IN THE HIGH COURT OF JUSTICE **CLAIM No: HC13F03721**

CHANCERY DIVISION

Royal Courts of Justice
Rolls Building
7 Rolls Building
London EC4A 1NL

Before:

MASTER MARSH

Between :

KEY HOMES BRADFORD LTD & ORS

Claimants

-and-

RAFIK PATEL

Defendant

JUDGMENT

Edward Cumming instructed by Reynolds Porter Chamberlain LLP appeared for the Claimants

Tim Penny instructed by Shulmans LLP appeared for the Defendant

Judgment handed down on 10th January 2014

……………………………………………….
Master Marsh

1. On 16th August 2013 the Claimants issued proceedings against the Defendant. The Claimants say that the claim was served on the Defendant on 13th September 2013. On that date, Christopher Whitehouse, a Solicitor employed by Reynolds Porter Chamberlain, attended two addresses at each of which he delivered the claim form, the particulars of claim and a response pack. The two addresses he attended were:

(a) 869 Romford Road, London E12 5JY ("Romford") and

(b) 12 Town Quay Wharf, Abbey Road, Barking IG11 7BZ ("Barking").

Romford is a residential address. Barking comprises business premises.

2. The Defendant disputes that effective service has taken place and on 9th October 2013 issued an application seeking, amongst other things, an order setting aside purported service of the claim form, a declaration that the Romford and Barking addresses are not his usual or last known residence and declaring that the claim form has not been served on him. On 12th November 2013 the Claimants issued an application seeking permission to serve the Defendant out of the jurisdiction at an address in United Arab Emirates (UAE) and also seeking an order that they be permitted to serve the Defendant by alternative methods pursuant to CPR 6.15(1).

3. On 20th November 2013 the Claimants attended before me and, having read the witness statement of Timothy Charles Brown dated 12th November 2013, I granted permission to serve the claim form out of the jurisdiction in the UAE. I directed that the remainder of the Claimants' application should be heard at the same time as the Defendant's application. Both applications came before me on 17th December 2013 when I reserved judgment.

The Claim

4. It is only necessary to provide a brief summary of the claim. The Claimants are each special purpose vehicles (SPV's) set up for the purpose of attracting

investment for particular building projects. The projects involve building student accommodation and/or hotels. Until he resigned on 5th April 2013, the Defendant was the sole director of each of the Claimants and, clearly, he was the driving force behind the setting up of the Claimant companies and the proposed building projects. The investment scheme he developed involved attracting a large number of small (or relatively small) investors who each entered into an agreement for lease of a particular room in a specified building (student accommodation or a hotel) with a view to receiving rental income after deduction of management expenses. The total amount of investment attracted by the Claimants is slightly in excess of £53 million.

5. The investments were underwritten by a Deposit Protection Bond with Northern and Western Insurance Company Limited ("NWIC"). The Claimants' case is that by early 2013 NWIC had become concerned about whether the Claimants would be able to complete the developments successfully and on 5th April 2013 a Sale and Purchase Agreement ("the SPA") was entered into between Melior Development Management Limited ("Melior"), a company related to NWIC, and the Defendant under which Melior acquired the entire issued share capital of each of the Claimants and the Defendant agreed to resign his directorships. Thus, NWIC was able to obtain control of the developments at that stage. The Claimants say they discovered after the SPA that the Defendant has diverted a substantial proportion of the investment funds, amounting to at least £20 million, for his own benefit and that those funds were transferred to an account under his control and believed to be in the name of Key Homes FZE in Dubai. The proceedings seek an account from the Defendant of the investment monies that were received, delivery up of books and records and ancillary relief. Since the proceedings were commenced, one of the Claimants has gone into administration. The Claimants say there is some real urgency in pursuing the claim.

6. The Defendant has not engaged with the merits of the claim and if he is correct the claim has not been served he has been under no obligation to do so. In any event, the merits, or otherwise, of the claim have nothing to do with whether the Defendant has, in fact, been served with the claim. They are relevant, however, to the grant of permission for service out of the jurisdiction (no challenge is made to the order dated 20th November 2013) and to the Claimants' application under CPR 6.15 (2). It is not disputed that, subject to the question of service, the English court has jurisdiction to try the issues that are raised in the claim.

Defendant's Application

7. The Defendant's case is that by 13th September 2013 he was no longer resident in the United Kingdom, and that neither Romford nor Barking were his "usual or last known residence". This gives rise to a number of fact sensitive issues which cannot be finally determined on the basis of the witness statements that have been provided. The approach I must adopt is to consider whether the Claimants or the Defendant have, on an analysis of the evidence, the better or much the better of the argument. The onus is on the Claimants to establish that proper service in compliance with the CPR has taken place and to establish that one of the two addresses was the usual or last known residence.

8. The Claimants have raised what is agreed to be a novel point concerning service. They say they are entitled to rely upon section 1140 of the Companies Act 2006 ("the 2006 Act") and that by virtue of that section alone, disregarding the provisions of the CPR, service has been effected. It is therefore convenient to deal with that issue first and in the course of doing so it is necessary to consider whether there is an underlying conflict of law rule that a party may not be served while out of the jurisdiction unless that absence is a temporary one.

Section 1140 Companies Act 2006

9. Before setting out the provisions of section 1140, and putting it into its relevant statutory context, it is appropriate to remark that despite the very helpful submissions provided by both counsel, their researches were unable to locate any case in which section 1140 has been considered. There is also no commentary about its effect either in the White Book save that the existence of section 1140 is referred to in the notes at paragraph 6.3.9.1 and the wording of the section is summarised in a manner which suggests that the editors of the White Book consider section 1140 may provide a means of service of a claim form that operates in parallel to the CPR. But the notes do not say that in terms.

10. Section 1139 of the 2006 Act deals with service of documents on a company. Section 1140 is headed "Service of documents on directors, secretaries and others". The material parts of the section are as follows:

> " (1) A document may be served on a person to whom this section applies by leaving it at, or sending it by post to, the person's registered address.
>
> (2) This section applies to-
>
> (a) A director or secretary of a company;
>
> ... ...
>
> (3) This section applies whatever the purpose of the document in question. It is not restricted to service for purposes arising out of or in connection with the appointment or position mentioned in subsection (2) or in connection with the company concerned.
>
> (4) For the purposes of this section a person's "registered address" means any address for the time being shown as a current address in relation to that person in the part of the register available for public inspection.

(8) Nothing in this section shall be read as affecting any enactment or rule of law under which permission is required for service out of the jurisdiction."

11. Section 1141 is headed: "Service address". It provides a definition of "service address" for the Companies Act and states that it means in relation to a person:

"... an address at which documents may be effectively served on that person."

The Secretary of State is given power to make regulations to specify conditions with which a service address must comply. Part 3 of the Companies Act 2006 (Annual Return and Service Addresses) Regulations 2008 contain relevant conditions which permit service of documents by physical delivery or by postal delivery.

12. Sections 1140 and 1141 are linked to the information that is required to be recorded in the register of directors pursuant to section 163 of the 2006 Act. Under section 163(1) the register must contain for each director "a service address" and it is also required for the register to specify the country or state in which the director is usually resident. Under section 163(5) a person's service address may be stated to be the company's registered office.

13. Section 1140 came into force on 1st October 2009. Some assistance about its intended meaning can be derived from the commentary relating to the Bill. Clause 747 of the Bill corresponded to section 1140. The commentary is as follows:

"This clause is a new provision. It ensures that the address on the public record for any director or secretary is effective for the service of documents on that person. Sub-section (3) provides that the address is effective even if the document has no bearing on the person's responsibilities as director or secretary. The provision also applies to the address on the public record of various other persons for whom the 1985 Act requires an address on the public record."

Some, perhaps limited, assistance can be obtained from the DTI's consultation paper on Company Law Reform dated March 2005. At paragraph 5.3 under the heading "Directors' Home Addresses" it states:

"…. it is important that the service address functions effectively, and the law will be tightened to increase the obligation on directors to keep the record up to date, and ensure that the address on the public record is fully effective for the service of documents."

14. It is of note that section 163 contains an entirely new provision requiring a service address to be provided. Plainly it was the intention that the register of directors should contain information that made it easier to identify an address in which a company director could be served with appropriate documents. However, the director's privacy could be protected by the director opting for the service address to be the company's registered office. Such an option might well be appropriate for a director to adopt in relation to a company operating in a field attracting controversy. Nevertheless, the register was to provide a specified address for service purposes. Section 1140 is, in my judgment, drafted in clear and unambiguous language. Subsection (3) is explicit that the section applies whatever the purpose of the document in question and the section is not restricted to service for purposes arising out of or in connection with the directorship or in connection with the company to which the register relates. On the face of the section, it provides a method by which a company director may be served with any document, including a claim form, at the registered address. There are however limiting words in subsection (8) that require further examination.

15. So far as the Defendant is concerned, it is common ground that as at 13th September 2011, 10 companies of which the Defendant was a director recorded the Barking address as his address for service and at least two other companies recorded

the Romford address as his address for service. Mr Penny, who appeared for the Defendant, acknowledged that if section 1140 applies, service on the Defendant has been properly effected by delivery of the claim form and associated documents at those two addresses. However, he observed that the apparent effect of section 1140, if read literally, is startling. The mere fact of a director recording an address for service in a company register will enable a claimant to serve him at that address for all purposes. That is what the section quite explicitly says, but is it what Parliament intended?

16. It is of note that under section 1141 the Secretary of State is able to specify conditions with which a service address must comply. The conditions that have been imposed are set out in Part 3 of the 2008 Regulations. The conditions do not say that an address in the United Kingdom must be provided and, equally, it is not necessary that the address need be a residential address. It would have been possible for the Secretary of State to have specified that a director could not comply with section 163(1)(b) by providing an address outside the United Kingdom, but he has not done so. It follows, therefore, that a director of an English company who is resident abroad is at liberty to specify an address, business or residential, that is outside the jurisdiction provided the conditions set out in Part 3 of the 2008 Regulations are complied with. In this case, the Defendant was at liberty to specify that his service address was in the United Arab Emirates rather than the Romford and Barking addresses. He did not do so.

17. Section 1140 (8) clearly limits the scope of section 1140 overall. However, it appears to me that the effect of section 1140(8) is only to prevent section 1140 permitting service of proceedings on a director who has provided a service address outside the United Kingdom. In such a case it is necessary to comply with the provisions of CPR Part 6 and to obtain permission to serve out of the jurisdiction.

18. Mr Penny submitted that the effect of section 1140, taking into account subsection (8) and its proper construction overall, is that it does not abrogate what he says is the general rule of conflicts law that a person may not be served at a time when he is not resident within the jurisdiction unless that absence is temporary. It is therefore necessary to consider whether such a general rule of conflicts law exists and, if so, what effect it may have, if any, on section 1140.

19. In Chellaram & Another v Chellaram & Others (No. 2) [2002] 3 All ER 17 Lawrence Collins J. said at paragraph 47:

"...it has always been, and remains, a fundamental rule of English procedure and jurisdiction that a defendant may be served with originating process within the jurisdiction only if he is present in the jurisdiction at the time of service, or deemed service."

That dictum has been considered by the Court of Appeal in two cases which appear to express irreconcilable views about it. In City & Country Properties Limited v Kamali [2007] 1 WLR 1219 the Court of Appeal considered the dictum from Lawrence Collins J in the light of a previous decision of the Court of Appeal concerning the provisions of the County Court Rules – Rolph v Zolan [1993] 1 WLR 1308. The decision in Rolph related to the County Court Rules that were in force prior to the introduction of the CPR. Kamali considered the Rolph case in the light of the introduction of the CPR and whether or not the rule of law expressed in the judgment of Lawrence Collins J. in Chellaram remained correct. May LJ, gave the leading judgment. At paragraph 12 he said:

" 12. In my judgment, there is not, or at least no longer is, a fundamental principle such as Lawrence Collins J. supposed. Further, I do not think that he was substantially correct to say, as he did in paragraph 46 of *Chellaram's* case [2002] 3 All ER 17, that *Rolph's* case [1993] 1WLR 1305 was not binding. In

my view, if it is not strictly binding, it is plainly applicable and not in substance distinguishable."

Later in the same paragraph he said:

"The courts reasoning and conclusion in *Rolph's* case are not affected by the existence of provisions enabling an application to be made for service out of the jurisdiction."

20. Neuberger LJ agreed with May LJ. His analysis was that CPR rules 6.2 to 6.5 did not exclude service in accordance with their terms simply because the defendant is out of the jurisdiction. He considered it was inappropriate to imply the common law principle identified in Chellaram into CPR rules 6.2 to 6.5.

21. Wilson LJ concurred with the reasons given in the judgment of May LJ and Neuberger LJ:

"... particularly because of my disinclination to accept, without express mandate in the new procedure code, that inquiry into the validity of service of the claim form should depend upon where the Defendant turns out to have happened to be present on the day of the deemed service and, indeed, my concern that the enquiry would thus often degenerate into a difficult assessment of the truth of his assertion in such regard".

22. In Kamali the claim form was served on the defendant at his place of business at a time he was abroad. The application of the principle described by Lawrence Collins J. would have had, therefore, a stark effect. Nevertheless, all three judgments of the members of the Court of Appeal clearly disapproved of Lawrence Collins J's dictum in Chellaram and held that the principle had no application to service of proceedings under CPR rules 6.2 to 6.5.

23. In SSL International Plc & Anor v TTK LIG Limited & others [2012] 1 WLR 1842 a differently constituted Court of Appeal reached the opposite conclusion and

Kamali was distinguished. However, the facts in SSL International were markedly different from those in Kamali. SSL International concerned service on a company rather than an individual and the issue concerned the proper construction of CPR rule 6.5(3)(b). The Court of Appeal held that the rule did not permit service of a claim form on a company which did not carry on business within the jurisdiction by leaving it with a person holding a senior position within the company. Stanley Burnton LJ considered the decision of Brandon J, in The Theodohos [1977] 2 Lloyd's Rep 428. In that case the judge concluded at page 431:

> " In my view the authorities to which I have been referred compel me to reject Mr Longmore's submission, and to hold that, unless a foreign company is carrying on business as a place within the jurisdiction, it cannot be served with process within the jurisdiction, either by the method employed in the present case or at all".

That decision was made in a context of the provisions of RSC Ord 65, r3 which expressly permitted personal service of a document on a company by serving it on an officer of the company. The qualification to that rule as expressed in The Theodohos remained an established principle which Stanley Burnton LJ (paragraph 49) described as representing a fundamental rule of the common law. The question he had to consider was whether the CPR had changed the position. Having considered the decision in Rolph, the facts of which he described as "extraordinary" and the decision in Kamali, he went on to say:

> "56. I respectfully entirely agree with the decision in City & Country Properties Limited v Kamali. In that case, the defendant carried on business, and presumably resided, in this country (indeed, the claim was for unpaid rent due under the lease of his business premises), and relied on his temporary absence from the jurisdiction as a reason why the claim form had not been

validly served. He was, by reason of his business if not his residence, subject to the jurisdiction. It is a very different thing to hold that, in effect, a company which has never had and has no presence within the jurisdiction may be validly served in this country, not by way of substituted service, but as of right if a director happens to be in this country. The artificiality in the present case of the Claimants serving TTK by personal service on their own employee accentuates the unreasonableness of the position if the Claimants are correct.

57. It is a general principal of common law that absent specific provision (as in the rules for service out of the jurisdiction) the courts only exercise jurisdiction against those subject to, i.e. within the jurisdiction. Temporary absence, for instance on holiday, does not result in a person not being subject to the jurisdiction. In my judgment, Lawrence Collins J's statement of principle in Chellaram... was correct if read with that qualification, and was not inconsistent with the decision in City & County Properties v Kamali ..."

24. I am bound to say, with respect, that I do not find it easy to reconcile Stanley Burnton LJ's acceptance of the correctness of the decision in Kamali with his approval of Lawrence Collins J's statement of principle in Chellaram (with the qualification he adds). It appears to me that the judgments in Kamali are expressed in wide terms and construe the provisions of CPR Rule 6, so as to exclude the principle described by Lawrence Collins J in Chellaram. However, SSL International relates only to the provisions of CPR rules 6.5(3)(b) concerning service of a claim form on a company. This claim, and Kamali, relate to service on an individual. Although the distinction is a limited one, I consider that I am bound by the decision of the Court of Appeal in Kamali which is underpinned by the earlier decision by the Court of Appeal in Rolph that the Chellaram principle has no application to service of an individual under CPR rule 6.

25. I turn back to consider what is the effect of section 1140(8). Section 1140 in my judgment provides a basis for serving a director which is entirely outside the provisions for service in the CPR. It is a parallel code. The disapproval by the Court of Appeal in Kamali of the general principle enunciated by Lawrence Collins J in Chellaram was expressed in broad terms. It seems to me it is inherently unlikely that in passing section 1140 of the 2006 Act, Parliament can have intended what was clearly designed to be a new manner in which company directors could be served should be subject to a common-law principle which is directly contrary to the clear terms of the section. Nothing in section 1140 suggests that its provisions are limited such as to prevent service upon a director who is not resident within the jurisdiction. A new regime for service of documents on directors was introduced and was intended to have a wide effect. It is not prima facie unfair that a director of an English company who resides abroad, but who gives an address for service in England, should be vulnerable to being served at that address as a choice, or a deemed choice, has been made. And the solution is simple because the director can opt to provide an address abroad in appropriate circumstances. Section 1140(8) is explicable for the very reason that a director may opt to provide a service address which is outside the jurisdiction. Sub-section (8) is designed to make clear that by providing a foreign address, a director is not agreeing that the English court will have jurisdiction to deal with any dispute concerning him. As the sub-section makes clear, the general rule relating to permission for service outside the jurisdiction will still apply.

26. My conclusions in relation to section 1140 are that it does indeed provide a new set of provisions which are of broad effect. A director who is resident abroad is entitled to provide an address outside the jurisdiction and, if he does so, permission to serve out of the jurisdiction must be obtained before service can be effected. However, whether he is normally resident outside the jurisdiction or not, if he

provides an address for service that is within the jurisdiction then he may be served at that address. It may be that Mr Patel did not, in fact, consider the matter but he has held himself out by giving a service address in England as a person who is willing to be served at that address. Parliament plainly intended to institute a revised system that places some importance on the service address being kept up-to-date. The person who has responsibility for doing that is the director himself. If he fails to make an adjustment to his address at a time when he claims to have changed residence from England to the UAE, he has no one to blame but himself. It is also relevant to note here that the Defendant nominated both the Romford and Barking addresses as addresses for service in relation to a number of new companies some time after he claims to have abandoned his residence in England. I therefore conclude that service was properly effected on the Defendant on 13th September 2013 by service of the claim form, particulars of claim and response pack at both the Romford and Barking addresses.

27. Having reached that conclusion it is strictly unnecessary for me to deal with the remaining matters but they were extensively argued before me and this is therefore appropriate that I do so but I will deal with them rather more briefly than might otherwise be the case.

Usual or last known Residence

28. In this case the Claimants requested Shulmans Solicitors, who were acting for the Defendant to accept service of proceedings on his behalf. They stated in a letter dated 21st August 2013 that they do not hold instructions to accept service of proceedings. The Claimants did not feel able to effect personal service and the claim form was delivered to the Romford and Barking addresses. On the assumption that service under section 1140 of the Companies Act 2006 did not take place, the question arises whether service was effected under CPR 6.9(2) by serving the

Defendant at his usual or last known residence. The delivery of documents to the Barking address cannot have amounted to service within that provision as it is not a residential address.

29. The provisions of CPR rule 6.9(2) were considered by the Court of Appeal in Relfo Ltd v Varsani [2011] 1 WLR 1402. It suffices to refer to the headnote on the meaning of usual residence:

> " ... the test was whether the defendant resided there in the settled pattern of his life and it was not a matter of merely comparing the duration or period of occupation, taking little account of the nature or quality of his use of the premises and ignoring that the premises were occupied permanently by the defendant's family... ".

30 Etherton LJ, who gave the leading judgment, declined to give any guidance about the meaning of "last known residence" as the point did not arise.

Evidence about residence

31. The Defendant has provided extensive evidence about his residence in 2013, some of which was challenged by the Claimants. The Defendant's connection with the Romford address has been a strong one. He moved to that address with his parents in 1984 when he was three years old. He continued to live there with his parents up to and after his marriage in 2006 (a period well in excess of 20 years). He says he remained living there until he and his wife and their first child moved to live in the UAE in 2011. His brother Asif now lives at the Romford address and he says his parents spend some time there and some time at another property, although in his witness statement dated 13th December 2013 he says his parents "still live" at the Romford address. This may have been intended to mean that they live there from time to time but what he says in explicit terms does cast some doubt on his claim that they live there only some of the time.

32. The Defendant gives credible evidence about having taken a decision, with advice from PWC, to move his home from the UK to the UAE for tax reasons. He says that in February 2011 he made the decision to live permanently in the UAE and he moved from England to live there on 2nd April 2011. He owns no property in England, other than some shares in UK companies. He explains the steps he took to sever ties with the UK, including:

- Notifying his GP.
- Removing himself and his wife from the electoral roll.
- Cancelling his mobile phone contract.
- Notifying HMRC.
- Cancelling child benefit (this came a little after April 2011 because (he says) it was overlooked).

33. He describes the steps taken to find accommodation in the UAE. First, he stayed with his family in a hotel. Next they rented an apartment for 12 months and finally he has bought an apartment at Marina Quays, Dubai Marina. His elder son is now at school in Dubai. His younger son was born in England as his wife wished to be with her family. The Defendant has a residence permit in the UAE but it does not grant a permanent right of residence. That is not surprising but it is not suggested that that there is a real likelihood of his stay in the UAE being short-term due to revocation of his permit or that it will not be renewed as long as he wishes to live there and obeys local laws and regulations. He has retained UK nationality but, again, that is not surprising as it is very difficult to obtain UAE nationality.

34. On any view, the Defendant now has a strong connection with the UAE and the evidence points firmly to him being resident there. The question remains, however, whether he is also resident in the UK and thus his usual residence is both in the UAE and the UK. He does not claim to have severed all connections with the UK

and, indeed, his family connections cannot be severed at will. In some circumstances the quality of residence may be seen as being adhesive and in a period of transition, in particular, residence may be retained. His evidence is that:

(a) He has no car in the UK and cannot use his UK driving licence.

(b) He has visited the UK regularly for business and family reasons. He says his visits total:

2011 (April to December) – less than 30 days

2012 - 20 to 25 days

2013 (up to 13/9/13) - 49 days

(c) He has stayed at the Romford address, his brother's home and with other family members.

(d) He has sometimes made 1 day business visits when he does not sleep here.

35. The Claimants point to a number of indicators that suggest the Defendant's connection with the UK is stronger than he claims. These include:

(a) In the SPA he gives his address on the first page as the Romford address, Furthermore, he specified in clause 17.3 that the Romford address is the address to which notices under the SPA are to be sent to him. However, that provision does not apply to service of legal process.

(b) Bank statements for Key Homes UK Ltd and Mia Developments Ltd up to respectively August and October 2012 were sent to him at the Romford address. He says that does not indicate anything as he could view the statements on-line.

(c) The Defendant is a director of at least 18 companies registered in England. Although some of those companies are dormant, he took new appointments as a director in four new companies in 2012 and five in 2103, the most recent

being on 23rd May 2013. In each case he gave a service address at either Romford or Barking.

(d) On 22nd June 2013 he was asked by RPC for "an address for valid service". He replied saying: "Please send to Barking address". The email in which he made that statement describes him as "director" and the footer of the email names prominently his business as;

"KEYHOMES

2nd Floor, 12 Town Quay Wharf,

Abbey Road, Barking, IG11 7BZ"

36. It appears to me that the Defendant has retained a substantial business connection with the UK but the weight of the evidence points to his usual residence being only in the UAE and against Romford having been retained as a secondary usual residence. Romford is no more than a convenient address for him to use from time to time both as a place at which he can stay and an address he can use when it suits him. Applying the test in Relfo, the settled pattern of his life indicates his usual residence is only in the UAE.

Last known residence

37. This test raises rather different issues and there is further evidence that needs to be considered concerning the state of the Claimants' knowledge about the Defendant's residence as at 9th October 2013. The onus is on the Claimants to establish that Romford was the Defendant's last known address to them as at that date. There is no useful guidance about what last known residence means but it seems reasonably clear that there may be more than one of them. Last known is an alternative to usual but they overlap as a usual residence will normally be the last known residence, but not the other way round. What is the level of knowledge that is required to prevent an address being a last known residence? Is it sufficient that the

claimant has information that suggests, as here, that the defendant has acquired a new residence? It seems to me that in this connection the adhesive quality of a long term residence such as Romford becomes relevant because it will normally require a relatively high knowledge threshold to prevent a claimant relying on the last known provision where there is a sound basis for the claimant having acquired a belief that the address was the defendant's residence.

38. In this case, it is not suggested that the Defendant told the Claimants that he was leaving the UK and intending to sever his residential connection in order to take up residence abroad. Indeed he seems to have gone some way toward leading the Claimants to believe that he had retained his UK residence. I refer here in particular to his use of the Romford address twice in the SPA. The use of the Romford address in connection with a number of his companies is also pertinent.

39. There is, however, disputed evidence about what Mr Michael Mackey, a director of Melior, and Mr Robert Harrison, the Chief Strategy Officer of NWIC, were told by the Defendant, or were able to infer from meetings with the Defendant, in the course of negotiating the SPA. There is disagreement about the dates and places of the meetings. Where there are differences about dates and places, it appears to me that the Defendant has the better of the argument as his evidence fits in with the available documents.

40. The following meetings took place:

18th February 2013 – London

27th February 2013 – Dubai

28th February 2013 – Dubai

25th March 2013 – London

The Defendant says when he met Mr Harrison and Mr Mackey in Dubai, he told them that it was a great place to live and that they knew he was living there. Both

vigorously deny this. The Defendant does not say that the meeting took place at his home in Dubai or that he gave Mr Harrison or Mr Mackey his address in Dubai. In that sense Romford must have been the last address known to the Claimants as it was the only address they knew and was the address given shortly afterwards in the SPA. However, the test relates to last known residence, not address. In any event, it must have been obvious to Mr Harrison and Mr Mackey that the Defendant had some connection with Dubai because the arrangements to meet there were made at the Defendant's request. But that is some way short of them having obtained knowledge that Romford was not the Defendant's residence in addition to him being resident at an unknown address in the UAE.

41. I consider that the Claimants have the better of the argument as to their state of knowledge about the Defendant's residence despite the errors about the dates of meetings. I reach this conclusion because it seems to me that had Mr Mackey and Mr Harrison known the Defendant was no longer resident at all in the UK they would have been concerned about it and the terms of the SPA would have been adjusted. They would have acted in a different way in view of the continuing businesses of the Claimants in the UK and the Defendant's potential obligations under the warranties in the SPA. Even if there were pointers toward the Defendant having acquired residential status in the UAE, the Defendant held out in the SPA that Romford remained his UK address and this was reinforced by his later email. The Defendant did not tell the Claimant he had given up being usually resident at Romford and maintained his connection there. Even though it had, in fact, ceased to be his usual residence, it was as far as the Claimant was concerned his last known address because such knowledge as they had acquired for believing or knowing otherwise was inadequate to displace the knowledge the Defendant had provided to them.

42. For the reasons I have given, I conclude that Romford was the (or one of the) Defendant's last known residence for the purposes of CPR 6.9(2) at the date the claim form was delivered there and service was effective (if he was not served under the 2006 Act). I have already concluded that the Defendant's presence in the UK was unnecessary and it is not a requirement of English conflicts law that he had to be resident in England at that date.

Claimants' Application

43. It is strictly unnecessary for me to deal with this application but I will do so briefly in case it becomes relevant. The Claimants apply under CPR 6.15(1) and (2) either to permit service by an alternative method (email or at his solicitors' address) or for a declaration that the steps taken have been effective to serve him.

44. It is not in doubt that the Defendant was made aware of these proceedings in September 2013. The claim was sent to his solicitors and forwarded to him from the Romford address (and probably from the Barking address too). These proceedings raise serious issues that need to be resolved. It may be that the Defendant has a complete answer to them. If so, the sooner that is known the better. The Claimants have been granted permission to serve the claim out of the jurisdiction although no steps have been taken to effect service. I am told that the Foreign Service Section at the Royal Courts of Justice say that the minimum period to effect service is likely to be 6 months and it may take 12 months. Unlike in Abela v Baadarani [2013] UKSC 44, there is a bi-lateral convention with the UAE. The approach the court should adopt in such a case was considered by the Court of Appeal in Cecil and others v Bayat [2011] 1 WLR 3086. Summarising the principles set out in the judgment of Stanley Burnton LJ:

> (a) Alternative service under CPR 6.15 should be regarded as exceptional, to be permitted in special circumstances only. (paragraph 65)

(b) The fact that the proceedings will come to the attention of the defendant more quickly by an alternative method than service under the Convention in general is not a sufficient reason to make an order under CPR 6.15. (paragraph 66)

(c) The overriding objective cannot be relied upon. (paragraph 67).

(d) Service by an alternative means may be justified by "... facts specific to the defendant" or by "facts related to the proceedings". (paragraph 68)

45. I take the factors at (d) above in turn. So far as the Defendant is concerned, he was resident in the UK until 2011 and had been resident here his entire life. He remains a UK citizen and he maintains a significant business connection here as well as having family here. He visits regularly for personal and business reasons. He instructed solicitors to represent him prior to 'service' of the claim and he has continued to instruct solicitors. He received the claim on or shortly after it was delivered to his addresses and significantly both addresses have been held out by him as being current. It seems to me that the Defendant has found it expedient to lead the Claimants to believe that he continued to reside in the UK.

46. So far as the claim is concerned, serious issues are raised. It is not appropriate to consider the merits in detail but the Defendant does not suggest that the order giving permission to serve out was wrongly made in the sense that the merits requirement for such an order was not met. The claim concerns what is said to be missing money amounting to a sum in excess of £20 million and no explanation was offered by the Defendant at the pre-action stage. Furthermore, one of the Claimants has gone into administration due to an inability to find out what has happened to the funds it was expecting to receive to fulfil its commitments. There is particular urgency in pursuing the claim as if the Claimants are right and there is a duty on the Defendant to account and to explain what has happened that information will be of great value to

the Claimants. A delay of 6 to 12 months could be highly and irremediably prejudicial to the Claimants.

47. Mr Penny who appears for the Defendant submits that the circumstances are not exceptional and, in any event, it is premature to consider making an order as the Claimants have not engaged with the service procedure under the Convention and there is no basis for thinking that the Defendant will be elusive. I can see no reason why it is necessary to adopt a 'wait and see' approach. On the basis of the evidence before me, service under the Convention will take many months. As to the second point, I disagree for the reasons I have already given concerning the use of UK addresses in the Defendant's dealings with the Claimants in 2013. There is good reason to believe that the Defendant will not co-operate.

48. It seems to me that the circumstances, as I have summarised them above, are properly characterised as being exceptional. This is not a case of a person with a limited connection with the UK. The Defendant's connection has been lengthy and, disregarding residence, it remains a significant connection. The Defendant chooses to do business here, to incorporate new limited companies and to maintain directorships. He continues to hold himself out as having an address for service in England. I consider that the underlying rationale for the decision in Cecil, that to allow service under CPR 6.15 would be an interference with the sovereignty of the UAE, has little application here in view of those factors. To the extent that the making of such an order is an interference with sovereignty, the interference is very limited indeed and thus can be justified because of the exceptional circumstances. Put another way, the limited interference can be justified when weighed against the likely prejudice to the Claimants caused by service under the Convention.

Conclusion

49. I will make an order dismissing the Defendant's application and I will declare that the Defendant was served with this claim on 13th September 2013. I will hear counsel as to the form of those orders and any other orders that may be required.