



Neutral Citation Number: [2019] EWHC 3410 (Ch)

Case No: BL-2018-001468

IN THE HIGH COURT OF JUSTICE
BUSINESS COURT OF ENGLAND AND WALES
BUSINESS LIST (CH)

Royal Courts of Justice
Rolls Building, Fetter Lane
London EC4A 1NL

Date: 12/12/2019

Before :

DEPUTY MASTER BOWLES

Between :

- | | |
|-----------------------------------|--------------------------|
| (1) Cavadore Limited | |
| (2) Magenta Black Trading Limited | <u>Claimants</u> |
| - and - | |
| (1) Mohammed Jawa | |
| (2) Modern Food Company Limited | <u>Defendants</u> |

Bridget Lucas QC (instructed by **DMH Stallard LLP**) for the **Claimants**
Denise McFarland (instructed by **Lipman Karas LLP**) for the **Defendants**

Hearing date: 8th August 2019

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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DEPUTY MASTER BOWLES

Deputy Master Bowles :

1. By two orders, each dated 10th October 2018, Master Price granted default judgment in favour of the Claimants, Cavadore Limited (Cavadore) and Magenta Black Trading Limited (Magenta), against each of the Defendants Mohammed Jawa (Mr Jawa) and Modern Food Company Limited (Modern Food). Both Claimant companies are registered in Cyprus. Mr Jawa is resident in the Kingdom of Saudi Arabia (Saudi Arabia). Modern Food is a Saudi Arabian company.
2. One of the orders granted permanent injunctive relief in respect of, among other things, the Claimants' intellectual property rights in the Nozomi Brand and the Nozomi System, as each of those was defined in the order. The other order was an order for payment by the Defendants, or one, or each of them, of an amount to be determined by the court in respect of damages, or equitable compensation, under various franchise agreements entered into between Magenta and Mr Jawa, or Modern Food and for an account of the profits made by the Defendants, or each of them, for breach of contract and/or infringement of trade marks.
3. By application notice, dated 17th December 2018, the Defendants applied under CPR 13.2 and CPR 13.3 to set aside the two 10th October 2018 orders, on the ground, firstly, of the non-service of the Claim Form and Particulars of Claim and, secondly and alternatively, upon the ground that the Defendants have realistic prospects of successfully defending the Claim. The application also sought a stay of the proceedings on the basis of the existence of parallel proceedings in Saudi Arabia.
4. By a further application notice, dated 20th March 2019, the Claimants applied, by way of cross application, for an order, pursuant to CPR 6.15(2) and CPR 6.27, that, in the event that it be found by the court that the original service of the Claim Form and Particulars of Claim had failed, then, nonetheless, the steps taken as to service, on 15th July 2018 and (following oral application to amend) 16th July 2018, should constitute retrospective good service, by alternative means, as at one, or other, of those dates.
5. This judgment relates to the foregoing applications.
6. The Claim, itself, was issued upon 29th June 2018 and arises, as foreshadowed above, out of alleged breaches by the Defendants of a number of franchise agreements entered into by either Modern Food, or Mr Jawa, with Magenta and the alleged misuse by the Defendants of the intellectual property rights associated with the franchise agreements. The claim for a stay, should judgment be set aside, arises from the existence of proceedings, in Saudi Arabia and elsewhere in the Arabian peninsula, in respect of trade marks, which have been registered, or which have been sought to be registered, by, or, as the Claimants allege, on behalf of the Defendants in respect of the Nozomi name.
7. The name Nozomi is, or was, the name of a restaurant, in Beauchamp Place, in Knightsbridge, specialising, as I understand it, in contemporary Japanese cuisine. The franchise agreements related to like restaurants, actual or contemplated, in Riyadh, Jeddah, Dubai and Kuwait City and to an external catering business in Riyadh and franchised Mr Jawa, in respect of the Riyadh restaurant and Modern Food, acting by Mr Jawa, in respect of the Jeddah, Kuwait City and Dubai restaurants and the Riyadh external catering agreement, to operate those restaurants and that catering agreement in the Nozomi name. Although, in each case, the franchisor is Magenta, Cavadore is, or is

said to be, the ultimate beneficial owner of the business that operated the Nozomi restaurant in London and the owner of the intellectual property rights relating to 'Nozomi'. Cavadore has registered the name 'Nozomi' and its related logo as a trademark in the United Kingdom and in other countries around the world. Cavadore has granted Magenta a licence in respect of Cavadore's intellectual property rights relating to 'Nozomi'.

8. The agreements, each of which was for a term of ten years, laid down very detailed provisions as to the operation of the franchised restaurants and the catering business and, in particular required the franchisees to operate the restaurants and the business strictly in accordance with the 'Nozomi System' (meaning, as defined in the agreements, the 'Know-how, specialised techniques, skill and proprietary information' developed, obtained and acquired by Cavadore relating to what I will call the original Nozomi restaurant) and in conformity with the 'Nozomi Standards' (defined in recital (B) of each of the agreements as the 'high standards, policies and uniform specifications in relation to design and operation' as operated, or applied, at the London Nozomi restaurant).
9. Correspondingly, the franchisor, Magenta, was to provide the franchisee with Know-how, advice and guidance relating to the management, finance, promotion and methods to be employed in utilising the Nozomi System and conforming to the Nozomi Standards and was to consult in good faith in respect of any problems relating to the Nozomi System with a view to assisting the franchisee in the operation of that system. The franchisor was to provide menus and recipes to be used in each restaurant and the franchisees' 'offer' to customers was to be confined to those menus and recipes. Pricing was to be determined by the franchisor. The franchisor was to provide what were termed Key Employees with their initial training in the standards, techniques, procedures and methods comprised in the Nozomi System and the Nozomi Standards.
10. The agreements, also, contained detailed provisions designed to protect the goodwill and the intellectual property rights, including trade marks and logo, relating to the Nozomi name, collectively described in the agreements as the 'Nozomi Brand' and to ensure that all such rights were retained in the franchisor and were not available for exploitation by the franchisees. In particular, the agreements precluded the franchisees from selling, assigning transferring, or charging the 'Nozomi Brand' or the 'Nozomi System', or the particular franchise business to which the relevant agreement related, without the franchisor's written consent, or from applying to register any of what was termed in the agreements the Nozomi IPR (defined as all intellectual property rights owned by the franchisor both in the Nozomi Brand and the Nozomi System) anywhere in the world and required the franchisees to assist the franchisor in the registration of the Nozomi name and logo as trademarks in the relevant jurisdiction to which the particular franchise related.
11. The agreements, further, made provision as to the extent of the franchise created by each agreement. In respect of the restaurants, the franchise was limited to the restaurant itself and the relevant agreement provided that the Nozomi Brand, Nozomi System and, what was termed in the agreements, the Nozomi Standards should not be used away from the franchised premises and, in particular, should not be used in any other restaurant operated by the franchisee. In respect of the external catering business, the agreed franchise was limited to the premises from which the catering service operated and to the use of the Nozomi Brand and the Nozomi System at the private, or corporate,

addresses served by the external catering operation. The Nozomi Brand, the Nozomi System and the Nozomi Standards were not to be utilised in any other restaurant operated by the franchisee, save where a separate franchise agreement existed for that restaurant.

12. Under clause 3.4 of each agreement, the franchisor contracted, in the case of the restaurants and the catering business located in the Kingdom of Saudi Arabia, not to grant any licence for the use of the Nozomi Brand and the Nozomi System to any person within the Kingdom of Saudi Arabia other than the relevant franchisee. Equivalent provisions were contained in the franchise agreements relating to Kuwait and Dubai. Those provisions and any grant of exclusivity created by those provisions were subject to the franchisee's performance of what was termed its commitment. On the face of the agreements that commitment is a commitment set out in clause 15.10 of each agreement, namely a commitment to promote the franchise business in question. It is the Claimants' case, however, that the intended commitment was to the franchisee's compliance with the very full range of matters, set out in clause 15 of each agreement, as the general obligations of the franchisee (to include the operation of the relevant business in accordance with the 'Nozomi System' as well as such detailed matters as the purchase of crockery etc. from the franchisor's nominated supplier, the use, only, of approved display materials, and conformity with the quality and standards of the London restaurant). The Claimants' case, among other things, is that in view of the franchisees' non-compliance with those obligations, or some of them, any agreement which might otherwise have existed as to exclusivity does not arise.
13. The Claimants' case, further, is that clause 3.4 of each of the agreements had to be read subject to the provisions of clause 3.5 and that, when read together, any exclusivity in favour of the franchisee was limited to an entitlement to a first option to expand the extent of the franchisee's operation to other sites and locations within the relevant geographical area, in the event that the franchisee is notified by the franchisor that a third party has an interest in seeking a franchise within that area. That reading of the agreement and that limitation upon the exclusivity provision, contained in clause 3.4 has never been accepted by the Defendants
14. In respect of termination, the agreements provided that the franchisor, Magenta, was entitled to terminate the agreements in the event, among other things, of the franchisee's failure to make payments falling due under the agreements, or to operate the business in accordance with the 'Nozomi System', in the event that the franchisee purported to assign any rights or licences granted by the agreements, in the event that, in the opinion of the franchisor, the franchisee misused, or impaired the goodwill associated with the 'Nozomi Brand', or took any action to contest the franchisor's ownership of the 'Nozomi Brand' and in the event that the franchisee purported to claim, or exert, proprietary rights or ownership of the Nozomi Trademark in the territory to which the particular franchise related, or worldwide.
15. Each such event would, under the terms of each agreement, constitute a 'material breach' with the result, pursuant to clause 20.1 G of each agreement, that the consequence of termination, or one such consequence, was, or would be, that the franchisee pay to the franchisor a sum equivalent to the average monthly royalty paid under the franchise agreement prior to the termination of the agreement for each month remaining until the agreed expiry date.

16. Each agreement contained an acknowledgment by the franchisee that it had been entered into by the franchisee without any reliance upon any representation, warranty, promise, or inducement emanating from the franchisor, other than might have been notified to the franchisee and annexed to the agreement. Each agreement also contained an entire agreement clause, such that the agreement superseded any prior agreement.
17. Relevantly to the issues of service, arising in this case, each agreement provided both that the agreement would be governed by and construed in accordance with English law and that the courts of England would have exclusive jurisdiction in respect of any claim, or dispute concerning the agreement or in respect of any matter arising out of it.
18. Each agreement further provided that any notice to be given to the franchisee under the agreement should be sent by post, fax or email to, respectively, PO Box 230034 Riyadh 11321, +966 1216 2227 and Mjawa@hotmail.com for the attention of Mohammed Jawa and, separately, that, without prejudice to any other mode of service allowed under any relevant law, the franchisee irrevocably appointed Mohammed Jawa to act as its agent for service of process in relation to the service of any process in respect of proceedings before the English courts in connection with that agreement.
19. The Claimants' case is that the Defendants have been in root and branch breach of the terms of the franchise agreements, both in the details and in the fundamentals, that, by reason of those breaches, Magenta was entitled to terminate and did, by letter dated 13th November 2017, terminate the agreements and that, in consequence and in addition to the Defendants' liabilities in respect of monies due and owing at the date of termination of each of the agreements, the Defendants are said to be collectively liable to the Claimants in sums totalling in excess of £21M.
20. Most particularly, the Claimants allege that contrary to the franchise agreements and contrary, also, to a power of attorney granted to Mr Jawa and Modern Food, in December 2013, Modern Food, first, procured the registration, in Saudi Arabia, of the Nozomi trade marks in the name of an entity called Modern Cuisine and, thereafter and despite repeated requests to transfer the marks to Cavadore, has wrongfully transferred the marks to a Mr Al Quain, has, through Mr Al Quain, sought to register, as trade marks, a number of names confusingly similar to Nozomi, has filed a trade mark application for Nozomi in Bahrain and has purported to assign one of the Saudi Nozomi trade marks to a Bahraini company.
21. It is in respect of the foregoing matters that default judgment has been obtained and it is by reason of proceedings in Saudi Arabia and Bahrain, arising out of the transfer of the marks to and by Mr Al Quain and his attempts to register similar marks, that the Defendants submit that these proceedings, if default judgment is set aside and these proceedings continue, should be rendered subject to a stay.
22. In further regard to the Defendants' position, it is acknowledged, albeit denied, by the Claimants that, in October 2017, the Defendants, themselves, purported to terminate the Riyadh and Jeddah franchises, relying upon repudiatory breaches by Magenta of what the Defendants claim to be the rights of exclusivity granted by the franchises in the territories in which the franchises operated, in particular Magenta's grant of a franchise to a company, or entity, Al-Othman, in respect of a restaurant to be operated in the Eastern Province of Saudi Arabia, upon an implied term that the external catering franchise could be terminated in the event of the lawful termination of the Riyadh

franchise and upon alleged misuse by Magenta of confidential information belonging to Modern Food. To any extent that is necessary, I will deal with other matters raised in correspondence and in what I will term a provisional draft defence provided by the Defendants later in this judgment.

23. The starting point in respect of service is the Claimants' application to serve Mr Jawa and Modern Food out of the jurisdiction and the order made by Master Price, on that application, on 4th July 2018.
24. The evidence in support of that application, a witness statement of Harriet Chessher, of 29 June 2018, made reference to the exclusive jurisdiction of the English court, in respect of each franchise agreement, to the appointment under each agreement of Mr Jawa, as the agent to accept service of any proceedings and to the provisions of each agreement, set out in paragraph 18 of this judgment, to the effect that notices under the agreements should be served on the relevant franchisee by any of the means specified in the relevant provision.
25. The contention put forward was that these provisions as to service of notices constituted a contractually agreed mode of service within CPR 6.11. In the alternative, if the court was not disposed to accede to that contention, permission was sought, nonetheless, to serve both Defendants at the PO Box address (PO Box 230034 Riyadh 11321), or elsewhere in Saudi Arabia, such service to be effected by a method permitted by the laws of Saudi Arabia. In respect of PO Box service as an agreed mode of service, Ms Chessher similarly confirmed that service would be effected in accordance with the laws of Saudi Arabia.
26. The order granted by Master Price did not explicitly distinguish, as I read it, between the two approaches advocated by Ms Chessher, but simply gave permission to serve both Defendants at the PO Box address, or elsewhere in Saudi Arabia, by a method permitted in accordance with the laws of Saudi Arabia; reflecting, therefore, the provisions of CPR 40 (3)(c).
27. The first evidence filed as to the steps taken to effect service is to be found in Ms Chessher's second witness statement, dated 14th August 2018, in support of the application for default judgment. In that evidence, Ms Chessher stated, without further explanation, that the Claim Form, Particulars of Claim and associated documents had been served on the Defendants by the courier service, DHL, on 15th July 2018. The certificates of service, filed with the court on 30th July 2018, stated, however, that service had been effected at the PO Box address set out in the franchise agreements as the address for service of notices under the agreements and referred to in Master Price's order. This information was, in fact, not correct.
28. In fact, as explained in evidence filed by a Mr Ashdown, a partner in the Claimants' solicitors, and dated 11th September 2018, in consequence of a transcription error in respect of the PO Box address, it had not been possible for DHL to deliver the requisite documents, by way of service, to the PO Box address. Instead the documents in question had been delivered to the reception area of the registered office of Modern Food, at its address, 2nd Floor, Al Tahlia Street, Riyadh, signed for, apparently, by a receptionist, 'Hamdan', with the 'receiver' of the Claim Form and other documents, meaning, I think, the intended recipient of the documents, noted by DHL as 'Jawa.'

29. Additionally, according to Mr Ashdown's evidence, on the same day as the Claim documents were delivered to Modern Food's offices, copies of the Claim Form and Particulars of Claim were delivered by the Claimants' Saudi Arabia attorneys, Kadasa Law Firm (Kadasa), to a law firm, Sulaiman Al Ammar (Al Ammar), said by Mr Ashdown to be known to be representing Mr Jawa. The genesis of that 'knowledge' appears to be the fact that a representative of Al Ammar had telephoned to ask to receive copies of the Saudi Arabia trademark proceedings, referred to in paragraph 21 of this judgment, and, based upon that fact, a Mr Jomoa of Kadasa had concluded that Al Ammar was representing both Defendants. Mr Ashdown's further evidence is that the two law firms signed a letter which, so he says, constituted a confirmation and acceptance of service. Despite this alleged acceptance, Mr Ashdown acknowledged that the documents delivered were in due course returned by Al Ammar, on the footing that that entity was no longer representing the Defendants.
30. The Defendants' evidence as to these matters, emanating from Mr Jawa, by witness statement dated 17th December 2018, is that DHL did, indeed, deliver what transpired to be copies of the Claim Form, Particulars of Claim and other associated documents intended for each of the two Defendants. The documents, however, when received and signed for by Mr Jawa's driver, a Hamdan Abdulmalik, were placed by Mr Abdulmalik in a storage room and their delivery was not reported to Mr Jawa. At that stage, it is said that Modern Food's offices were in process of removal and were in some chaos. Mr Jawa further explains that it was not until receipt of a letter from the Claimants' solicitors, DMH Stallard LLP (DMH Stallard), dated 21st November 2018, enclosing, in response to a request by his current solicitors, Lipman Karas LLP (Lipman Karas), for all documentation relating to the default judgments, the witness statements of Mr Ashdown and Ms Chessher relating to service of the Claim, that searches were effected and the package of documents signed for by Mr Abdulmalik recovered from storage.
31. Before turning to the purported service upon Al Ammar, it is convenient to tease out some of the other relevant aspects of the chronology.
32. Mr Jawa's evidence is that the Defendants first became aware of the application for default judgment at a date somewhere between 5th and 10th October 2018. Mr Jawa does not dispute that the application, the draft order, and covering letters for each Defendant were delivered to Modern Food's offices on 16th September 2018, and were, there, signed for by an administrative officer, a Mr Al Goth. Mr Jawa explains, however, that he and the other officers of Modern Food were not present at the company's offices at, or immediately following that date, and that it was only on his and their return and at a date somewhere between 5th and 10th October 2018 that the application came to the Defendants' attention. Mr Jawa asserts that, even then, he did not appreciate the significance of the documents, or, he says, notice, or realise, that the documents referred to a court hearing date, in London. Had he appreciated the full position, he would, he says, have secured urgent legal advice.
33. In fact, however, Mr Jawa's evidence is that the Defendants did not realise that default judgment had been granted until copies of Master Price's two orders, of 10th October 2018, were sent to Mr Jawa, by Mr Ashdown, by email in the early evening of 24th October 2018. It was those emails that led Mr Jawa to take advice and to instruct Lipman Karas and Lipman Karas, by letter of 16th November 2018, to request the documents which had been relied upon in securing the default judgments and which, in

due course, resulted in the provision by DMH Stallard of, among other things, the witness statements of Ms Chessher and Mr Ashdown, dealing with service of the Claim.

34. To complete the chronology, the Defendants' application to set aside the default judgments was issued, as already stated, on 17th December 2018 and, in March 2019, that application was met with the Claimants' cross-application, under CPR 6.15(2) and CPR 6.27 for an order that the steps taken by the Claimants, as to service of the Claim Form and Particulars of Claim, constitute retrospective good service of those documents. Those applications came before the court on 27th March 2019 and were stood over by Master Price to enable the parties to file and serve expert evidence relating to the service of foreign process under Saudi Arabian law. In due course, the applications came before me, on 8th August 2019.
35. Reverting to the purported service on Al Ammar, Mr Jawa's evidence, albeit hearsay, is that a pack of documents were handed to a Mr Al Aardi, who is a consultant at Al Ammar, but not an employee, by a representative of Kadasa and that the pack contained, among other things, an unissued and undated copy of the Claim Form, a copy of the Particulars of Claim, without any claim number, an unissued copy of the application for service out, a draft order and a copy of Ms Chessher's witness statement in support of service out. Contrary to Mr Ashdown's evidence, Mr Jawa states that the delivery to Mr Al Aardi did not take place at the offices of Al Ammar, but, rather, was effected when a representative of Kadasa met Mr Al Aardi at the Ministry of Commerce and Investment in Riyadh. All the documents delivered were scanned by Al Ammar (and are exhibited by Mr Jawa) but afterwards returned to Kadasa, under a covering letter. That letter, exhibited in Arabic and in translation by Mr Jawa, stated, in terms, that Al Ammar was not the attorney for Mr Jawa, or Modern Food, that this had previously been made known to Kadasa and that the documents should not have been sent. The letter also queried why Kadasa had effected delivery in the way they had and suggested that this had been done because it was known that delivery would have been rejected if sought to be effected at Al Ammar's offices. Al Ammar appear to have believed, incorrectly, that the documents served included, or related to a judgment issued by the English court.
36. Mr Jawa confirms that Mr Al Aardi did sign a copy of a covering letter. The translation of the letter, with which I have been provided by Mr Jawa and which was not challenged as to accuracy, is addressed to Al Ammar, as agent of Mr Jawa and Modern Foods, and states that Kadasa had been asked to deliver to Al Ammar's client, Modern Food and its director, Mr Jawa, the 'attached documents and affidavits issued by the Supreme Court of England and Wales.' Although Mr Al Aardi counter-signed the letter, as confirmation of receipt, it is noteworthy that in a statement prepared by Kadasa and exhibited to Mr Ashdown's second witness statement, dated 20th March 2019, Kadasa confirm that even at the point of delivery Kadasa were informed that Al Ammar were not the appointed legal representative of Mr Jawa, or Modern Food.
37. In regard to Al Ammar's relationship with Mr Jawa and Modern Food, Mr Jawa's evidence was that Al Ammar was instructed, as agent, for the limited purpose of registering, renewing and protecting trademarks and exhibited an 'Authorisation' confirming that Al Ammar had been appointed for that purpose.
38. In addition to the delivery of documents to Al Ammar, as last set, the statement from Kadasa, to which mention is made above, explained that Kadasa had, also taken other

steps in respect of the delivery of those documents, by sending them, by registered post to the PO Box address specified in the franchise agreements. The further evidence as to this 'delivery' is that it was posted to the PO Box address on 16th July 2018 and, subsequently returned on the basis, as disclosed by the return stamp on the package of documents, that the PO Box did not exist, or the subscription for the box was inactive. In clarification of this, Mr Ford, of Lipman Karas, in his witness statement of 15th April 2019, explained that, following Decree No. 252 of the Saudi Council of Ministries, of 3rd June 2013, whereby Saudi companies were required to register a 'national' (i.e. geographic) address, such as the address of its offices, rather than a PO Box address, Modern Food had ceased to use the PO Box address.

39. The two applications, with which I am concerned, raise three primary issues. Firstly, whether the purported service upon Mr Jawa and Modern Food, by any of the deliveries, or modes of delivery, relied upon by the Claimants, were good service under Saudi law; secondly, if that were not the case, whether, nonetheless, the court should conclude that there is good reason to authorise service by an alternative mode of service and, in particular, under CPR 6.15(2) and CPR 6.27, to order that the steps taken by the Claimants, on 15th and 16th July 2018, to bring the Claim Form and Particulars of Claim to the attention of the Defendants amounted to, or constituted, good service on one, or other, or both, of those dates.
40. If there has not been good service under Saudi Arabian law and if the court is not prepared to hold that the steps taken by the Claimants to serve constitute good service, then the judgments in default granted by Master Price must be set aside and, since the validity of the current Claim Form expired on 29th December 2018, that will bring these proceedings to a close.
41. In the event, however that, by one means or another, the Claimants have established good service, then the third issue arises, namely whether, pursuant to CPR 13.3, the default judgments, granted by Master Price, should be set aside upon the basis that the Defendants have realistic prospects of defending the claims made against them.
42. A fourth, albeit secondary issue, arises, in the event that the default judgments are set aside, namely whether the current proceedings should be stayed to await the outcome of the trade mark proceedings currently in existence in Saudi Arabia and Bahrain.
43. The question as to the validity of the Claimants' attempts at service under Saudi law arises on two bases. Firstly, as I read Master Price's order of 4th July 2018, it was a condition of his order that service upon the Defendants, whether at the PO Box, or elsewhere, had to be good service by a method permitted under Saudi law. In consequence, any service which did not satisfy that condition was outside the permission for service out of the jurisdiction that was granted and, for that reason, ineffective. Secondly, this is a case where, under CPR 6.40, the only mode of service which, subject to CPR 6.15, can be relied upon as being effective is that under CPR 6.40(3)(c); that is to say service by a mode, or method, permitted by, in this case, Saudi Arabia.
44. It was in reflection of the importance of this requirement, that Master Price's March 2019 order gave the parties permission to adduce evidence of Saudi law. In reliance upon that permission both parties have put in that evidence. In the event, there was, as acknowledged by the parties, very little difference between the expert opinions as to

Saudi law advanced upon each side and, more for convenience than for any other reason, both parties tended to rely upon the opinion provided by Mr John Barlow, of Holman Fenwick Willan Middle East LLP, for the Claimants, rather than the somewhat more prolix opinion tendered to the court on behalf of the Defendants, by Mr Mohamed Alnafea.

45. The upshot, in my view, of Mr Barlow's opinion is that none of the deliveries effected by the Claimants upon the Defendants constituted good service under Saudi Arabian law.
46. In regard to the delivery to Al Ammar, Mr Barlow is clear that, in the absence of Al Ammar having indicated that it was prepared to accept service, any purported service on Al Ammar was ineffective. In light of the evidence, including that advanced by Kadasa, I am not persuaded that Al Ammar ever indicated to Kadasa that it had that authority. The evidence, rather, as it seems to me, is that Al Ammar had made it clear, even before the questioned delivery, that it was not the Defendants legal representative, let alone authorised to accept service.
47. In regard to the delivery at Modern Food's offices, while Mr Barlow opines that delivery to Mr Abdulmalik, might well be capable of amounting to good service, in the event that the server, DHL, regarded him as the agent, or employee, of the Defendants, the fact remains that the service could only be good, if, as was not the case, a confirmatory notice of service had been sent to the Defendants, in accordance with Article 14 of the Saudi Arabian Law of Civil Procedures (LCP).
48. In regard to the delivery to the PO Box address, Mr Barlow makes clear that that, in itself, would not constitute good service on Modern Food under Saudi Arabian law, having regard, in particular, to Decree No. 252, referred to in paragraph 38 above, and to the requirement of that Decree that companies register a 'national' address. In regard to Mr Jawa, whether served in his own right, or as agent of Modern Food, under the provisions of the franchise agreements, as discussed in paragraph 53 below, my understanding of Mr Barlow's evidence is that, as an individual, service upon him could only be at either his place of residence, or place of work (the PO Box address is neither) and, further, that that service would, as set out above, only be effective if followed up in accordance with Article 14.
49. In addition to all the foregoing, Mr Barlow explained that under Article 23 of the LCP there was, as he put it, a threshold condition to be satisfied, in respect of foreign process, before there could be any good service of that process under Saudi Arabian law, namely that documents for service need to be 'legalised' by the Ministry of Justice, by way of translation into Arabic by a legal certified translator. No such legalisation, or translation was effected in respect of the documents delivered and purportedly served in this case.
50. Mr Barlow, in his opinion, chose to treat Master Price's order as operating disjunctively and, therefore, to permit service either at the PO Box address, or, separately, elsewhere in Saudi Arabia by a method permitted under Saudi Arabian law. On that analysis, Mr Barlow appeared to consider that service at the PO Box, although not good service under Saudi Arabian law, might be good service under the terms of Master Price's order.

51. I reject that analysis. As already stated, I do not read the requirement, in the order, that service be effected by a method permitted under Saudi Arabian law as relating solely to service other than at the PO Box address. I consider that that requirement embraced both limbs of the order and did so because service by a mode not permitted by Saudi Arabian law would clearly offend, on the facts of this case, the provisions of CPR 40(3)(c). Even if that had not been the very experienced Master's intention, his order, which was not an order made under CPR 6.15 and not intended, therefore, to provide for a mode of service other than that permitted by CPR 40(3)(c), could not, in my view override that provision, or the requirement of that provision, in the circumstances of this case, that good service could only be effected by a mode of service compliant with Saudi Arabian law.
52. I add, for completeness, in respect of this aspect of the matter, that there are suggestions in Mr Alnafea's opinion that there are circumstances in which the Saudi Arabian courts will ratify service even if that service is not fully compliant with the LCP. Such ratification might arise if the court were satisfied that, notwithstanding technical failings as to service, proper notice of the proceedings had been received by the intended defendant. Similarly, the court might be so satisfied, in the event that the parties had agreed and complied with a specific process of service, albeit not one which accorded fully with the LCP.
53. Although in the application before Master Price the argument was advanced, as earlier set out, that service at the PO Box address constituted service pursuant to an agreed mode of service, pursuant to CPR 6.11, I am not satisfied that the franchise agreements in this case did give rise to any agreed mode of service. The franchise agreements provided for two separate things. Firstly, they provided that any notice to be given under the agreements should be given by way of post, fax, or email and that the postal address for the giving of any such notices should be the PO Box address. Secondly and separately they appointed Mr Jawa as the agent for the service of proceedings both for himself and for Modern Food. What they did not do was to provide that service of proceedings, as opposed to the giving of contractual notices, could be effected at the PO Box address. The provisions as to the giving of notices and the appointment of Mr Jawa as the agent for service fall under different provisions of the agreements and distinguish, explicitly, between the giving of notices under the agreements and the service of proceedings. There is no correlation, or linkage, between the relevant provisions. Had it been intended that service of proceedings on Mr Jawa, as agent for service, could be effected by service by post at the PO Box address, the agreements could, readily, have said so. They did not.
54. Even had there been, as there was not, an agreed mode of service, albeit one not compliant with Saudi Arabian domestic law, coupled with compliance by the serving party with that agreed mode, it would have remained a matter for the Saudi Arabian court as to whether that service would be ratified, or validated. Although Ms Lucas QC, for the Claimants argued, somewhat faintly, that this court could, in effect, second guess the view that a Saudi Arabian court might take, in this regard, or, likewise, as to whether, notwithstanding technical non-compliance, sufficient notice had been given to a defendant, she, ultimately and correctly, recognised that this court could not, properly, carry out a process which, inevitably would turn on local law and practice quite outside the purview of an English court.

55. In the result, I am not at all satisfied that the various attempts at service and the various deliveries of documents effected by the Claimants constituted service by a mode, or method, permitted by Saudi Arabian domestic law, as required by CPR 40(3)(c), nor, that for that reason, those attempts at service satisfied the conditions as to service laid down in Master Price's order. In consequence and subject to any order under CPR 6.15 and CPR 6.27, service of the proceedings, in this case, had not been effected at the date of the default judgments, with the result that, subject to such an order, giving retrospective validity to the steps taken by the Claimants as to service, the default judgments must be set aside.
56. I turn, therefore, to a determination, pursuant to CPR 6.15 and CPR 6.27, as to whether there is good reason to authorise service, in this case, at a place or by a method not otherwise authorised by CPR 6 and, in particular, whether there is good reason to order that the steps taken by the Claimants to bring the Claim Form and Particulars of Claim to the attention of the Defendants, on 15th and/or 16th July 2018, constitute good service.
57. In regard to the approach to be adopted by the court in the application to particular facts of the provisions of CPR 6.15(2) and CPR 6.27 (which applies CPR 6.15 to documents other than a Claim Form, such as, here, Particulars of Claim), I was taken to a number of authorities: **Abela v Baadarini [2013] UKSC 44**; **Societe Generale v Goldas Kuyumculuk Sanayi Ithalat Ihracat AS [2019] 1 WLR 346** (Court of Appeal) and **[2017] EWHC 667 (Comm)** (High Court;) and **Kaki v National Private Air Transport Co [2015] 1 CLC 948**. I have also had regard to the majority decision of the Supreme Court, in **Barton v Wright Hassall LLP [2018] UKSC 12**, cited in **Societe Generale** in the Court of Appeal.
58. From those decisions, I extract the following matters relevant to the instant case.
59. Firstly, the exercise required of the court is an evaluative exercise, designed to determine whether good reason exists to warrant the retrospective validation of service by that alternative method. An order under CPR 6.15(2) does not require exceptional circumstances.
60. Secondly, that, although the language of CPR 6.15 is couched in discretionary terms, in circumstances where good reason exists to permit, retrospectively, or otherwise, service by an alternative means, it would be irrational to refuse to exercise discretion in favour of the party seeking relief.
61. Thirdly, in determining whether good reason exists to allow service by an alternative means, retrospectively, or otherwise, the court should have regard to all relevant circumstances.
62. Fourthly, in making that determination, the court should focus on the particular facts before it and should not over-focus upon the analysis of previous decisions by other judges on other facts.
63. Fifthly, that the fact that the effect of a determination, that there was good reason to allow, retrospectively, service by an alternative mode of service, would be to validate a judgment which would not otherwise be valid, because of defects in the original purported service, was not, of itself, a good reason for not making such a determination.

64. Sixthly, the fact that, in respect of service out of the jurisdiction, an order for an alternative mode of service would endorse and validate a mode of service not permitted by the relevant local law is not a good reason for refusing such an order.
65. Seventhly, that, although, in the case of an application under CPR 6.15(2), the fact that the defendant has learned of the existence and contents of a Claim Form is a critical factor, that fact, of itself, cannot, without more, constitute good reason for making an order under the rule. While notice of the existence of the claim is a necessary condition for the grant of an order, it is not a sufficient one. The quality of the supposed service is also important. This is because, as it has been put, a bright line rule is necessary in order to determine the exact time from which time runs for the taking of further steps, or, for example, the entering of judgment. Accordingly, where it is clear to a defendant that formal service has been intended and that, in the view of the claimant, the claim is on foot, the purported service may carry more weight, in the determination of good reason, and be more effective as providing the 'bright line' than in the case where it has not been made clear to a defendant that the steps taken by the claimant were intended to constitute service, or to subject the defendant to the court's jurisdiction.
66. Eighthly, where retrospective validation is sought, the court will have regard to the steps taken by the claimant to effect service, any prejudice to the defendant which would arise from retrospective validation and, as appropriate, the defendant's knowledge of the claim form at its expiry.
67. The starting point, in determining whether there is good reason to validate the steps taken by the Claimants as to service, is the state of the Defendants' knowledge as to the purported service of the Claim on each of the days, 15th and 16th July 2018, upon which it is said by the Claimants that the steps taken to bring the Claim Form and Particulars of Claim to the attention of the Defendants should be held to constitute good service. In the absence of significant knowledge by the Defendants of the existence of the Claim on one, or other, or both, of those days, the requisite necessary condition for the grant of an order under CPR 6.15(2) is, simply, not made out.
68. As to that, I am satisfied that the purported service, or delivery, of documents to the PO Box address, on 16th July 2018, did not come, at all to the attention of the Defendants and did not provide the Defendants with any notice of the Claim. The PO Box was not in use and the package of documents was returned, as I understand it, unopened. Ms Lucas QC, in reliance upon **DVB Bank SE v Isim Amin Limited [2014] EWHC 2156 (Comm)**, submitted that this purported service, or delivery, should be taken as being brought to the attention of the Defendants because the franchise agreements gave rise to an agreed mode of service, at the PO Box address, even if not one permitted by Saudi Arabian law, such that the Defendants could not deny service, or receipt. As set out in paragraph 53 of this judgment, however, I am satisfied that the franchise agreements did not give rise to an agreed mode of service and, in consequence, there is no basis, in my view, for the abortive PO Box service to be treated as having brought the documents, sought to be delivered to the Defendants, by that means, to their attention.
69. I am, similarly, unpersuaded, that the documents sought to be served by DHL at the offices of Modern Food, on 15th July 2018, can be treated as being brought to the Defendants' attention on that day. Mr Jawa's evidence is that the documents were placed in storage and not recovered and considered until after receipt by Lipman Karas of DMH Stallard's letter of 21st November 2018. Ms Lucas describes Mr Jawa's

evidence as implausible, but I am not disposed to that view, or to disregard that evidence. No application was made, as it could have been, to try out the question, or to cross examine Mr Jawa, on the issue of his knowledge of the claim, and, having given his evidence careful consideration, I do not see any reason to reject it. I consider, in particular, the fact that Mr Jawa accepts some knowledge, at least of the application for default judgment, in the period 5th to 10th October 2018, to be some touchstone of his credibility. Had he chosen to give dishonest evidence on these matters, he could very well have asserted that no knowledge, at all, of that application, came to him prior to the date of the default judgment hearing. He did not seek to do so.

70. I am left, therefore, with the delivery of documents to Mr Al Aardi, on 15th July 2018, and the fact that they were scanned by Al Ammar before being returned to the Claimants.
71. I have considerable concerns as to that delivery and as to the Claimants' attempts to treat that delivery as good service.
72. Firstly, it is quite clear that the documents delivered and scanned did not include an issued Claim Form, or an issued application for service out and that the Particulars of Claim, without a claim number, were, in essence, a draft. Ms Lucas QC, rightly, acknowledged these deficiencies in her skeleton argument and, in conceding, in that skeleton argument, that the court would, or might, have some difficulty in regarding the delivery of these documents as constituting permitted service.
73. Secondly, I am left with the clear impression that Kadasa, when delivering the documents was, or may well have been, well aware that Al Ammar was not authorised to accept service and that the delivery to Mr Al Aardi was designed to 'foist' documents upon the Defendants. The letter sent by Al Ammar makes plain that Kadasa had been made aware, prior to the delivery, that Al Ammar was not the Defendants' legal representative for service and suggests, not implausibly, that the delivery to Mr Al Aardi, at a place other than Al Ammar's premises, was designed to prevent Al Ammar from rejecting the documents in question.
74. I am very uneasy as to treating documents of the kind delivered and in the manner delivered as constituting good service of the Claim Form and Particulars of Claim, when, palpably, there was not, in fact, any service, or delivery, of an issued Claim Form, when the Particulars of Claim were, or were likely to be, in draft and when the process of purported service, may well have been knowingly defective. I find it hard to see that there can be good reason to treat the delivery of the documents delivered, in that way, as amounting to good service.
75. I am, further, not persuaded that the documentation delivered, even although I accept that it seems likely that the documentation in question would have been brought, by Al Ammar, to the attention of the Defendants, was such as to make it clear that a claim had been issued against the Defendants, or that the delivery to Al Amman was intended to be service of such a claim. The covering letter did not assert that the documents were delivered by way of service and the state of the documents was not such as to lead to that conclusion. Somewhat ironically and as already stated, Al Ammar seems, erroneously to have mistaken the documents as pertaining to a judgment.

76. Although, as, again, I accept, the Defendants would have been likely to be aware that proceedings were coming; there had been solicitors correspondence in respect of the termination of the franchise agreements as from November 2017 and Lewis Silkin LLP, who had acted for the Defendants, at an early stage, had been approached, in April 2018, as to its authority to accept service; it remains the case that there was nothing in the documents delivered, nor the letter covering the delivery, to show, unequivocally, that this was the intended service of the Claim and the 'bright line' moment, from which time relevant to the Claim was to run.
77. Looking at the Claimants efforts as to service more generally, I have been given no explanation, at all, as to why the various defects as to service took place, or why, given those self-inflicted deficiencies, there is good reason to exculpate the Claimants from the consequences of those deficiencies, by way of orders under CPR 6.15(2) and CPR 6.27.
78. It is common ground, as between the experts, that the usual process of service of foreign process in Saudi Arabia is via diplomatic channels, that is to say on the basis set out in CPR 6.42. No explanation has been proffered as to why this was not done. Nor has there been any explanation as to why, although plainly aware of the necessity of serving in accordance with Saudi Arabian law, the modes of service required by Saudi Arabian domestic law were simply not followed. The intended and attempted PO Box service, given, with respect, that the supposed CPR 11 agreed mode of service is not realistic, on the face of the franchise agreements, and would not, other than by way of a specific ruling of a Saudi Arabian court, in any event, be good service in Saudi Arabia, is an egregious example of this. PO Box service, as a means of corporate service, had been abolished by the 2013 decree and that fact should have been well known to the Claimants Saudi Arabian advisers. Why then was that mode of service put forward?
79. In regard to prejudice to the Defendants, arising in the event that the delivery to Al Ammar is treated as good service, the fact is that the consequence, or result, of an order to that effect would be to validate a judgment, which otherwise than by the making of such an order would be invalid. While I accept, in light of **Kaki**, that such retrospective validation will not, necessarily, preclude the court from concluding that there is good reason to make an order under CPR 6.15(2), I consider that the prejudice to the Defendants which would arise, if an order was made under CPR 6.15(2), is a matter which, having regard to the observations as to prejudice, by Lord Sumption, in **Barton**, at paragraph 10, is something that can be brought into account.
80. In regard to the position of the Claimants, if an order is not made, this is not a case where the refusal of an order would preclude the Claimants from pursuing their claim, albeit, given that the validity of the Claim Form expired on 29th December, the claim would have to be pursued in new proceedings. Their position is further alleviated by the fact that, in regard to their claims to the Nozomi trademarks and logo, they have the protection of existing and extant litigation in Saudi Arabia and Bahrain.
81. Taking all these circumstances together, I am not satisfied that there is good reason to make an order in favour of the Claimants, under CPR 6.15(2), or CPR 6.27 and I decline to do so. In consequence, I will, as foreshadowed in paragraph 55 of this judgment, set aside the two default judgments granted by Master Price.

82. In light of that decision, the question as to whether the Defendants have realistic prospects of defending the Claimants' claims does not, now, arise for determination and, given, as it seems to me, the very strong likelihood of new proceedings and given that, in view of the issues as to service, I did not regard the parties' positions on the merits, particularly that of the Defendants, to be fully articulated, I do not consider it advisable, or necessary, to say any more about it.

83. In light, further, of the fact that the validity of the Claim Form has now expired, unserved, with the result that these proceedings are, subject to any appeal, at an end, the question of a stay, pending the determination of the existing Saudi Arabian and Bahraini proceedings, is, likewise, one that no longer requires determination. I would only say that, given that these proceedings raise very substantial contractual and other claims which are wholly outside the ambit of the current trademark proceedings in Saudi Arabia and Bahrain, I would not, had the occasion arisen, been minded to grant the suggested stay.