CPR 6.20? It would be odd if he could not and every reason to suppose that he should be able to utilise the sub-rule, always subject to the court being satisfied that England is the "proper place" in which to bring the claim, pursuant to CPR 6.21(2A).*
>
> *19. The claim in the present case clearly has a connection with a contract governed by English law. To my mind that makes it a claim in respect of that contract even if it is not a claim brought under the contract. No doubt some connections with contracts are more remote than others but the present claim has a very close connection with the insurers' contract with the miners to pay their costs and own disbursements if they lose. As the judge said the remoteness from the contract (if any) is something that can be dealt with when the court considers whether England is the proper place for the claim under CPR 6.21(2A).*"

34. Similar reasoning can be applied to the position of the Fourth Respondent (and also to Fifth to Eighth Respondents). The Unfair Prejudice Application complains about the validity of actions taken in relation to the First Respondent. This extends to the appointments of the four individuals named as the Fifth to Eighth Respondents to directorships of companies within the group of which the First Respondent is the parent. Because everything ultimately comes back to the First and Second Respondents and the dispute the Petitioners have about how the First Respondent is operated, necessarily in accordance with Guernsey law, I am satisfied that the Unfair Prejudice Application has a connection with a contract governed by Guernsey law and, subject to Guernsey being the proper place to bring the application, that the role in the proceedings to be played by the Fourth Respondent (as well as by the Fifth to Eighth Respondents) has a close enough connection to that contract to meet this jurisdictional gateway.

35. Perhaps the most obvious of the jurisdictional gateways relied upon is the fact that the Unfair Prejudice Application has been brought under sections 349 and 350 of the Companies (Guernsey) Law, 2008. Such an application can be brought by a member of a company and the Petitioners are three of the four members of the First Respondent. Because the Guernsey statute confers the entitlement to bring the proceedings, in the words of para. 3.1(20)(a) of Practice Direction 6B, section 349 "*allows proceedings to be brought*". To the extent that the English Court of Appeal queried the appropriateness of relying on this jurisdictional gateway in AES Ust-Kamenogorsk Hydropower Plant LLP v UST-Kamenogorsk Hydropower Plant JSC [2012] 1 All ER (Comm) 845 (at [126] and [207]), the basis of the concerns expressed in that case does not, in my view, apply here.

36. However, the passage in Practice Direction 6B then continues "*and those proceedings are not covered by any of the other grounds referred to in this paragraph*", indicating that this is really an alternative to other gateways. That said, I am satisfied that this jurisdictional gateway exists because of the direct link to the statutory provisions under which the Unfair Prejudice Application has been made. Accordingly, if I am wrong about the existence of the other jurisdictional gateways, this gateway is open to the Petitioners to establish the second requirement.

Appropriate forum for trial

37. I note at the outset that jurisdiction is likely to be contested by the Third and Fourth Respondents, such an indication having already been given in the injunction proceedings and repeated by Advocate Dawes at the hearing on 14 June 2012. I do not know what the position of the Fifth to Eighth Respondents will be on this question. However, on the material placed before me at this stage of considering service, I am satisfied on balance that Guernsey is the appropriate forum for the trial of the disputes set out in the Unfair Prejudice Application.

38. As Advocate Mark Ferbrache put it in his initial Skeleton Argument, the four Russian business partners, acting through their respective companies, namely the three Petitioners and the Third Respondent, "*chose to hold their business interests through a company incorporated in Guernsey*". In doing so, they can be taken to have chosen to make themselves amenable to the jurisdiction of the Royal Court, as their business interests are held within, or beneath, a company incorporated under the laws of Guernsey. Advocate Dawes suggested that the real choice was to incorporate anywhere other than in Russia because of the adverse consequences for the businessmen there, and Guernsey was purely fortuitous. However, I am persuaded that of all the places they could have incorporated the First Respondent they did choose Guernsey and consequences flow from that choice. Indeed, as I have already pointed out, the Unfair Prejudice Application has been brought under a provision in the Companies (Guernsey) Law, 2008. The relief sought can be effectively granted by this Court.

39. The focus of the Unfair Prejudice Application is principally on the First Respondent and, because of the role played by it, the Second Respondent is best placed to give effect to any relief granted. The suggestion is that the Fourth Respondent, through the Third Respondent, now exercises de facto control of the First Respondent. As such the active participation of those Respondents will be necessary if the Petitioners obtain the relief they seek. These proceedings have a distinct Guernsey nexus. The claims against the Fifth to Eighth Respondents are more tangential because the companies to which they have purportedly been appointed as directors are all incorporated in other jurisdictions. However, at this stage, I was satisfied that these claims against them can properly be brought within the context of the Unfair Prejudice Application. Bearing in mind the principle that, if possible, fragmentation of proceedings should be avoided, I accept that the appropriate forum for these proceedings is Guernsey.

40. By the time of the hearing on 14 June 2012, I had the further comfort of the Bailiff's conclusions in his judgment of 17 May 2012 on this question (see, in particular, para. [35]). Whilst Advocate Dawes did not concede that the Third and Fourth Respondents were submitting to the jurisdiction of Guernsey, and reserved their position to challenge jurisdiction in the substantive proceedings, once proper service has been effected on them, he did not oppose the submissions made by Advocate Ferbrache that the third requirement of AK Investments is satisfied. Instead, he concentrated on the manner of service to be ordered against the Third and Fourth Respondents.

Conclusion

41. Having considered the three requirements drawn from AK Investments and reminded myself of the need to be cautious about exercising the discretion to bring foreign parties into Guernsey proceedings, I am satisfied that each requirement is met in respect of the Third to Eighth Respondents. Accordingly, reverting to rule 8(2) of the 2007 Rules, I am satisfied that the Unfair Prejudice Application is properly justiciable before the Royal Court and that that Application is a proper one for service out of the jurisdiction on the Third and Fourth Respondents (and I was satisfied about rule 8(2) in respect of the Fifth to Eighth Respondents on 11 May 2012).

Fifth to Eighth Respondents

42. At the conclusion of the hearing on 11 May 2012, I gave leave to serve the Fifth to Eighth Respondents out of the jurisdiction by registered post sent, in each case, to two addresses. The first address for each Respondent was the address identified in the Third Affidavit of Mr Oldnall. The second address in each case was the registered office of the companies in respect of which each Respondent had purportedly been appointed as a director. I directed that posting of the Unfair Prejudice Application and accompanying documents should occur on or before 15 May 2012 and made the return date 1 June 2012.

43. In relation to the Fifth and Sixth Respondents, the address identified in Mr Oldnall's Third Affidavit is where Green Field's Russian subsidiaries have offices. As will become apparent, ordering service in the Russian Federation by post is not an acceptable manner to seek to effect service. It is most unfortunate that Mr Oldnall in evidence and Advocate Mark Ferbrache in argument advanced service by registered post on a Moscow address as being permissible. Those elements of my Order of 11 May 2012 cannot be relied upon by the Petitioners as a means of effecting service of the Unfair Prejudice Application on the Fifth and Sixth Respondents.

Third and Fourth Respondents: principles on manner of service

44. At the conclusion of the hearing on 11 May 2012, having due regard to the overriding objective of the 2007 Rules "*to deal with cases justly*" (r. 1(1)), which includes, so far as practicable, "*saving expense*" and "*ensuring that [the case] is dealt with expeditiously and fairly*" (r. 1(2)(b) and (d)), I considered that the balance lay in favour of granting leave to serve the Unfair Prejudice Application on the Third and Fourth Respondent by hand delivered post at the offices of Mourant Ozannes rather than by the alternative means sought, namely for service out of the jurisdiction by registered post. I did so in order to achieve an expedient, pragmatic and just solution in the circumstances of this case.

45. It is that conclusion that the Third and Fourth Respondents have challenged. In doing so, they argue that insufficient attention has been paid to the requirements of the Hague Service Convention. The focus of the parties has been primarily on the requirements that apply in Russian law, and how that affects the manner of serving the Unfair Prejudice Application on the Fourth Respondent, but similar arguments have been raised in relation to service in the British Virgin Islands on the Third Respondent. Therefore, although the legal principles

derived from consideration of the approach in England have a common basis, I need to apply them to the Third and Fourth Respondents distinctly.

The Hague Service Convention

46. The Hague Service Convention has been extended to the Bailiwick of Guernsey. It was also extended to the British Virgin Islands at the same time in 1970. The Russian Federation became a party to the Hague Service Convention in 2001. The Preamble recites that the parties agreed the provisions "*desiring to create appropriate means to ensure that judicial and extrajudicial documents to be served abroad shall be brought to the notice of the addressee in sufficient time*".

47. The basic scheme of the Hague Service Convention is to undertake service abroad by transmission through the Central Authority of the State addressed, which shall then serve the document or arrange to have it served in accordance with the method prescribed by its internal law or, provided it is not incompatible with that law, by an alternative method requested by the applicant. Where a Contracting State so wishes, it may designate other authorities in addition to its Central Authority (Article 18). The designated authority of the British Virgin Islands is the Registrar of the Supreme Court. The Ministry of Justice of the Russian Federation has been designated as the Central Authority for the Russian Federation.

48. The State requested to effect service is entitled to insist on documents being written in, or translated into, its official language, or one of them. The Third of the Declarations made by the Russian Federation states that "*pursuant to the third paragraph of Article 5 of the Convention documents to be served within the territory of the Russian Federation shall only be accepted if they have been written in, or translated into, the Russian language*". Failure to comply would inevitably mean the Central Authority rejecting the request to effect service.

49. By virtue of Article 10 of the Hague Service Convention:

> "*Provided the State of destination does not object, the present Convention shall not interfere with –*
>
> *(a) the freedom to send judicial documents, by postal channels, directly to persons abroad, ...*"

No such objection has been raised on behalf of the British Virgin Islands. However, the Sixth of the Declarations made by the Russian Federation states that "*service of documents by methods listed in Article 10 of the Convention is not permitted in the Russian Federation*". The effect of this Declaration is that if service is to be effected in the territory of Russia it cannot be done by sending the documents through the post because the government of the Russian Federation has expressly removed that as an option for alternative means of effecting service. Service within the territory of Russia must be effected through official channels by transmitting the request to the Central Authority.

The English law rules

50. In the same way that useful guidance can be gleaned from considering Part 6 of the CPR for other questions arising in relation to service of process, my attention was drawn to the more detailed regime existing in English law as a means of assisting me to resolve "*the form, manner and time in which, and conditions subject to which, service [out of the jurisdiction] is to be effected*" (rule 8(3)) or whether to order "*service in some other manner*" in accordance with rule 9(b) of the 2007 Rules.

51. Rule 6.37(5) of the CPR, dealing with applications for permission to serve a claim form out of the jurisdiction, provides that "*where the court gives permission ... it may give directions about the method of service*". Rule 6.40 then provides:

> "(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.*"

These provisions are broadly equivalent to rule 8(3) of Guernsey's 2007 Rules, but are noticeably more prescriptive.

52. The Service Regulation to which reference is made is an EU law measure which does not apply in respect of Guernsey and is, therefore, of no further assistance. No service is sought "*on a State*" so rule 6.40(3)(a)(iii) is not engaged. As regards service through foreign governments, etc, I simply note that this gives effect to Article 10 of the Hague Service Convention and the Russian Federation's Declaration to which I have just referred expressly removes that option. Further, as regards the British Virgin Islands, I similarly note that, as a matter of English procedural law, rule 6.42(3) provides that "*where a party wishes to serve the claim form or other document in ... any British overseas territory ... the party or the party's agent must effect service direct, unless Practice Direction 6B provides otherwise.*"

53. In the light of the approach taken by English law, when considering what is required by rule 8(3) of the 2007 Rules, in my view it will be appropriate to have regard to what form of service can be expected in the territory in which service is to be effected. I will address comity in more detail in due course, but, even without the 2007 Rules being explicit about it, the principle underlying rule 6.40(4) must, in my judgment, be respected by this Court. Accordingly, applications for leave to serve out of the jurisdiction should not propose methods of service that would result in something being done which will be contrary to the law of the country in which the document is to be served. Whether this is best addressed in the evidence supporting the application or in an accompanying skeleton argument will no doubt depend on the circumstances of each case.

54. Advocate Dawes also commented on rule 6.15 of Part 6 of the CPR, which provides:

> "*(1) Where it appears to the court that there is 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.*"

He submitted that, in the absence of anything equivalent to rule 6.15 in Guernsey's 2007 Rules, which in itself means that one is not comparing like with like, the Court should be cautious about incorporating the possibility of alternative service where the application relates to service on a non-resident party. In such circumstances, he suggested, the only route available when considering service in a State to which the Hague Service Convention applies is to comply with that Convention and to direct service in accordance with its terms.

55. Because the provisions of the CPR do not refer to substituted service, which was expressly available under Order 65, rule 4 of the predecessor Rules of the Supreme Court, Advocate Dawes also suggested that this left an unfortunate lacuna in the English rules relating to service. Substituted service was expressly made available in respect of service of a writ abroad (see Order 11, rule 5). Even under the previous regime, Order 11, rule 5(2) made similar provision to the CPR, rule 6.40(4) so that directing service in a manner contrary to the law in the country where service was to be effected was impermissible. Advocate Dawes highlighted the fact that the test for substituted service was "*impracticability*" whereas the test under the CPR, rule 6.15 is "*good reason*", being a further example of where differences arise and caution is needed.

56. When comparing Order 65, rule 4 with rule 7(1) of the 2007 Rules, Advocate Dawes emphasised the similarities between the provisions. Rule 7(1) provides:

> "*Where service within the jurisdiction of a document in the manner required by these Rules would, but for the provisions of this Rule, be impracticable or would entail undue expense, the Court may make such order for substituted or other service, whether by notice, by advertisement or otherwise, as it thinks just.*"

However, as he correctly pointed out, rule 7 is confined to substituted service within Guernsey and there was no suggestion that service on the Third and Fourth Respondents could be effected within the jurisdiction "*in the manner required by [the 2007] Rules*", meaning that rule 7 is not directly engaged in this case. Consequently, because rule 7 could not be prayed in aid by the Petitioners, any notions of ordering a form of substituted service, which conferred a wide discretion under the former English rule, should be disregarded.

57. One consequence of these submissions is that Advocate Dawes' primary position is that the Hague Service Convention creates an exclusive regime for service and the methods set out within it provide an exhaustive list of the means of transmission abroad. That exhaustive list is, of course, subject to the right of Contracting States to make declarations disapplying the alternative means that would otherwise be available, eg, under Article 10. There is support for that contention in the Provisional Version of the New Practical Handbook on the Operation of the Hague Service Convention, published in 2003. This document indicates that the view is not universally held but that the majority of Contracting States regard it as an accurate statement. Moreover, the manner of service out of the jurisdiction prescribed by the English CPR is consistent with that stance. In relation to the Third and Fourth Respondents, therefore, Advocate Dawes submitted that I was obliged to make an order for service in the British Virgin Islands and Russia respectively limited to the terms of the Hague Service Convention.

58. I agree with Advocate Dawes that, in a case where service is to be effected outside Guernsey, regard must first be had to what methods of service are lawful in the place where the document is to be served. The overriding objective in rule 1 of the 2007 Rules will not be met by parties applying to effect service in another jurisdiction in a manner that is not lawful there. Counsel must play their role in assisting the Court so that inappropriate orders for service are avoided. That said, notification of proceedings by an alternative means, being supplementary to an appropriate method for service of the document, may be sensible as a way of seeing whether the party to be served appears as a result of such notification, but

simple expediency must not, in my view, override consideration of what forms of service are permitted in the place where service is to be effected.

59. Reverting to the CPR, rule 6.15, I also accept that a provision equivalent to paragraph (2) does not feature in the 2007 Rules. Accordingly, I do not think it would be open to this Court to regard something done previously as retrospectively being good service. In Guernsey, where service cannot be effected in one of the ways prescribed, or has not been accepted voluntarily, leave to effect service needs to be sought. Such leave is a pre-condition to then effecting service in accordance with the Court's order.

60. I reject, however, Advocate Dawes' submissions on the interaction of rules 7, 8 and 9 of the 2007 Rules. In my judgment, where service out of the jurisdiction is sought, rule 8 is the first consideration. If a document is to be transmitted outside of Guernsey for service in another place, when specifying the matters required by rule 8(3) proper regard should be had to whether the Hague Service Convention applies and, if so, how service needs to be effected to comply with its terms. However, rule 9(b) confers a wide discretion on the Court to order "*service in some other manner*" and, when it does so, rules 2 to 8 do not apply. In other words, the option of ordering service in some other manner is available in addition to the methods of service set out in rules 2 to 8. Therefore, without applying any of rules 2 to 8 directly, before considering if rule 9(b) can be used, regard may be had to the principles set out in those other rules. Accordingly, rule 9(b) may be regarded as facilitating alternative service in a similar fashion to rule 6.15(1) of the CPR and guidance may, therefore, be taken from the application of that rule in English cases.

The English case law

61. It was common ground that the decision of the English Court of Appeal in Cecil v Bayat [2011] 1 WLR 3086 sets out relevant principles, which might usefully be taken into consideration in determining the Petitioners' application made under rules 8 and 9 of the 2007 Rules. That case involved proceedings which had been instituted in England following the failure of proceedings some years earlier in New York. The claim form was issued on 19 May 2008. The main element of the appeal proceedings related to decisions extending time for service of the claim form and the prejudice occasioned to the defendant's limitation defence and so is not relevant for present purposes. The appeal also concerned the refusal of Hamblen J on 29 March 2010 to set aside an order of David Steel J made on 8 April 2009 for permission to serve out of the jurisdiction and for alternative service. The grounds for seeking such orders rested principally on the lifestyles of the personal defendants, who had homes in more than one place, and that service would be speedier by alternative means than requiring compliance, where applicable, with the Hague Service Convention.

62. The reasoning of Hamblen J was set out in para. [199] of his judgment, which was quoted by Stanley Burnton LJ at para. [26] of his judgment:

> "*The evidence is that the individual defendants in this case are international businessmen who travel extensively, have a transient lifestyle and homes in different countries. As such, service through official channels would not necessarily have meant that the proceedings would come to their attention promptly. I accept that the more efficient means of doing so was service by electronic means. In the case of the corporate defendants the evidence was that service in the US and Afghanistan would involve delay. In relation to all defendants, given the limitation issues, it was important that service was effected as soon as possible. I do not consider that there was any ulterior motive behind the request for service by alternative means. Concerns about a possible anti-suit injunction was [sic] a reason why the defendants were not told of the proceedings in advance. It was not the reason why service by alternative means was being sought. That was justifiably motivated by a desire to ensure that proceedings were brought to the defendants' attention as efficiently and*

> *expeditiously as possible. In my judgment in the present case service by alternative means was likely to be the most effective and efficient means of bringing the proceedings to the attention of the defendants and there was a need, in the interests of the defendants themselves, for that to be done as expeditiously as possible. In all the circumstances I am satisfied that there was good reason for service by alternative means.*"

63. Stanley Burnton LJ was critical (at para. [61]) of Hamblen J referring to service as a means of bringing proceedings to the attention of the defendants because:

> "*... service is more than that. It is an exercise of the power of the court. In a case involving service out of the jurisdiction, it is an exercise of sovereignty within a foreign state.*"

At para. [69], he distinguished service and notification, saying that they should not be confused. Consideration of what can constitute proper service "*does not mean that a claimant cannot bring proceedings to the attention of a defendant by e-mail, fax or other more speedy means than service pursuant to CPR r 6.40.*" For present purposes, I am content to recognise that such a distinction can be drawn and remind myself of the need to concentrate on service of the Unfair Prejudice Application, as opposed to notification.

64. Because Guernsey is not covered by EU measures relating to service, the Hague Service Convention can be regarded as "*the most important source of the consent of states to service of foreign process within their territory ... service on a party to the Hague Convention by an alternative method under CPR r 6.15 should be regarded as exceptional to be permitted in special circumstances only*" (see para. [65]). Stanley Burnton LJ then offered the following examples of special circumstances (at para. [68]):

> "*Service by alternative means may be justified by facts specific to the defendant, as where there are grounds for believing that he has or will seek to avoid personal service where that is the only method permitted by the foreign law, or by facts relating to the proceedings, as where an injunction has been obtained without notice, or where an urgent application on notice for injunctive relief is required to be made after the issue of proceedings.*"

This does not appear to be an exhaustive list of the situations in which the discretion to direct service by alternative means can be exercised in favour of the applicant.

65. The decision in Cecil v Bayat does confirm that the wish of a claimant, or plaintiff or applicant, to avoid the delay, whether arising as a consequence of complying with requirements for service by the methods permitted by CPR, rule 6.40 or generally, "*cannot of itself justify an order for service by alternative means*" (see para. [67], which also confirms that reliance on the overriding objective cannot of itself justify an order for alternative service). The extent of delay likely to be occasioned is a relevant consideration, but something additional will be required before there is good reason, as required, for ordering alternative service in accordance with the English CPR.

66. Stanley Burnton LJ supported that proposition by referring to para. [47] of Knauf UK GmbH v British Gypsum Ltd [2002] 1 WLR 907 (quoted at para. [67] of his judgment):

> "*It was argued by [the second defendant] before the judge that the Hague Convention and the Bilateral Convention were a 'mandatory and exhaustive code of the proper means of service on German domiciled defendants', which therefore excluded alternative service in England. The judge did not accept that submission, pointing out that those Conventions were simply not concerned with service within the English jurisdiction. [The second defendant] did not repeat that submission on its appeal.*

> *Nevertheless, it follows in our judgment that to use CPR r 6.8 [now CPR r. 6.15] as a means of turning the flank of those Conventions, when it is common ground that they do not permit service by a direct and speedy method such as post, is to subvert the Conventions which govern the service rule as between claimants in England and defendants in Germany. It may be necessary to make exceptional orders for service by an alternative method where there is 'good reason': but a consideration of what is common ground as to the primary method for service of English process in Germany suggests that a mere desire for speed is unlikely to amount to good reason, for else, since claimants nearly always desire speed, the alternative method would become the primary way.*"

67. Advocate Dawes placed particular emphasis on the importance of not "*turning the flank*" of the Hague Service Convention in dealing with the Petitioners' application for leave to serve the Unfair Prejudice Application on the Third and Fourth Respondents. I agree that the Court should not rush headlong into concluding that dispensing with compliance with the methods of service permitted by the Hague Service Convention is warranted. Proper regard should, in my view, be had to such conventional routes for achieving service by means recognised by the relevant Contracting States. However, in accordance with rules 8 and 9 of the 2007 Rules, I consider that a staged approach to resolving the most appropriate method of directing service of a document is appropriate and that there is as much, if not more, flexibility in the Guernsey rules than in the English CPR. Indeed, when summarising his concurrence with the views expressed by Stanley Burnton LJ and referring to the requirement for good reason, Rix LJ commented that "*it may be that some flexibility should be shown in dealing with cases [where service can take very long periods], especially where litigation could be prejudiced by such lengthy periods*".

68. The principles derived from Cecil v Bayat were confirmed and explained in the judgment of the court delivered by Longmore LJ in Abela v Baadarani [2011] EWCA Civ 1571 (at para. [22]):

> "*CPR 6.15 permitting alternative service is in Section II of Part 6 which deals with service within the jurisdiction. It has until recently been controversial whether there is any jurisdiction to order alternative service outside the jurisdiction at all but that controversy seems to have been resolved in favour of the existence of such a jurisdiction by the decision of this court in Cecil v Bayat [2011] 1 WLR 3086. In Bacon v Automaytic Inc [2011] 2 AER Comm 852 Tugendhat J set out the reasons why the existence of the jurisdiction was previously considered doubtful but rightly considered that Cecil v Bayat has now settled the matter, because CPR 6.37(5)(b)(i) which is in Section IV of Part 6 dealing with service out of the jurisdiction provides:-*
>
> > *"(5) Where the court gives permission to serve a claim out of the jurisdiction*
> >
> > *(b) it may*
> > *(i) give directions about the method of service."*
>
> *This 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 paragraph 65 of Cecil v Bayat, should be regarded as exceptional. ... 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."*

69. I regard the willingness in these English cases to make use of service methods applicable for service within the jurisdiction in cases where service out of the jurisdiction is under consideration as indicative of the level of flexibility that can be applied under rule 9(b) of the 2007 Rules. It is why I have previously referred to the possibility of having regard to the principles underlying substituted service within the jurisdiction in accordance with rule 7 without engaging that rule directly. However, I do take heed to the guidance of Longmore LJ that the power conferred by rule 9(b) should only be used exceptionally and exercised cautiously.

70. The final English case to which I shall refer is Joint Stock Asset Management Company Ingosstrakh-Investments v BNP Paribas SA [2012] EWCA Civ 644. Advocate Mark Ferbrache relied on the fact that as recently as 24 May 2012, in respect of a hearing on 24 and 25 April 2012, the English Court of Appeal had upheld an order declaring that the claim form had been validly served on a Russian company by providing it to the company's London solicitors. Unlike the other authorities, to which reference could have been drawn at the hearing on 11 May 2012, this judgment was only available for the hearing on 14 June 2012.

71. The court's judgment in this case was also delivered by Stanley Burnton LJ. On alternative service, he concluded (at para. [85]):

> "*Teare J carefully considered the case for and against the validation of the service of the claim form on the Appellant by the alternative means of its delivery to Bryan Cave LLP, who are now its solicitors, but were not acting for it at the date of its delivery. The Appellant (D2) has in fact been participating in the English proceedings since 27 June 2011, albeit without submitting to the jurisdiction. The claim form was served on the solicitors acting for it in these proceedings, who are also the solicitors who regularly act for the person who has ultimate ownership of the Appellant and has control over it. Service in this country involves no infringement of Russian law, which applies to service in Russia, and has no extra-territorial effect on service outside Russia. It is appropriate for proceedings such as the present to proceed to trial expeditiously, in the interests as much of the Appellant and D1 (if their defence of the Bank's case against them in these proceedings is well-founded) as the Bank. Teare J took into account that good reason is required to justify an order for service by alternative means against a foreign defendant, as explained by my judgment in Cecil v Bayat, and that the retrospective validation of such service requires even stronger grounds and a more exceptional case. I see no error of law or principle on his part, and I would therefore dismiss the appeal against his order.*"

72. Although the Joint Stock case and Abela v Baadarani were cases about after the event validation of steps taken to effect service made under the CPR, rule 6.15(2), which is not a course of action available under Guernsey's 2007 Rules, the principles about when it is appropriate to order service by alternative means can be extracted and are, in my judgment, relevant to the consideration of whether, and if so how, to order service in some other manner in accordance with rule 9(b). In particular, where the order for the manner of service is for service in Guernsey, the problem about offending against the law of another place falls away.

73. Because the Court of Appeal in the Joint Stock case endorsed the reasoning of Teare J, at my request a copy of the first instance judgment was provided (BNP Paribas SA v OJSC "Russian Machines" [2012] EWHC 1023 (Comm)) and considered. After rehearsing the guidance given by the other cases, Teare J concluded:

> "*[17] In the present case the nature of the relief sought against the Defendants is an anti-suit injunction designed to protect an arbitration taking place in London between the claimant and the First Defendant. In such a case there is a particular need for the trial to be heard promptly. If service can only take place via the Hague Convention there is a risk, on the evidence now before the court, that it may not take place in sufficient time to enable the trial against all Defendants to take place in December 2012. Disclosure has been agreed, subject to questions of jurisdiction and service, to take place in August 2012. That is just over one year from the date when the papers were transmitted by the FPS to Russia. Service may not take place until some time thereafter and so the projected early trial may be put at risk.*
>
> *[18] In principle I consider that such considerations are capable of amounting to 'good reason' to make a retrospective declaration of good service. I do not consider that such an approach is inconsistent with the guidance of the Court of Appeal in Cecil v Bayat. The consideration to which I have referred are 'facts relating to the proceedings' of a type recognised by Stanley Burnton LJ in para 68 of his judgment as justifying an order under CPR 6.15. They are also considerations resulting from a long period of delay in service which Rix LJ recognised might require flexibility where litigation could be prejudiced.*"

74. Advocate Dawes sought to distinguish the Joint Stock case on the basis that it was an arbitration case. I doubt that in itself is a relevant distinction because the nature of each set of proceedings will depend on its own facts and the circumstances in which an application relating to service is being made. However, I do note that in this case there had been orders made for service to be effected by other means and that the decision of Teare J as endorsed by the Court of Appeal was in the context of proceedings that had been commenced some time earlier and in which a trial date had been fixed. Those are factors that are absent from the current proceedings so the result from the Joint Stock case is less relevant than the principles that can be derived from it. The same reasoning applies to the other English cases to which I have referred.

75. All of the cases refer in one way or another to the importance of respecting comity among nations. In the context of orders giving leave to serve a document in another place, this means paying proper regard to what is permissible and what is unlawful in that place. As I have already indicated, Counsel must bear the responsibility for alerting the Court to anything that would impact on the lawfulness of service by the methods being proposed. The words of Lord Westbury LC in Cookney v Anderson (1863) 1 De G J & S 365, 380-81, quoted by Stanley Burnton LJ in Cecil v Bayat (at para. [62]), offer a salient reminder:

> "*The right of administering justice is the attribute of sovereignty, and all persons within the dominions of a sovereign are within his allegiance and under his protection. If, therefore, one sovereign causes process to be served in the territory of another, and summons a foreign subject to his court of justice, it is in fact an invasion of sovereignty, and would be unjustifiable, unless done with consent ...*"

However, as noted by Teare J in the BNP Paribas case (at para. [20]), having reminded himself of the need to respect comity, where the order relates to steps to be taken within the English jurisdiction (and, in my view, the same applies to steps ordered by this Court to be taken in Guernsey) that cannot be said to offend the principle of comity.

Conclusions on principles

76. The guidance offered by the English CPR and the cases decided under it indicate that, in relation to the manner of service to be ordered on a person who is outside the jurisdiction in respect of whom leave to serve is warranted, the starting point is to consider any applicable international agreement and the regime established under it. For present purposes, that

involves consideration of the Hague Service Convention. In order to respect comity, careful consideration is needed to ensure that the manner of service ordered is not incompatible with the way that Convention applies in the place in which service is to be effected. In addition, where there is "*good reason*" to do so, in exceptional circumstances service by alternative means may be ordered. This possibility confirms that the Hague Service Convention (or any other permissible means to effect service available in English law) is not the only applicable regime, ie, it does not apply to the exclusion of such alternative means. However, the discretion available to order service by alternative means must be exercised cautiously and must genuinely be in exceptional, or special, circumstances, otherwise it would be elevated to become the normal manner of effecting service, which is not the scheme envisaged by the CPR.

77. In my judgment, that guidance can be adopted as a matter of Guernsey procedural law. In the context of Guernsey's 2007 Rules, an application under rule 8 for leave to effect service out of the jurisdiction will normally involve transmission of the document in question to another place. In deciding on the manner of service, as is required by rule 8(3), which has the consequence that the Court cannot grant leave to serve out of the jurisdiction in the abstract because it is incumbent for the judge's order to detail the matters set out in paragraph (3), respecting comity and ensuring compatibility with the domestic law of the place in which service is to be effected is vitally important. Service is different from notification and the proceedings in question can be notified to the intended recipient by different means, which might then result in a party attending without taking any further issue about service. However, where voluntary attendance does not ensue, establishing good service becomes essential.

78. The 2007 Rules are not as prescriptive as the English CPR, both as regards service out of the jurisdiction and, in some respects, service within the jurisdiction. In particular, in rule 9(b) there is no qualification that "*service in some other manner*" can only be order for "*good reason*" or because service by the methods covered by the other rules is "*impracticable*". Because consideration of other aspects of service under the 2007 Rules have looked to the application of similar rules in the English CPR and the more extensive learning of the English courts, I can see merit in seeing if similar guidance leads to the conclusion that opting for another manner of effecting service is justified. Although there is no explicit reference to "*good reason*" in rule 9(b), the absence of any reasoned foundation for making the order would put its lawfulness into jeopardy, if only on the usual public law ground of irrationality. Accordingly, as a first stage in the exercise, I propose to adopt a similar approach to the question of manner of service as applies in English procedure. However, because of the arguably greater flexibility contained in the 2007 Rules, if a different outcome is called for in order to do justice in the case, in my judgment, the constraints produced through following the English procedural approach can be looked at again. This is because the Guernsey rules are different from the more detailed CPR and Guernsey's solutions to these questions must be appropriate for proceedings before this Court and not the English High Court.

Application of principles to Third Respondent

79. Although most of the argument of Counsel concentrated on the manner of effecting service on the Fourth Respondent, the position of service on a company registered and domiciled in the British Virgin Islands also needs to be addressed and both Counsel indicated that their submissions on principles and effect applied equally to service on the Third Respondent.

80. The First Affidavit of Jonathan Wall, a partner in the law firm Withers BVI, sworn on 8 June 2012 helpfully provides some information about service as a matter of BVI law. He confirms that there is no evidence of the British Virgin Islands being subject to any declaration or reservation objecting to the freedoms to serve afforded by Article 10 of the Hague Service Convention. As such, service of proceedings by post is not precluded. However, at paragraph 10 of his Affidavit, Mr Wall explains that:

> "*... we would not as a practical matter advise clients to serve proceedings by post in the BVI due to the unreliability of the BVI postal service. The postal delivery system in the BVI is limited, and mail typically can only be sent to central PO Boxes that are rented from the BVI postal service. These PO Boxes need to be visited by the person renting them in order to collect post. Post sent in the traditional manner can further take a long time, sometimes several months, to arrive. For urgent items, or situations where reliability is an issue, we would use a courier, either DHL or Fed Ex, who deliver to a physical address.*"

81. Mr Wall further explains that service of a document on a company may be effected under section 101(1) of the BVI Business Companies Act 2004 by addressing the document to the company and leaving it at, or sending it to, the company's registered office or the office of the company's registered agent. Those methods are included in rule 5.7 ECSR CPR, which also enables service on a limited company to be effected by certain electronic means or through personal service on certain specified officers. More generally, at paragraph 15, he deposes that "*BVI solicitors, as officers of the BVI Court, are able to effect personal service of process directly in the BVI. This is a common form of service in the BVI, and the form that we consider most reliable.*"

82. At the conclusion of the hearing on 11 May 2012, I took the pragmatic approach of directing that service of the Unfair Prejudice Application on the Third Respondent could be effected by hand delivering the document to the offices of Mourant Ozannes. I recognise now, having had the benefit of fuller argument, that I was wrong to do that. Instead of undertaking the staged approach I have outlined above, I jumped straight to my conclusion and lumped the Third Respondent in with the Fourth Respondent when its position is actually more closely aligned to those of the Fifth to Eighth Respondents.

83. I will leave open the question of whether the Hague Service Convention applies to service in the British Virgin Islands of a document originating in Guernsey. Because there is only a single Contracting State involved, namely the United Kingdom, although the Convention has been extended to both Guernsey and the British Virgin Islands, there is an argument that international law is not engaged at all. However, even if the Convention is relevant, there are no particular restrictions on the method of service permissible in the British Virgin Islands and so no requirement to utilise official channels through the designated authority.

84. Therefore, having determined that rule 8(2) of the 2007 Rules is satisfied, I move on to consider whether giving leave to effect service on the Third Respondent in the British Virgin Islands is feasible or whether I also need to consider ordering service in some other manner under rule 9(b). From the evidence of Mr Wall, I am now satisfied that there are no legal barriers in BVI law to ordering service to be effected by sending the Unfair Prejudice Application to be delivered to the Third Respondent's address in the British Virgin Islands. I note that there are a number of different ways in which good service can be effected as a matter of BVI law. Although Mr Wall refers to the possibility of some delay in receiving documents sent by the postal system, because of problems on the ground in the British Virgin Islands, this goes only to timing and convenience, which in themselves are insufficient reasons to justify considering service by alternative means.

85. Using the terminology of the CPR, rule 6.15(1), I do not find that there is "*good reason*" to order service of the Unfair Prejudice Application on the Third Respondent in a manner other than by transmitting it to the British Virgin Islands. From the evidence and through the application of the principles I have set out, a straightforward disposal under rule 8 is available because the requirements of paragraph (3) can be included in an order giving leave to serve out of the jurisdiction. I am now satisfied that the appropriate course of action in respect of service on the Third Respondent is not to order that service be effected under rule 9(b) by

hand delivering the document to the offices of Mourant Ozannes. Accordingly, I will set aside, or discharge, that part of the Order I made on 11 May 2012.

86. As an aside, I should record that I am satisfied that an order stating that service on the Third Respondent by sending the Unfair Prejudice Application to its registered address by registered post (see paragraph 1(i) of the Order I made *ex parte* on 25 May 2012, the Petitioners having exercised their liberty to apply) is an appropriate order to make on an application under rule 8 as being entirely consistent with BVI law as explained by Mr Wall. Whether it needs to be supplemented in any way by seeking leave to effect personal service through the agency of a BVI solicitor or by arranging for the document to be delivered by courier, or even by sending it by electronic means in order to ensure that service is effected as expeditiously as it can be, is a matter for the Petitioners.

Application of principles to Fourth Respondent

87. The expert evidence about service on a person in Russia contains a number of common themes. Both Mr Chernysov and Professor Yarkov agree that, as the latter put it, "*the only permissible method of serving foreign judicial and extrajudicial documents originating from a state court in Guernsey on a Russian citizen in Russia is by forwarding a request to the Ministry of Justice of the Russian Federation*". Before such a document can be served it must be translated into Russian. Upon receipt, the Ministry of Justice will check it for compliance with the rules of the Hague Service Convention and, if the request properly complies with its terms, the document is forwarded to the relevant territorial subdivision, which then sends the request to the appropriate court at the addressee's place of residence. Because this process is seen as a judicial activity, it operates under the exclusive authority of the court. The judge subpoenas the addressee to attend in person for the purpose of being personally served with the document. As Mr Chernysov explained, "*all Russian citizens must have a registered place of residence and the court will seek to notify the individual of the Court Hearing at that address*". However, there are instances where attempts at service in Russia have been unsuccessful. The list of examples exhibited to Mr Chernysov's Second Affidavit, relating to 2010-2012, is of passing interest but I doubt I can draw any particular conclusion from it beyond noting that there are occasions when service cannot be effected, several of which occurred in the Commercial Court of Moscow. I mention those three examples because the Fourth Respondent's address is a Moscow address, but I have no idea how the list of failures compares to the list of successes.

88. Perhaps the more pertinent aspect of the expert evidence relates to the timeframe within which a request to serve a document under the Hague Service Convention is executed. At paragraph 17 of his First Affidavit, Mr Chernysov referred to the advice given by the Russian Federation to the Hague Convention on Private International Law that "*the time of performance of a request for service of documents is from three to six months*", and exhibited an extract confirming that from the HCCH website. Professor Yarkov disagreed and, at paragraph 35 of his Affidavit, pointed out that the actual reply was "*2 to 6 months*". Mr Chernysov continued by adding "*in my experience, due to the lengthy and complicated procedure adopted in Russia, service of a court document may take six months, which is what happened in 3 instances the Firm has been involved in where service on Russian companies was required.*" Professor Yarkov also addressed this issue by stating that "*in my experience and on the basis of consultations with officers from the Ministry of Justice, the normal time period of fulfilling the request does not extend beyond six months.*"

89. The conclusions I draw from the evidence of these two experts is that a request to effect service on a person in Russia might be completed within a matter of months, possibly as short as two months, from receipt by the Ministry of Justice of a properly formulated request. Normally the request is fulfilled before the expiry of six months. The average time for complying with requests is obviously going to be longer than the shortest period of two months and I think I can properly infer that it is going to be shorter than six months.

However, there are examples where the service of the document is not effected at all or is not effected within that six-month period. That position is clear from the facts in the Joint Stock case and is further supported by reference to the experience to which Mr Oldnall deposed in his fourth Affidavit (given not as expert evidence but as fact).

90. As a consequence of this evidence, which has only been lodged since the hearing on 11 May 2012, I now know that, in order to grant leave to effect service on the Fourth Respondent in Russia, an order under rule 8 of the 2007 Rules would need to state that the manner of service is that required by Russian law, namely to transmit a request to the Ministry of Justice of the Russian Federation in accordance with all the requirements of the Hague Service Convention. Service by that method will take anything from two months upwards. I do take into account that Advocate Dawes confirmed that the address in Moscow given by the Fourth Respondent is his registered place of residence and his actual address, implying that in due course the Fourth Respondent, when subpoenaed to appear for service to be effected, will not be in the position of some intended recipients of documents in Russia whose addresses are discovered to be out of date. However, there is also an appreciable risk in this case that service will not be effected by these means until at least nearer to six months have passed and a much smaller risk that service will not be effected until some time later. In those circumstances, before deciding whether or not to order service on the Fourth Respondent under rule 8 in a Convention-compliant manner, I turn to consider the alternative of ordering service under rule 9(b).

91. In doing so, I will commence that exercise by seeing where adopting the guidance offered by Stanley Burnton LJ in Cecil v Bayat leads me. I have already referred to the period of delay that ordering service on the Fourth Respondent in Russia under the terms of the Hague Service Convention is likely to entail, although I also remind myself that the delay inherent in following that procedure cannot, of itself, justify a decision to order service "*in some other manner*". For present purposes, even allowing for service to be effected in, say, four months (taking the mid-point between the two and six months to which Professor Yarkov referred, although there is every reason to suspect that in doing so I am being unduly optimistic), the return date on which the Fourth Defendant would then formally appear would be running up close to Christmas. Accordingly, it is that rough timescale against which I will consider whether there are "*facts specific to the defendant ...or ... facts relating to the proceedings, as where an injunction has been obtained without notice, or where an urgent application on notice for injunctive relief is required to be made after the issue of proceedings*" justifying an order under rule 9(b).

92. Advocate Dawes has emphasised that in the English cases to which I have referred the switch to service by alternative methods only arose after service by more conventional methods had proved unproductive. He was effectively inviting me at this stage to conclude that, until some attempt at service on the Fourth Respondent in accordance with the Hague Service Convention had been made, it would be premature to dispense entirely with service in that manner. I have given very careful consideration to that submission because I certainly would not lightly disregard, or perhaps more accurately dispense with, the method of service agreed as a matter of international law between the United Kingdom, on behalf of Guernsey, and the Russian Federation, ie, the "*turning the flank*" argument to which I referred earlier. However, I note that in the guidance provided by Stanley Burnton LJ in Cecil v Bayat he did not indicate that service under the Convention (or by some other acceptable means involving transmission of the document out of the jurisdiction) must always be attempted first. Indeed, one of the examples he gave (quoted in the preceding paragraph) demonstrates to me that the urgency of the proceedings may lead to alternative means of service being justified from the outset. On the basis that the 2007 Rules do not preclude me from ordering service otherwise than in accordance with rule 8 in a case like this, which I understand is consistent with the position under the English CPR, if justice so requires, it remains open to the Court to make an order under rule 9(b), even at this comparatively early stage in the proceedings.

93. In deciding whether there are "*facts relating to the proceedings*" justifying something other than an order for leave to serve out of the jurisdiction under rule 8, it is necessary to have regard to what the dispute between the parties involves and how matters currently stand in respect to progressing the Unfair Prejudice Application. The first thing to note is that good service (in accordance with rule 3 of the 2007 Rules) has already been achieved against the First and Second Respondents. The Third Respondent is one of the four shareholders of the First Respondent. It is not disputed that the Fourth Respondent controls the Third Respondent as beneficial owner and it is alleged that he now also exercises *de facto* control over the First Respondent (see, eg, para. [36] of the Bailiff's judgment of 17 May 2012). Because there are proceedings already before the Court involving other parties, in reaching a decision on the Petitioners' application to effect service on the Fourth Respondent I consider that I can properly have regard to the desirability for all parties of making progress with the Unfair Prejudice Application in a timely fashion.

94. Having regard to the relief sought in the Prayer to the Unfair Prejudice Application, paragraphs (6) to (8), in particular, seek injunctive relief against the Fourth Respondent (as well as the Third Respondent) and, although the interim relief granting by the Bailiff in the injunction proceedings holds the line (as it has been described) between the parties, in my judgment it is desirable to move towards finally resolving that temporary position as soon as appropriate. Advocate Mark Ferbrache drew attention to the prejudice to the Petitioners (and also to the Third Respondent, and so indirectly to the Fourth Respondent) described in Mr Oldnall's Fourth and Fifth Affidavits. In the light of the subject-matter of the dispute, and balancing all parties' interests in it, it seems to me that prolonging the stalemate is of no real benefit to anyone and that the injunctive and other relief being sought tips the balance in favour of treating the Unfair Prejudice Application as being one of the exceptional cases in which service by alternative means is appropriate. In my judgment, this is a case where resolving the substantive dispute as expeditiously as possible, whether that arises from a dispute about the appropriateness of Guernsey as a jurisdiction (which I understand is an issue still to be raised) or at the end of a trial, is in the interests of all parties. Adopting the words used by Stanley Burnton LJ in the Joint Stock case (at para. [75]), "*the relief sought ... require[s] a speedy inter partes hearing that could not be achieved if service had to be effected under the Hague Convention.*"

95. An order under rule 9(b) for service to be effected within Guernsey does not offend against comity. In the context of how these proceedings are developing, the international "flavour" to them may yet result in that question being re-visited but, for the purposes of determining the manner of service on the Fourth Respondent, hand-delivery of the Unfair Prejudice Application at the offices of Mourant Ozannes does not engage questions of comity.

96. Further, because the Petitioners gave an undertaking to the Court in the injunction proceedings to commence substantive proceedings against the Respondents, since that time the Fourth Respondent must have been aware of the intention to institute the substantive proceedings and so can, I suggest, be treated as expecting them. In the particular circumstances of this case, I regard that undertaking to commence substantive proceedings against all the Respondents to the injunction proceedings as being another significant factor to weigh in the balance when deciding whether there is justification for making an order under rule 9(b) rather than rule 8.

97. These factors lead me to the conclusion, adopting the test of the CPR, rule 6.15(1), that there is "*good reason*" in this case to make an order for service on the Fourth Respondent in a manner different from that required under rule 8. There is, therefore, no need for me to move on to decide whether rule 9(b) offers a wider gateway to ordering service "*in some other manner*" because, as I have already determined, satisfying the requirements that apply in England and Wales under the CPR must, in my judgment, clearly bring the application within the wide discretion available under rule 9 of the 2007 Rules.

98. Just as I did following the hearing on 11 May 2012, I have tested my conclusion that this is a case in which an order for service under rule 9(b) can properly be made against the overriding objective of the 2007 Rules "*to deal with cases justly*" (rule 1(1)) which includes, so far as practicable, "*saving expense*" and "*ensuring that [the case] is dealt with expeditiously and fairly*" (r. 1(2)(b) and (d)). In my judgment, granting leave to serve the Unfair Prejudice Application on the Fourth Respondent by hand delivered post at the offices of Mourant Ozannes is consistent with the overriding objective in that it does not entail additional expense and should result in the proceedings being progressed more fairly for the benefit of all parties. Although these are not the primary or sole considerations on which I have based this decision, any inconsistency with the overriding objective could have led me to re-think the choice between a rule 8 or rule 9(b) order.

99. Each case in which an application for leave to effect service on a person who is not within the jurisdiction of Guernsey will necessarily turn on its particular facts. Having weighed up the competing arguments between making an order for service on the Fourth Respondent in Russia in accordance with the Hague Service Convention or by hand-delivery to the Advocates who are already representing the Fourth Respondent, admittedly on an acknowledged limited basis, and so are necessarily in contact with him, I am satisfied that the balance remains in favour of service by hand-delivery. The order I made on 11 May 2012, therefore, stands in relation to the Fourth Respondent.

Conclusion

100. The hearing on 14 June 2012 has enabled me to consider afresh the Petitioners' application for leave to serve the Third and Fourth Respondents by hand-delivered post at the offices of Mourant Ozannes. For the reasons I have outlined, I accept that the order I made in respect of the Third Defendant, a BVI company, was flawed. Accordingly, I will set aside, or discharge, that aspect of the order I made on 11 May 2012. The much more detailed analysis I have now undertaken on the competing arguments for and against making such an order in relation to the Fourth Respondent does not, however, affect my conclusion that the order sought by the Petitioners was the right order to make. Therefore, that aspect of my order of 11 May 2012 stands.

