Neutral Citation Number: [2020] EWHC 875 (Ch)

Case No: CR-2019-003323

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)
Re: SMU INVESTMENTS LTD
And re: THE INSOLVENCY ACT 1986

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

Date: 14/04/2020

Before :

ICC JUDGE PRENTIS

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Between :

EDWIN KIRKER	**Applicant**
(Liquidator of SMU Investments Ltd)	
- and -	
1. HOLYOAK INVESTMENTS INC	**Respondents**
2. GRESHAM HOUSE PLC	
3. HIGHTOWN SECURITIES LIMITED	
4. JANE EBEL	
5. JULIAN EBEL	
6. DOMINIC EBEL	
7. SECURITY CHANGE LIMITED	

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AMIT KARIA (instructed by **Summit Law LLP**) for the **Applicant**
TONY BESWETHERICK (instructed by **Sherrards**) for the **Respondents**

Hearing date: 27 February 2020

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JUDGMENT

ICC JUDGE PRENTIS

1. SMU Investments Ltd ("SMU") was incorporated on 31 March 2010 as a vehicle for investment into the Jersey-registered company Memorial Property Investments Limited ("MPIL") which was developing a cemetery at Kemnal Manor, Chislehurst. At all material times SMU's directors were Derek Lucie-Smith ("DLS"), now deceased, and Antony Ebel ("AE"). On 28 March 2013 Eren Muduroglu ("EM") presented the petition on which on 20 May 2013 SMU was wound up. Simon Paterson was appointed liquidator on 23 July 2013, being replaced by Edwin Kirker on 30 July 2015 at the creditors' behest.

2. Mr Kirker issued an application on 15 May 2019 with a return date of 11 June seeking a declaration under section 239 *Insolvency Act 1986* that payments made variously to the Respondents on 18 July, 19 July, 4 September, 12 September and 14 September 2012 and totalling £2,712,175 were preferences, and orders for repayment. It describes the payments as having been made to the Respondents as creditors of SMU directly by MPIL, by agreement with either or both of SMU's directors, in reduction of MPIL's debts to SMU, and at a time when both AE and DLS "knew that the Company was indebted to Eren Muduroglu (or at the least to another third party)" for the monies which became the c.£2.9m loan made by SMU to MPIL under agreements of April 2010 and April 2011. It is the difference in treatment of EM and the Respondents which it is said gives rise to the preference, EM's debt of c.£2.9m not having been repaid.

3. The application also states, baldly:

"The Respondents were all connected persons (as defined in s.249 of the Insolvency Act 1986)".

4. That matters. By s.240(3)(e) the onset of insolvency for measuring the relevant time period under s.240(1)(a) or (b) is the date of commencement of winding up, being here, by s.129(2), 28 March 2013, the date of presentation of the winding-up petition. Unless the Respondents are connected there will be no claim under s.239 because the 6-month period under s.240(1)(b) had by then already expired.

5. At the hearing on 11 June 2019 the Second to Fifth and Seventh Respondents were represented, as today, by Mr Beswetherick. Judge Burton directed the exchange of evidence between the Applicant and those Respondents. Her order recorded that the application had not yet been served on the First Respondent ("Holyoak"), and that there was an issue over whether service had occurred on the Sixth Respondent, Dominic Ebel ("DE").

6. On the same date was issued an application for service out on the First Respondent (the "Service Application") at the Arango-Orillac Building in Panama, supported by a short statement from Liam Michael Stein, the solicitor with conduct on behalf of the Applicant, which directed itself at the requirements under CPR 6.36 and 6.37 and 6BPD3.1 and adopted the contents of the 15 May application notice. As in that application, it simply stated that "the Respondents were all connected persons"; and that the payments were "made to the Respondents at a relevant time (as defined in s.240…)"; and that there was "a good arguable case that the First Respondent is liable to repay". Those are conclusions, not facts.

7. On 26 July 2019 Judge Burton on the papers granted permission to serve out on Holyoak in Panama, where it is incorporated.

8. On 30 August 2019 Holyoak issued an application to set aside that order on two bases: (a) there was no claim against it with a real prospect of success; and (b) there had been a failure in the duty of full and frank disclosure and fair presentation in the Service Application.

9. Meanwhile, on 16 July 2019 the Applicant had issued an application which sought, among other things, permission to serve the witness evidence in support of the 15 May application on Holyoak and DE through Sherrards solicitors. There is a further application sealed on 7 February 2020 seeking to amend this to include among other things a CPR 6.15 application to declare that service of the 15 May application on Holyoak at the Arango-Orillac Building address (the documents being left there on 12 August 2019 by Maidayle Ellis Santos; on 16 September she also left the second witness statement of Mr Muduroglu for Holyoak at Alfaro & Calvo Solicitors, Oceania Business Plaza, Panama) and on DE at 56A The Close, Salisbury ("The Close") was valid, or for an extension of time for service.

10. All these applications have been addressed at the hearing by Mr Karia for the Applicant and Mr Beswetherick. The slightly constrained nature of this judgment is not a reflection of their wide-ranging arguments but of the times we now have, including the pressure on judicial time, which obliges a focus on essentials.

Is Holyoak connected?

11. It is not in dispute that under CPR 6.37(1)(b) the obligation on the Applicant is to show a claim with "a reasonable prospect of success". In *Altimo Holdings and Investment Ltd v Kyrgyz Mobil Tel Ltd* [2011] UKPC 7, [2012] 1 WLR 1804 at [71] Lord Collins stated:

"The current practice in England is that this is the same test as for summary judgment, namely whether there is a real (as opposed to a fanciful) prospect of success".

I have been taken as well to Bryan J's quoted discussions on the application of the test in *The Libyan Investment Authority v J.P.Morgan Markets Limited* [2019] EWHC 1452 (Comm) at [23].

12. By s.249 "a person is connected with a company if (a) he is a director or shadow director of the company or an associate of such a director or shadow director, or (b) he is an associate of the company; and 'associate' has the meaning given by section 435…".

13. Despite the flurry of allegations in the Applicant's evidence, which I shall come on to, Mr Karia has placed his arguments that Holyoak is connected to SMU on the only plausible ground, being s.435(6): a "company is an associate of another company (a) if the same person has control of both" as elucidated by s.435(10)(a): "a person is to be taken as having control of a company if (a) the directors of the company… are accustomed to act in accordance with his directions or instructions". AE was indisputably a director of SMU at the relevant times. The question is whether characterising him as having control

over Holyoak has a reasonable prospect of success, bearing in mind the summary nature of the investigation at this stage of the court's process.

14. There is no doubt that AE had a relationship with Holyoak at the time. In 2017 SMU commenced other proceedings against him concerning these transactions, which maintained that they were caused by him in breach of his fiduciary duties to the company and he was therefore liable to restore some £7.3m (the "2017 Proceedings"). These were struck out, there having been a failure to provide security for costs. Within them, on 19 October 2018 AE made a witness statement in support of the security for costs application. He describes how Mr Muduroglu's brother, Sami (whom AE believed had loaned the monies to SMU), had approached himself and DLS in August 2010 seeking to raise funds. "I mentioned this to Holyoak and it resulted in them agreeing to make its first loan to SMU in the sum of £600,000" in September 2010; and in April 2011 it made a further loan of £420,000; the "remaining funds were provided by my family investment company, Hightown Securities Ltd of which I am a director…".

15. Further details are given in the evidence of Robert Monticelli of 22 January 2020 and AE of 24 January 2020. Mr Monticelli confirms that he had been a director of Holyoak, between 22 March 2013 and 20 June 2014. He exhibits "the full register of directors" to support his statement that "neither [AE] nor any member of his family have ever been a director of Holyoak", a sentence which continues "and neither he nor his family members have ever exercised control over it. It is operated by professional trustees in accordance with the declaration of trust". "Holyoak has a number of professional advisers, with

particular areas of expertise, who make recommendations to it for consideration by its directors… Microdisc Ltd ("Microdisc") is one such adviser to Holyoak for unquoted investments. That company is, I understand, owned by [AE] and his family", which AE confirms. "Microdisc has provide advisory services to Holyoak since the early 1990s but Holyoak formalised its arrangements with Microdisc on 17 January 2000 when it entered into a written consultancy agreement", which is exhibited. "Microdisc submits investment opportunities and recommendations to Holyoak and the directors of Holyoak decide whether or not to follow these up".

16. Mr Monticelli then describes a further relationship between Microdisc and Holyoak. In 1993 they entered a 21-year lease for Monmouth House, Ringwood at a rent of £4,750 for 7 years and then by reference to open market rent. In 1997 this was varied because Holyoak wished to sell Monmouth House. The variation was as to period, which became 35 years, and property, which became The Close. Microdisc sublets The Close to Hightown and AE.

17. Mr Monticelli provides further details of Holyoak. He says its settlor was Sheilah Ferrara and that the bearer shares are held, now by companies within the Jersey-based JTC group, "for a discretionary charitable trust which was settled pursuant to a declaration of trust dated 1 May 1987", which is exhibited. Although AE was originally among the beneficiaries, he (although not his issue) was removed by an exhibited declaration of 27 March 2009.

18. Mr Monticelli's account is confirmed by AE in his January 2020 statement. Sheilah was his sister. She told him of the setting up of the trust only after the event, and she introduced him to those running it. His commercial and

investment advice is provided through Microdisc, which hires out his services and others', and in which "I and my family have a 60% interest". Holyoak, by whom AE has never been paid directly, pays it an annual base fee plus time spent. While AE through Microdisc recommends investments, it is "not infrequent" that they are not pursued by Holyoak, whether at the initial stage or after having been passed the relevant documents or carried out due diligence (which is sometimes through Microdisc). The decision to pursue or not is wholly Holyoak's board's. AE and his wife use "part of" The Close as a residence when they are in England.

19. On 16 July 2019 Mr Kirker made a witness statement in support of his application. He says that Holyoak "is understood to be [AE's] investment vehicle or at least partly beneficially owned by him". He does not specify where this understanding comes from. As to corroborative evidence for those two averrals, this is that (a) Holyoak "was recorded as being an entity with significant control over Minos Investments Limited… between 6 April 2016 and 29 March 2018 and Mr Ebel was since 22 June 2009 and still is the company secretary for the same", and (b) that Holyoak owns The Close, AE's residential address.

20. Neither of those factors begins to grapple with s.435(10)(a).

21. Mr Kirker also relied on a statement made the day before by Eren Muduroglu in which he says that Holyoak was "essentially [AE's] investment vehicle"; whatever that is meant to mean, he does not give reasons for the conclusion.

22. Mr Muduroglu was the apparent origin for two emails which are relied on by Mr Karia. The first is of 22 March 2010, which Mr Karia says shows that "It

was understood by all in this transaction that [AE] controlled and in essence was Holyoak… [AE] is even asked for the KYC information on behalf of Holyoak". In it Mr Muduroglu's solicitor Stephen Koehne tells Rebecca Vernon that "I spoke this morning with both Sami and [DLS] and it looks likely that [AE's] share will increase from 20% to 30% and that he'll be paying an extra £1,900,000 for the additional 10%". The implication drawn by the Applicant appears to be that as, months later, it was Holyoak which invested, it and AE are to be equated.

23. The second email is of more than a year later, 19 April 2011. Keith Robinson of Sherrards writes to Mr Koehne copied to AE, DLS and others, that "I have cleared my lines with [AE] and I understand that (1) Holyoak are expecting drawdown in two tranches- can you confirm the amounts… I believe that Holyoak are making the necessary arrangements for the funds to be available and I expect to get the necessary authority from [AE] by the close of business- after a meeting he has with [DLS] today".

24. This Mr Karia characterises as showing that "Sherrards themselves seem to be of the view that [AE] can give authority to bind Holyoak".

25. That is simply not what this email says. At most it may indicate (as with the obtaining of the KYC) that AE had communications with Holyoak over its investment.

26. When weighing the Applicant's case on this, what I find really striking about these two emails is that, one year apart, and capable at most of founding inferences, they are the best evidence which Mr Muduroglu has been able to produce as to the connection between AE and Holyoak, even though he was

on his own account intimately involved in the lending to and refinancing of SMU.

27. In Mr Muduroglu's statement of 16 September 2019 he says of AE's position that "he is merely a long-standing adviser" to Holyoak that it is "patently obvious that this is less than accurate as Holyoak owns… [AE's] family home. Notwithstanding whether [AE] has a beneficial ownership of Holyoak, he is versed in its business". The point on The Close goes only indirectly to Holyoak's acting in accordance with AE's "directions or instructions"; being "versed in its business" drops short.

28. Mr Muduroglu also says that DLS told him that Holyoak "was funded with monies from [AE's] sale of shares in Halin Marine in or around 2009". No more details are given either as to the circumstances in which this was said, nor as to the Halin Marine transaction. This bears very little inferential weight.

29. Mr Stein has made another relevant statement, of 26 November 2019.

    29.1 He answers the allegations of non-full and frank disclosure by saying that "it is overwhelmingly clear that Holyoak is a connected party, it is in essence a Trust which acts at the direction and under the control of Mr Ebel for his family and various investments [sic]".

    29.2 Later he says that "Holyoak are accustomed and do act in accordance with [AE's] direction or instructions. That is despite [AE] not being a trustee or director of the same".

29.3 Next: "If [AE] or any of his associates (family members) are beneficiaries of the trust it would be sufficient for SMU to be connected to Holyoak". This is not a positive case.

29.4 Next: "[AE] was employed as a consultant by Holyoak; accordingly, he is associated with and he is also a director of the Company so they are connected". There is no evidence of this employment, and this point is not pursued.

30. As support for his contentions, Mr Stein cites the two emails; a passing reference in a judgment of 15 April 2017 to Holyoak being "a Panamanian company that [AE] used as a family trust"; the use of The Close by AE; and to Holyoak also owning 3 Elgin Mews North, Maida Vale: "The same is understood to be [AE's] London residence". Again, no basis is given for that understanding; it is AE's evidence that it is a property managed by Hightown which is "let on a short-term basis to students".

31. Mr Karia is right to say that the arrangements between AE and the offshore Holyoak ought to be looked at purposefully when seeking to analyse their relationship. That cannot mean that the formal relationships prescribed by the trust documents, or by appointments to its board, or by the documents recording loans to SMU, or governing the roles and obligations of Microdisc, or the use of The Close can be ignored; indeed, they are a starting point. It is for the Applicant to convince the court that he has a real prospect of success in showing that those documented relationships are a fiction, and that actually Holyoak's directors are "accustomed to act in accordance with [AE's] directions or instructions".

32. This, in my judgment, he cannot do. At every point the documentary scheme distances AE from the management decisions taken by Holyoak; and there is no sufficient inference that it has done that deliberately to exclude him overtly: on the contrary, the scheme is entirely consistent with a well-thought-out foreign-based trust managed by its directors but with input from others. The Applicant's strongest point is the use of The Close; but again, that is insufficient to conclude that even in this instance Holyoak's board has acted on the direction or instruction of AE: it has acted to his benefit, but that is a different matter.

33. The Applicant's problems are accentuated if one looks at what ought to be documents in its favour, being the minutes of Holyoak board meetings at which AE's recommendations were accepted. So on the 27 April 2012 the board noted that "[AE] on behalf of Microdisc has referred an investment opportunity to the Corporation" being a 50% investment in Minos; after recording certain features including that "the properties would produce a steady rate of return of just over 7% and the intention would be in the future that Minos would sell of half the leaseholds over a one or two year period and purchase the freehold", "After due consideration it was resolved that the Investment be approved", and signatories were nominated.

34. On 15 June 2012 AE "in his capacity as adviser to the Corporation had recommended through Microdisc an investment in Carlisle Subseas IS of 10% of the issued share capital"; it is discussed, and approved, and signatories nominated.

35. The 22 October 2012 minutes refer to an email from AE "in his capacity as adviser to the Corporation recommending the Corporation proceed with the Subscription" for a 4% share in 3B Offshore IS; again discussion and approval and nomination of signatories.

36. On 4 December 2012 the pattern was different. Those present (Mr Patrick and Mr Troy) noted that "Whitmill Trust Company Limited had advised the Corporation of an opportunity to invest in Memorial Properties (Mill Hill) Limited"; then "[AE] in his capacity as adviser to the Corporation through Microdisc… had recommended that the Corporation take up their allocation of 2,490 ordinary shares…".

37. The first three therefore show the board considering and deliberating on recommendations from AE as a Microdisc adviser. The last supports AE's account that on occasion Microdisc acted at the due diligence stage. It, though, seems not to have been an investment recommended by AE. What is more, these are only some of the board minutes from 2012. The others record discussions of investments without any reference to AE or Microdisc. It follows that the board was capable of finding with, and considering, investments without their assistance and, on the evidence, with the probable assistance of others. There is also nothing to gainsay AE's statement that actually it was only those recommendations of his which Holyoak was seriously considering pursuing which made it to board level; in other words, he made recommendations which were refused.

38. In short, the evidence of substance on this critical point is AE's and not the Applicant's. I bear in mind that this is an enquiry into whether the Applicant

can establish its cause of action, rather than an enquiry into the merits of the defences. I also bear in mind that the Applicant would doubtless have many questions for cross-examination, and that (perhaps to put the same point a different way) this is just the sort of relationship which one would expect to be kept hidden and undisclosed. But, albeit the test is not a high one, the onus is on the Applicant to show grounds of substance, even if they are inferential. The Applicant does not meet that test. Moreover, he does not do so despite having the significant advantages of SMU having been in liquidation for six years before the initiation of these proceedings, and of being able to tap into an apparently direct source of knowledge, Mr Muduroglu. The Applicant can point to no example of AE directing or instructing Holyoak. Even if the test is construed as something less than that in s.251 *Companies Act 2006*, which defines "shadow director" in almost identical terms, those words are not met.

39. There is an illustration of the position in AE's statement of 19 August 2019, which is the stronger because it is not directed at being anything other than a factual description surrounding the further loans of April 2011.

> "Due to the shortage of time consequential on the urgency of Sami to complete the transaction and the unwillingness of Gresham and Holyoak to provide further monies, I arranged for the remaining funds required by Sami to be provided by my family investment company, Hightown…".

So, Hightown is the "family investment company". But the point to be drawn out is this. AE was seeking further investment from Holyoak. It was unwilling. It therefore came from Hightown. In other words, Holyoak did not do what AE wished.

40. It is not an irrelevant point, though it provides only a small and additional factor, that the May 2019 application, issued on the cusp of limitation, is the second direct bite at this cherry after the 2017 Proceedings. There was also an indirect bite: in 2016 Mr Muduroglu and SMU brought a claim against Mr Koehne's firms for alleged breaches of duties of care over these transactions.

41. It follows that I must set aside Judge Burton's order of 26 July 2019, as requested in Holyoak's 30 August 2019 application. The Applicant not being able to meet this CPR 6.37 gateway, as against Holyoak the May 2019 application must be dismissed.

Full and frank disclosure/ fair presentation

42. Even were I wrong in my conclusions on that point, the result would remain the same.

43. Mr Karia realistically and properly recognised the limits on a submission that there had not been full and frank disclosure. The evidence of Mr Stein in support of the service out application could not have said less (and it is not suggested that the court's attention was drawn to the July evidence of Mr Kirker and Mr Muduroglu). He failed to deal in any way with the failed 2017 Proceedings (which Mr Kirker's July statement says are "of relevance to the present claim"), and fails to draw the court's attention to what are plain issues, even were the Applicant right in its view, over whether Holyoak was connected.

44. Surprisingly, it has been left to Mr Karia to do the apologising. Mr Stein does not appear to comprehend what was wrong, even when drawn to his attention.

45. Mr Beswetherick points to the Chancery Guide at 7.14:

> "The applicant must take account of the obligation to be candid and should draw to the attention of the court in the evidence all relevant matters regardless of whether they help or hinder the application. A failure to comply with this obligation may lead to an order giving permission to serve out of the jurisdiction being set aside regardless of the merits".

46. In *Punjab National Bank (International) Ltd v Srinivasan* [2019] EWHC 3495 (Ch) at [68] the Chancellor adopted dicta from *Libyan Investment Authority* beginning with the "general rule" that where this duty was breached the court "should discharge the order obtained… and refuse to renew the order"; the jurisdiction to re-grant should be "exercised sparingly", but the "application of the principle should not be carried to extreme lengths or be allowed to become the instrument of injustice".

47. I can reach no view on whether the failure here was deliberate; but it was total. It is no excuse to say that the connected party issue had not been raised before: first, the failure of disclosure was not just as to that, but as to the previous proceedings; secondly, had there been pre-action correspondence then it might well have been raised, and the Applicant cannot shelter behind the lack of such correspondence, because it was for the Applicant to initiate; and thirdly, on any analysis of his case there were issues. The inference is that no real thought was given to this basic and important duty.

48. I would therefore see no reason not to apply the ordinary rule; and I would therefore set aside Judge Burton's order.

49. As to re-grant, by a *Re Baillies Limited* [2012] EWHC 285 (Ch) and *Re Kelcrown Homes Limited* [2017] EWHC 537 (Ch) and *Re H S Works Limited* [2018] EWHC 1405 (Ch) analogy with the claim form procedure, the May application notice is stale even for foreign service; and (by further analogy) were a new application notice issued to commence further proceedings it would be time-barred. To allow the May application to continue would be to cause substantial injustice to Holyoak in depriving it of its otherwise insurmountable limitation defence: r.12.64 *Insolvency (England and Wales) Rules 2016*.

Other matters regarding Holyoak

50. It follows that I need make no finding on any of the other matters raised in respect of Holyoak, being other grounds (the "Desire Issue", the "Further Creditors Issue") for saying that the Applicant had no reasonable prospect of success, or that Judge Burton's order should be set aside (the limitation issue).

Service on DE

51. By the February 2020 amendment application the Applicant seeks declarations that the service of the May application on DE at The Close by first class post sent on 16 May 2019 is valid; or that the service of it on Sherrards by emails

of 16 July is valid. The application notice states that DE was served at The Close "which the Applicant understands to be the family home". Some justification for that belief was provided: the "Applicant had sent correspondence to [DE] at [The Close] in relation to previous proceedings which had never been returned and there had never been any suggestion previously that this was not his residential address".

52. DE has filed a statement of 25 February 2020 giving an address in Christchurch, Dorset; he says he has lived there since 2016, and has never lived in The Close. He provides a list of his residences since 2000, when he was 25.

53. In reply, Mr Stein has produced the 1 April 2011 lending agreement between DE and Sami Muduroglu. DE's given address is The Close.

54. By Schedule 4 of the IR16 service on DE was obliged to be in accordance with CPR Part 6. As DE was resident in the jurisdiction, via CPR 6.3(1)(c) CPR 6.9(2) applied, and he was to be served at his usual or last known residence.

55. For DE The Close was not that. However, he was aware of the May application and could respond to it consequent on service (whether the service on himself or another), because on 12 June 2019 Sherrards told the Applicant that he had got the address wrong.

56. CPR 6.15(1) allows the court to "make an order permitting service by an alternative method or at an alternative place" "where there is a good reason to authorise service by a method or at a place not otherwise permitted by this

Part"; or under (2) "the court may order that steps already taken to bring the claim form to the attention of the defendant by an alternative method or at an alternative place is good service".

57. In *Abela v Baadarani* [2013] UKSC 44, [2013] 1 WLR 2043 the Supreme Court held at [33] that whether there was "good reason" "is essentially a matter of fact"; and at [35] Lord Clarke continued that "…the court should simply ask itself whether, in all the circumstances of the particular case, there is good reason to make the order sought". As he said at [36], that a defendant has learned of the existence and content of a claim form is not without more enough; but it is a critical factor because [37] the most important purpose of service is to ensure that the document served is communicated to the defendant.

58. In *Barton v Wright Hassall LLP* [2018] UKSC 12 Lord Sumption set out at [9] the principles he drew from the speech of Lord Clarke, noting at [10] that it was not a complete statement and identifying as "in the generality of cases, the main relevant factors" as being likely to be the steps taken to effect service under the CPR; the awareness of the defendant; and what prejudice to the defendant retrospective validation would cause.

59. Here, the Applicant cannot point to pre-action correspondence. He can say that previous documents, including reports, had not been returned when sent to DE (which seems to me a minor point); but he cannot identify positive steps taken to ascertain that The Close was for DE an address within CPR 6.9. As Mr Beswetherick emphasises, if service thus far is invalid then, were this a claim form, it would have expired.

60. That would be a harsh outcome for what is a formal irregularity. DE did not have no connection with The Close: he had used it as an address in a formal document; what is more, that is a document within the factual purlieus of this claim. It was also an address through which he was contactable, and was appropriate for the other defendants who were members of his family. He received the May application at the latest before any substantive steps in the litigation were required, and he has suffered no prejudice by that. He also received it well within the currency of the application, applying the claim form analogy.

61. I will therefore validate the service on him at The Close.

Consequentials

62. The parties must endeavour to agree all consequent orders, including as to costs.