Neutral Citation Number: [2025] EWHC 1836 (KB)

Case No: QB-2022-002353

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18 July 2025

Before:

MR JUSTICE BUTCHER

- -

Between:

RIYADH AL-AZZAWI **Claimant**

- and –

HISHAM TALAAT MOUSTAFA

Defendant

- -
- -

Philip Sapsford KC (instructed by **Walker Wise Solicitors**), on 3 July 2025, for the **Claimant**
Clare Montgomery KC and Edward Craven KC (instructed by **Peters & Peters LLP**) for the **Defendant**

Hearing dates: 3-4 July 2025

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Approved Judgment

This judgment was handed down remotely at 10:00am on 18th July 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mr Justice Butcher :

1. Hisham Talaat Moustafa, who is the Defendant and to whom I will refer as such, seeks orders pursuant to CPR Part 11 determining that the court does not have jurisdiction or should not exercise jurisdiction in respect of the claim brought by Riyadh Al-Azzawi, to whom I will refer as the Claimant, and seeking the setting aside of certain orders of the court granted without notice and of the service of the Claim Form and Particulars of Claim.

The Underlying Facts

2. The claim which the Claimant seeks to bring arises out of the shocking and brutal murder of Suzan Abdul Sattar Tamim ('Ms Tamim') in Dubai, United Arab Emirates ('UAE') on 28 July 2008. Ms Tamim, who was a Lebanese national, was a well-known singer in the Arabic world, who had won a Gold Medal at the Arabic version of 'Pop Idol', and had made a number of pop singles in Lebanon.

3. The Claimant is a professional kickboxer. He was born in Iraq in 1975, but fled from that country in 1996 and obtained asylum here. He has British and Iraqi nationality. He has six times been the World Kickboxing Champion. He claims that he lawfully married Ms Tamim in an Islamic ceremony in the UK in April 2007.

4. The Defendant is a prominent Egyptian businessman, who was head of the Talaat Moustafa Real Estate Group, and was appointed in 2004 to the Shura Council (Upper House) of the Egyptian Parliament. The Claimant's evidence put in on this application indicates that the Defendant had attempted to pressure Ms Tamim into marriage, and that it was this that had forced her to flee Egypt to London, where she had met the Claimant. The Defendant, however, had not abandoned his pursuit of Ms Tamim, and, after making financial offers to her, and an offer of US$2 million to the Claimant to leave her, had then turned to direct threats and intimidation. In the Particulars of Claim, it is alleged that one of these threats was a message sent to Ms Tamim while she was in London, which said, 'Fifty million dollars says you come back to Cairo to marry me or one million dollars says I have your throat cut.'

5. The Claimant's evidence is, further, that in July 2008, Ms Tamim travelled to Dubai to stay in the apartment which she and the Claimant owned. On 28 July 2008 she was murdered in that apartment by Mohsen Al-Sukkari ('Al-Sukkari'), a former officer with the Egyptian police, who took not only Ms Tamim's life but that of her and the Claimant's unborn child. The Dubai police had then launched an investigation, which had gathered evidence indicating that the Defendant had ordered the murder and paid Al-Sukkari a substantial sum for it to be done.

6. The material put forward on this application shows that criminal proceedings were brought against the Defendant and Al-Sukkari in Egypt. The trial took place, non-continuously, over a period of eight months, during which the court heard evidence from at least 15 individuals from Dubai and 18 from Egypt. On 25 June 2009 both men were found guilty of Ms Tamim's murder and each was

sentenced to death. On 4 March 2010 the Egyptian Court of Cassation overturned the convictions of the two men, and the matter was referred back to the Cairo Criminal Court. There was a second criminal trial before the Cairo Criminal Court, and on 28 September 2010 the Defendant and Al-Sukkari were again found guilty. The Defendant was sentenced to 15 years in prison, and Al-Sukkari to life in prison. There was a second appeal to the Court of Cassation. On 16 January 2012, the court overturned the 28 September 2010 ruling of the Cairo Criminal Court and ordered a retrial to be heard in the Court of Cassation. That further retrial took place on 6 February 2012, and the Defendant and Al-Sukkari were found guilty. The Court of Cassation imposed the same sentences as the Cairo Criminal Court had by its ruling of 28 September 2010. The Defendant served his sentence until June 2017, when he received a presidential pardon; Al-Sukkari served his sentence until 2022 when he was released, he also having received a presidential pardon.

7. It is apparent from the Defendant's evidence that, during the course of the Egyptian criminal proceedings, the Claimant lodged a claim for compensation in respect of the death of Ms Tamim. Specifically, in 2008 he lodged with the Cairo Criminal Court a claim pursuant to Article 251 of the Egyptian Criminal Procedure Law No. 150 of 1950, which allows civil claims for compensation to be heard in a criminal court if the harm suffered is a crime. The claim was based on the allegation that the Claimant had been lawfully married to Ms Tamim, and had suffered harm as a result of her death.

8. Another man, Adel Reda Maatouk ('Mr Maatouk') also lodged a claim for compensation with the Cairo Criminal Court in respect of Ms Tamim's death on the same basis as the Claimant, i.e. that he was lawfully married to her at the time of her death. The evidence is that the civil claims for compensation were considered by the Cairo Criminal Court but, on 25 June 2009, that court did not accept the Defendant's or Mr Maatouk's civil claims and referred both to a competent civil court. Both the Claimant and Mr Maatouk sought to raise their civil claims with the Cairo Criminal Court at the retrial on 28 September 2010, but these claims were again not accepted, apparently on the basis that it had already been ruled that these claims should be referred to a competent civil court. It appears that Mr Maatouk, but not the Claimant, sought to bring a civil claim during the retrial on 6 February 2012, but this was rejected again. It appears that neither the Claimant nor Mr Maatouk lodged a civil claim for compensation with any civil court in Egypt.

These proceedings

9. On 18 March 2022, Janes Solicitors ('Janes'), who were at that stage instructed by the Claimant, sent, or attempted to send, a document headed 'Pre-Action Protocol Served in Accordance with the Civil Procedure Rules of England and Wales' to the Defendant. The Defendant's evidence is to the effect that, in fact, the Defendant did not receive a copy of that document until September 2022, when it was enclosed with a letter from Janes dated 13 September 2022. The 'Pre-Action Protocol' document stated that, if the Defendant did not engage in negotiations to resolve the claim, an application would be made for permission to serve the claim on the Defendant in Egypt, relying on CPR PD 6B paragraph 9(a), namely that the claim was made in tort, and the damage had been sustained

in England, because the Claimant resides here. The document said that the claim would be for the grief, psychological and emotional damage which the Claimant had suffered as a result of the murder, including the loss of earnings as a kickboxer which had been caused by reason of the emotional and psychological harm which Ms Tamim's death had induced. The document stated that the law which would be applicable would be the law of the UAE, and stated that an opinion had been obtained from a UAE lawyer on the questions of whether a claim would be actionable in the UAE for damages and losses incurred as a consequence of a murder, and whether the claim would be time-barred. It was said that the advice was that 'liability definitely exists under the law of the UAE for damages arising from losses sustained by the murder of an individual'; and that a number of enumerated provisions of the UAE Civil Transaction Law 'clearly do not prevent the initiation of proceedings despite the lapse of time in this case.'

10. On 26 July 2022 the Claim Form was issued by Janes on behalf of the Claimant. It was marked 'Not for Service out of the Jurisdiction'. The 'Brief details of claim' stated that:

> 'The Claimant seeks damages, under English law, alternatively under the law of Dubai, UAE,
>
> (i) In his own right for personal injuries sustained as a result of the death of Ms Tamim;
>
> (ii) Under the Law Reform (Miscellaneous Provisions) Act 1934, in his capacity as administrator of the Deceased's estate and on behalf of the estate.
>
> (iii) Under the Fatal Accidents Act 1976 in his capacity as dependent co-habitant and/or husband for dependency for wrongful death.
>
> Alternatively, the Claimant seeks damages under the laws of Dubai, UAE
>
> (i) In his own right for personal injuries sustained as a result of the death of Ms Tamim
>
> (ii) As heir on behalf of the Estate and its heirs; and
>
> (iii) For loss of heirship / dependency for wrongful death.'

11. On 12 December 2022, the Claimant applied for permission to serve the Claim Form out of the jurisdiction. The only evidence served in support was contained in the Application Notice. Although it was stated that 'a detailed statement of a UAE lawyer' would be served prior to the hearing of this application, that did not happen. Particulars of Claim were 'annexed' to the application. The Particulars of Claim, in large part, reproduced the contents of the 'Pre Action Protocol' document. In paragraph 5, it is stated that 'although the proceedings will take place in England the relevant law which will apply is the law of the UAE', and that 'this is a very significant and important point in deciding in which jurisdiction the claim should be litigated.'. Notwithstanding that

statement that the applicable law would be the law of UAE, claims were made for damages under the Law Reform (Miscellaneous Provisions) Act 1934 and under the Fatal Accidents Act 1976, and alternatively under the laws of Dubai – UAE.

12. On 19 January 2023, the Claimant issued an application for an extension of time to serve the Claim Form out of the jurisdiction ('The First Extension Application'). In support of this application the Claimant filed a 3-page witness statement from Mr Robert Berg of Janes. This stated in part:

> 'As the murder of Suzan Tamim took place in Dubai it is the law of the [UAE] which will apply in relation to the limitation period for the claim to be issued on behalf of the Claimant. According to Article 473 of the Civil Transaction law of the U.A.E the limitation period that would apply in relation to a claim of this nature is 15 years.'

13. An *ex parte* hearing of the application to extend time was held before Master Gidden on 25 January 2023 ('The First *Ex Parte* Hearing'). Junior counsel, Mr Joshua Hitchens, had supplied a Skeleton Argument. This had stated, in paragraph 4:

> 'The applicable law, however, is the law of the UAE. Under Article 298 of the Civil Transaction Law of the UAE, the applicable limitation period is 15 years. Accordingly, the claim is in time and the applicable time limit shall expire on 28 July 2023.'

14. The Skeleton Argument had referred to the principles as to extension of time set out in ST v BAI (SA) (t/a Brittany Ferries) [2022] EWCA Civ 1037, and had stated that, applying those principles:

> '(a) There is clear justification for an extension of time. The Claimant has not yet been granted permission to serve out of the jurisdiction despite having made the application within the period allowed for service;
>
> (b) There is a good reason for the inability to serve within the specified time limit. The Claimant has not been granted permission to do so as is required by the rules;
>
> (c) the applicable limitation period has not yet expired; and
>
> (d) The overriding objective militates strongly in favour of the granting of the application…'

15. At the (remote) hearing, which was listed for 20 minutes, and although no evidence had been served in support of the application for service out of the jurisdiction and Master Gidden had not anticipated that the application for service out would be addressed at that hearing, counsel asked the Master to deal with service out. Master Gidden acceded to this request and made an order for permission to serve the Claim Form out of the jurisdiction in Egypt. He also made an order extending time for service until 25 July 2023 ('The First

Extension Order'). As drawn up, the order only extended time for service of 'the particulars of claim' and did not mention the Claim Form.

16. On 28 June 2023 the Claimant applied for a second extension of time to serve the Claim Form and Particulars of Claim on the Defendant ('The Second Extension Application'). The Application Notice contained, inter alia, the following:

> '1 By an Order of Master Gidden sealed on the 26 January 2023 permission was granted to serve the Defendant with the Particulars of Claim and accompanying documents in Cairo, Egypt by the 25 July 2023.
>
> 2 From the date of this Order, 'without prejudice' discussions occurred between the parties in an attempt to avoid litigation and reach a settlement. This paused our efforts to serve the Defendant in Cairo, Egypt.
>
> 3 Ultimately no settlement was reached. Therefore, we gathered the required documents for service abroad and instructed an Arabic interpreter for translations of these documents for the benefit of the Defendant.
>
> 4 On 1 June 2023 these documents and Arabic translations were delivered to the Foreign Process Section at the Royal Courts of Justice.
>
> 5 These documents were then returned by the Foreign Process Section with a request to include additional forms in English and Arabic.
>
> 6 On 9 June 2023 we instructed an interpreter to provide Arabic interpretations of these additional documents before resubmission was possible.
>
> 7 On 16 June 2023 the interpreter provided the final necessary document and the Particulars of Claim and accompanying documents were submitted in person to the Foreign Process Section at the Royal Courts of Justice.
>
> 8 Therefore service has not yet been effected on the Defendant and due to the lengthy process involved, service will not be effected by the 25 July 2023.'

17. That Application Notice was accompanied by a Second Witness Statement of Mr Berg. At paragraph 5 it was said that the claim had been issued 'within the 15 year limitation period as prescribed under the applicable UAE statute.' Mr Berg further said, at paragraph 12:

> 'From the Order of Master Gidden, there are two principle [sic] reasons for the delay in lodging the documents with the Foreign Process section:
>
> (a) Firstly, the Claimant has faced considerable difficulty in raising funds in order to pursue the claim. Janes is not acting under a conditional fee arrangement or other such arrangement and this is an inherently complex claim. The Claimant's career and associated earnings were prematurely ended by the facts giving rise to this claim. As such, he has faced considerable difficulty in finding the money to progress the claim.

> (b) Secondly, there were the delays in procuring and then re-procuring the translation of documents.'

18. At the (again remote) *ex parte* hearing in front of Master Gidden on 25 July 2023 ('The Second *Ex Parte* Hearing'), the Claimant was again represented by Mr Hitchens. One of the matters which counsel said to the Master was:

> 'More recently, part of the reason that there was a delay from the point at which you granted the previous – both permission to grant – to serve out of the jurisdiction and extension for time on 19 January and the papers being passed to the Foreign Process Section was that there were, again, quite advanced discussions and it was hoped that there may be no need for recourse to court whatsoever.'

19. Master Gidden made an order that time for service of the Claim Form and Particulars of Claim should be extended until 25 January 2024 ('The Second Extension Order').

20. On 14 December 2023, the Claimant made an application for a further 6-month extension of time for service of the Claim Form ('The Third Extension Application'). On 15 January 2024, a third Witness Statement of Mr Berg was filed in support of that application. It was a short statement, which dealt with the fact that Peters & Peters, for the Defendant, had written correspondence which, while making it clear that the Defendant was not submitting to the jurisdiction and had not provided instructions to Peters & Peters to accept service, asked for copies of various documents.

21. A further *ex parte* hearing took place before Master Gidden on 16 January 2024 ('The Third *Ex Parte* Hearing'), and again the Claimant was represented by Mr Hitchens. On this occasion counsel referred to the duty of full and frank disclosure. In that connexion he raised two points, the first being that The Third Extension Application had inappropriately been made on an 'urgent' basis, and secondly that there had been correspondence with Peters & Peters, which had been exhibited, and that Peters & Peters had criticised the Claimant for not supplying copies of all the documents which had been requested.

22. Master Gidden made an order for a further extension of time to serve the Claim Form and Particulars of Claim until 25 July 2024 ('The Third Extension Order').

23. On 15 February 2024 Peters & Peters sent Janes a 31-page letter expressing concerns that the Claimant and his representatives had breached the duty of full and frank disclosure and that the court had been misled in The First, Second and Third *Ex Parte* Hearings which had taken place. On 22 February 2024, Mr Berg sent an email which said that Janes were taking instructions and intended to provide a detailed reply to the 15 February 2024 letter within 21 days. No such reply was sent, but on 7 March 2024 Janes sent a letter to Peters & Peters which said that Janes were no longer representing the Claimant, and that it was anticipated that they would soon be making an application to be removed from the record. The letter said that it remained Janes' intention to provide a detailed response to the various issues which had been raised by Peters & Peters in

correspondence. Master Gidden made an order removing Janes from the court record on 22 March 2024.

24. In May 2024, the Claimant instructed Walker Wise Solicitors ('Walker Wise') in place of Janes. Peters & Peters continued to press Janes (as well as Walker Wise) for a response in relation to the points which they had raised in correspondence. On 3 June 2024, Janes had said that they had drafted a detailed response to the various points raised, but wished to run this past Walker Wise before sending it to Peter & Peters. Neither that letter, nor any other detailed response, was sent by Janes to the Defendant or his representatives.

25. On 16 July 2024, the Claimant, by Walker Wise, issued an application for a further extension of time of two months to serve the Claim Form and also for an order permitting service by alternative means. The supporting witness statement of Mr Ibraheem of Walker Wise stated that the Foreign Process Section had returned the documents 'without an explanation of why they could not be served.' Further, that 'we have made every effort to serve the documents on the Defendant's solicitors in jurisdiction', but that Peters & Peters 'have made clear they are not authorised to accept service of the same'. The witness statement said that '[t]he UK is the appropriate jurisdiction as the Claimant resides in the UK as all damages have been sustained in and flow from the UK [and that] the Claimant will inevitably face difficulties with pursuing a claim in Egypt due to the Defendant's political connections in the country.'

26. In a Skeleton Argument put in by junior counsel who had not attended the earlier hearings, it was stated that it had been discovered that the Defendant had, since November 2023, been the director of a UK company, and could accordingly be served in the jurisdiction pursuant to s. 1140 Companies Act 2006. At the hearing before Master Gidden on 23 October 2024, counsel said that the application for alternative service no longer needed to be pursued, but nevertheless sought that the hearing of the application should be relisted to be heard on notice. Master Gidden made an order extending time for service of the Claim Form and Particulars of Claim until 25 January 2025 ('The Fourth Extension Order'), and relisted the Claimant's application to be heard on notice on 21 January 2025.

27. On 24 October 2024, the Claimant served the Claim Form and Particulars of Claim on the Defendant pursuant to s. 1140 of the Companies Act. The documents were sent by post and the deemed date of service was 28 October 2024. No point was taken before me that that was not good service (subject to the Defendant's points as to the invalidity of the previous orders extending time, and his case in relation to the inappropriateness of English jurisdiction).

28. On 19 November 2024, the Defendant issued his Part 11 Application, seeking an order that (1) the court does not have jurisdiction and shall not exercise jurisdiction in respect of the claim brought by the Claimant against the Defendant, and the setting aside of The First, Second, Third and Fourth Extension Orders and of service of the Claim Form and Particulars of Claim; alternatively (2) the court should not exercise jurisdiction over the claim brought by the Claimant against the Defendant and that the action be stayed. The application also sought directions for the hearing of the Part 11 Application.

29. The Defendant's evidence in support of his Part 11 Application was served on 19 November 2024 and on 20 December 2024. The parties agreed extensions of time for the service of the Claimant's evidence in response until 7 March 2025, on which date the Claimant served a witness statement of the Claimant himself, and a witness statement from Mr Ibraheem. The Claimant's witness statement exhibited statements from a lawyer based in the UAE and another lawyer who had previously acted for the Claimant in Egypt. Reply evidence was served by the Defendant on 4 April 2025.

The hearing of 3-4 July 2025

30. The hearing of the Defendant's Part 11 Application came before me on 3-4 July 2025. In advance of the hearing I received a Skeleton Argument from Ms Clare Montgomery KC and Mr Edward Craven KC on behalf of the Defendant and from Mr Philip Sapsford KC on behalf of the Claimant.

31. On 3 July 2025 Ms Montgomery KC made submissions in support of the Application. Mr Sapsford KC then made submissions in opposition to it. In his submissions, Mr Sapsford KC made reference to some – limited - material which was not in the evidence before me. Towards the end of his submissions on 3 July 2025, Mr Sapsford KC said that he had essentially finished, and that there was little else that he could say, but he wanted to consider whether to make an application to adduce further material. I adjourned the hearing until the following day on the basis that if it was sought to rely on further material, it should be shown as soon as possible to the Defendant's representatives, and an application to adduce it should be made on the following day.

32. On 4 July 2025, Mr Sapsford KC said that he was withdrawing from the case on the basis that he was professionally embarrassed. He indicated that a course which the court could adopt would be to adjourn the hearing in order to permit new counsel to make an application to adduce further evidence. I did not understand this actually to be an application to adjourn the hearing; but, to the extent it was, it was opposed by the Defendant. As I indicated at the time, I did not see that there was any valid basis for an adjournment of the hearing, given the amount of time that the parties had had to adduce evidence, the lack of any explanation of why any evidence had not been previously adduced and the fact that there was no identification as to what specific evidence might be the subject of an application. While Mr Sapsford KC said that he thought that an application had been lodged, Ms Montgomery KC told me that none had been notified to the Defendant, and none was shown to the court.

33. I consider that there is no reason why I should not proceed to determine the Defendant's application on the basis of the evidence served, taking into account the submissions which were made to me. I should say that I have considered, *de bene esse*, the limited matters which Mr Sapsford KC told me which went beyond what was in evidence, and considered that they had no effect on my decision on the issues raised by the Defendant's Part 11 application.

Analysis

The Defendant's application

34. The Defendant's application is in two parts. In the first place, as I have said, an application is made under CPR Part 11, for an order that the court does not have jurisdiction, and that The First, Second, Third and Fourth Extension Orders be set aside. I will call this, for convenience, the 'Set Aside Application'. Secondly, an order that the court should not exercise any jurisdiction it may have and that the claim should be stayed. I will call this the 'Stay Application'.

The Set Aside Application

35. Under CPR r. 11(6), where the court makes a declaration that the court has no jurisdiction, it may also make provision discharging any order made before the claim was commenced or before the claim form was served. Under CPR r. 23.10, where an order is made without notice, a person affected may apply to have the order set aside or varied.

36. The Defendant contends that the orders of Master Gidden both to grant permission to serve out, and the orders for an extension of time to serve the Claim Form, should be set aside ('The Relevant Orders'). His case is that if any of those orders (or at least the service out and The First, Second and Third Extension Orders) is set aside, then the court has no jurisdiction, because the claim form will not have been served during the period of its validity. His case is that each of these orders was obtained after a without notice hearing, during which the Claimant did not comply with its duty to make full and frank disclosure of all matters relevant to the court's discretion.

37. The Defendant's case is, in summary, that The Relevant Orders should be set aside because (1) there was a failure to make full and accurate disclosure of all material facts on the applications for those orders, and (ii) that there were not good grounds for the extensions of time.

38. The Claimant's case did not accept that there had been any such failure; and that in any event the interests of justice required that The Relevant Orders should not be set aside.

Legal Principles

39. Extensions of time for service of a Claim Form are governed by CPR r. 7.6. It provides:

> "Extension of time for serving a claim form
>
> (1) The claimant may apply for an order extending the period for compliance with rule 7.5.
>
> (2) The general rule is that an application to extend the time for compliance with rule 7.5 must be made –
>
> (a) within the period specified by rule 7.5; or
>
> (b) where an order has been made under this rule, within the period for service specified by that order.

> (3) If the claimant applies for an order to extend the time for compliance after the end of the period specified by rule 7.5 or by an order made under this rule, the court may make such an order only if –
>
> (a) the court has failed to serve the claim form; or
>
> (b) the claimant has taken all reasonable steps to comply with rule 7.5 but has been unable to do so; and
>
> (c) in either case, the claimant has acted promptly in making the application."

40. In ST v BAI (SA) (t/a Brittany Ferries) [2022] EWCA Civ 1037 at [62] Carr LJ provided a summary of the "relevant general principles" regarding applications to extend time for service of a Claim Form:

> 'i) The defendant has a right to be sued (if at all) by means of originating process issued within the statutory period of limitation and served within the period of its initial validity of service. It follows that a departure from this starting point needs to be justified;
>
> ii) The reason for the inability to serve within time is a highly material factor. The better the reason, the more likely it is that an extension will be granted. Incompetence or oversight by the claimant or waiting some other development (such as funding) may not amount to a good reason. Further, what may be a sufficient reason for an extension of time for service of particulars of claim is not necessarily a sufficient reason for an extension for service of the claim form;
>
> iii) Where there is no good reason for the need for an extension, the court still retains a discretion to grant an extension of time but is not likely to do so;
>
> iv) Whether the limitation period has or may have expired since the commencement of proceedings is an important consideration. If a limitation defence will or may be prejudiced by the granting of an extension of time, the claimant should have to show at the very least that they have taken reasonable steps (but not all reasonable steps) to serve within time;
>
> v) The discretionary power to extend time prospectively must be exercised in accordance with the overriding objective.'

41. Extensive consideration was given to the principles applicable to applications to extend time for service of a Claim Form, and when orders to extend time made without notice may be set aside, in Wragg v Opel Automobile GmbH [2024] EWHC 1138 (KB) at [35]-[45].

> '[35] As Senior Master Fontaine correctly identified at [55] of her Judgment, in *Qatar Investment v Phoenix Ancient Art S.A.* [2022] EWCA Civ 422, at [17] Whipple LJ identified what were described as 'key points' arising in that appeal, which were also relevant to the set aside application:

"(i) First, the Court's power to extend time is to be exercised in accordance with the overriding objective (*Hashtroodi v Hancock* [2004] 1 WLR 3206 at [18]; *Al-Zahra* at [49(2)];

(ii) Second, it is not possible to deal with an application for an extension of time under CPR 7.6(2) "justly" without knowing why the claimant has failed to serve the claim form within the specified period (*Hashtroodi* at [18]; *Al-Zahra* at [49(3)]. Thus, the reason for the failure to serve is a highly material factor. Where there is no good reason for the failure to serve the claim form within the time permitted under the rules, the court still retains a discretion to extend time but is unlikely to do so (*Hashtroodi* at [40]; *Al-Zahra* at [49(5)].

(iii) Thirdly, a "calibrated approach" is to be adopted, so that where a very good reason is shown for the failure to serve within the specified period, an extension will usually be granted; but generally, the weaker the reason, the more likely the court will refuse to grant the extension (*Hashtroodi* at [19]; *Al-Zahra* at [49(4)]). Weak reasons include: a claimant who has overlooked the matter (*Hashtroodi* at [20]; *Al-Zahra* at [49(5)]), and an applicant who has merely left service too late (*Hashtroodi* at [18], citing from Professor Zuckerman on Civil Procedure at p 180; *Al-Zahra* at [50]).

(iv) Fourthly, whether the limitation period has expired is of considerable importance; *Al-Zahra* at [50] and [51(3)]; *Hoddinott v Persimmon Homes (Wessex) Ltd* at [52]. Where an application is made before the expiry of the period permitted under the rules for service, but a limitation defence of the defendant will or may be prejudiced, the claimant should have to show at the very least that he has taken 'reasonable steps': (*Cecil v Bayat* [2011] EWCA Civ 135 at [48] ; *Al-Zahra* at [52(3)]. A claimant's limitation defence should not be circumvented save in 'exceptional circumstances' (*Cecil v Bayat* at [55]; *Al-Zahra* at [52(3)])."

[36] As to what constitutes a 'good reason' (referred to in (ii) and (iii) above), generally speaking, the good reason must be a difficulty in effecting service: *Cecil v Bayat* [2011] 1 WLR 3086 at [49] (Stanley Burnton LJ).

[37] The authorities also demonstrate that a defendant should not be criticised for refusing to accept service otherwise than in accordance with the CPR , and that a defendant has no duty to help the Claimant in effecting service. See:

(1) *American Leisure Group Ltd v Garrard* [2014] EWHC 2101 (Ch), [2014] 1 WLR 4102 at [27] David Richards J) at [32]:

"As is common on applications of this sort, the claimant submitted that success for the first defendant would produce a windfall for him and reward the playing of technical games. There is nothing technical about a defendant insisting on service of a claim form within the period for its validity set down in the Rules and resisting an extension of that time when it is not justified on the facts. … I say nothing as to whether new proceedings against the first defendant would be statute-barred but, if they are, the

responsibility for the claimant's inability to pursue a claim against the first defendant would not lie with him."

(2) *SMO v TikTok Inc* [2022] EWHC 489 (QB), in which the defendants had instructed English solicitors (Hogan Lovells) who the claimants asked to accept service; Hogan Lovells informed the claimant that she would need to apply for permission to serve out and the defendants did not agree to accept service via Hogan Lovells. Nicklin J relied upon the distillation of principles set out by Blackburn J from *Sodastream Ltd*, adding (on the basis of *Euro-Asian Oil SA v Abilo (UK) Ltd* [2013] EWHC 485, "*Joinder of a foreign defendant is an exercise of extra territorial jurisdiction, and no criticism can be made of such a defendant who refuses to instruct English solicitors to accept service* ")….

[38] Not criticising the defendant for refusing to accept service otherwise than in accordance with the CPR is not, of course, inconsistent with recognising that the additional time required to effect service through the Foreign Process Service ('FPS') process or difficulties which present themselves during the FPS process which are outside the control of the claimant can amount to a good reason by which a party may justify an extension of time. They clearly can …. However, it is necessary to consider what the actual reasons for delay were, before determining whether or not they are 'good'. This was explained and illustrated by Whipple LJ in the context of potential FPS delays in *Qatar* at [36]-[37]…

[39] Therefore, although delays in fact caused/predicted to be caused by a defendant insisting (as it is entitled to do) upon a particular form of service can amount to good reasons justifying an extension of time, the authorities demonstrate that fondly hoping that the defendant will agree to accept service in a way other than that which a defendant is entitled under the rules to require (subject to any order obtained, for example, for substituted service) does not constitute "good reason". …

[40] … Even where an application is made within time, however, it remains correct that problems which are of a party's own making will not amount to a 'good reason' and, even though the effect of refusing to grant an extension of time may have a significant impact because the claim is statute-barred, the absence of good reason will still mean that the court's indulgence (even when the extension is sought within time) will be limited.

[41] Sub-paragraph (iv) of the passage from *Qatar Investment* emphasises that whether the limitation period has expired is of considerable importance, as Senior Master Fontaine also identified at [56] of her judgment when quoting the explanation for this approach by Rix LJ in *Aktas v Adepta* [2010] EWCA Civ 1170 at [91]:

"The reason why failure to serve in time has always been dealt with strictly… is in my judgment bound up with the fact that in England, unlike (all or most) civil law jurisdictions, proceedings are commenced when issued and not when served. However, it is not until service that a defendant has been given proper notice of the proceedings in question. Therefore, the

> additional time between issue and service is, in a way, an extension of the limitation period….. In such a system, it is important therefore that the courts strictly regulate the period granted for service. If it were otherwise, the statutory limitation period could be made elastic at the whim or sloppiness of the claimant or his solicitors."
>
> [42] Rix LJ also gave the following guidance in *Cecil v Bayat* [2011] EWCA Civ 135 at [108] and [109]:
>
> "… It is therefore for the claimant to show that his "good reason" directly impacts on the limitation aspect of the problem, as for instance where he can show that he has been delayed in service for reasons which he does not bear responsibility, or that he could not have known about the claim until close to the end of the limitation period. If he cannot do that, he is unlikely to show a good or sufficiently good reason in a limitation case. …That means that in a limitation case, a claimant must show a (provisionally) good reason for an extension of time which properly takes on board the significance of limitation. If he does not do so, his reason cannot be described as a good reason. It is only if a good reason can be shown that the balance of hardship should arise".
>
> …
>
> [45] … (1) on an application such as this, it is not generally appropriate to resolve the limitation issue (so establishing that limitation 'might' be relevant is sufficient); and (2) where limitation 'might' be an issue, it is to be regarded as a matter of 'considerable importance' in deciding whether or not to grant an extension of time for service.'

42. The duty of a party making a without notice application is well established. The principles applicable on such an application were summarised by Carr J in Tugushev v Orlov (No. 2) [2019] EWHC 2031 (Comm) as follows (at [7]):

> 'i) The duty of an applicant for a without notice injunction is to make full and accurate disclosure of all material facts and to draw the court's attention to significant factual, legal and procedural aspects of the case;
>
> ii) It is a high duty and of the first importance to ensure the integrity of the court's process. It is the necessary corollary of the court being prepared to depart from the principle that it will hear both sides before reaching a decision, a basic principle of fairness. Derogation from that principle is an exceptional course adopted in cases of extreme urgency or the need for secrecy. The court must be able to rely on the party who appears alone to present the argument in a way which is not merely designed to promote its own interests but in a fair and even-handed manner, drawing attention to evidence and arguments which it can reasonably anticipate the absent party would wish to make;
>
> iii) Full disclosure must be linked with fair presentation. The judge must be able to have complete confidence in the thoroughness and objectivity of

those presenting the case for the applicant. Thus, for example, it is not sufficient merely to exhibit numerous documents;

iv) An applicant must make proper enquiries before making the application. He must investigate the cause of action asserted and the facts relied on before identifying and addressing any likely defences. The duty to disclose extends to matters of which the applicant would have been aware had reasonable enquiries been made. The urgency of a particular case may make it necessary for evidence to be in a less tidy or complete form than is desirable. But no amount of urgency or practical difficulty can justify a failure to identify the relevant cause of action and principal facts to be relied on;

v) Material facts are those which it is material for the judge to know in dealing with the application as made. The duty requires an applicant to make the court aware of the issues likely to arise and the possible difficulties in the claim, but need not extend to a detailed analysis of every possible point which may arise. It extends to matters of intention and for example to disclosure of related proceedings in another jurisdiction;

vi) Where facts are material in the broad sense, there will be degrees of relevance and a due sense of proportion must be kept. Sensible limits have to be drawn, particularly in more complex and heavy commercial cases where the opportunity to raise arguments about non-disclosure will be all the greater. The question is not whether the evidence in support could have been improved (or one to be approached with the benefit of hindsight). The primary question is whether in all the circumstances its effect was such as to mislead the court in any material respect;

vii) A defendant must identify clearly the alleged failures, rather than adopt a scatter gun approach. A dispute about full and frank disclosure should not be allowed to turn into a mini-trial of the merits;

viii) In general terms it is inappropriate to seek to set aside a freezing order for nondisclosure where proof of non-disclosure depends on proof of facts which are themselves in issue in the action, unless the facts are truly so plain that they can be readily and summarily established, otherwise the application to set aside the freezing order is liable to become a form of preliminary trial in which the judge is asked to make findings (albeit provisionally) on issues which should be more properly reserved for the trial itself;

ix) If material non-disclosure is established, the court will be astute to ensure that a claimant who obtains injunctive relief without full disclosure is deprived of any advantage he may thereby have derived;

x) Whether or not the non-disclosure was innocent is an important consideration, but not necessarily decisive. Immediate discharge (without renewal) is likely to be the court's starting point, at least when the failure is substantial or deliberate. It has been said on more than one occasion that it

> will only be in exceptional circumstances in cases of deliberate non-disclosure or misrepresentation that an order would not be discharged;
>
> xi) The court will discharge the order even if the order would still have been made had the relevant matter(s) been brought to its attention at the without notice hearing. This is a penal approach and intentionally so, by way of deterrent to ensure that applicants in future abide by their duties;
>
> xii) The court nevertheless has a discretion to continue the injunction (or impose a fresh injunction) despite a failure to disclose. Although the discretion should be exercised sparingly, the overriding consideration will always be the interests of justice. Such consideration will include examination of i) the importance of the facts not disclosed to the issues before the judge ii) the need to encourage proper compliance with the duty of full and frank disclosure and to deter non-compliance iii) whether or not and to what extent the failure was culpable iv) the injustice to a claimant which may occur if an order is discharged leaving a defendant free to dissipate assets, although a strong case on the merits will never be a good excuse for a failure to disclose material facts;
>
> xiii) The interests of justice may sometimes require that a freezing order be continued and that a failure of disclosure can be marked in some other way, for example by a suitable costs order. The court thus has at its disposal a range of options in the event of non-disclosure.'

43. What was said by Carr J in Tugushev v Orlov (No. 2) was in the context of a freezing order, but the principles are of general application, as has been confirmed by the Court of Appeal in Derma Med Limited v Dr Zack Ally [2025] I.R.L.R. 68 at [30] per Males LJ.

44. The obligation of full and frank disclosure is one which should be known to all practitioners. It is an obligation to disclose matters which are objectively material for the judge to know, and not to be judged only from the point of view of the applicant. The nature of the duty was helpfully explained by Richard Salter KC (sitting as a Judge of the High Court) in Borrelli v Otaibi [2024] EWHC 1148 (Comm) at [47], as follows:

> 'In my judgment, that entirely misunderstands the nature of the duty of full and frank disclosure. It should be known to all practitioners that what is material to place before the judge on a without notice application is not to be judged solely from the point of view of the applicant. Material facts are those which it is material for the judge to know in dealing with the application as made. That duty requires an applicant to make the court aware of the issues likely to arise, which includes making the court aware of the possible difficulties which the applicant may face, either in the claim or in the particular application. What is required is a fair presentation. Although that need not extend to a detailed analysis of every possible point which may arise, it necessarily involves making the court aware of the main difficulties which the application, if contested, could face and of the principal arguments which the other side would be likely to raise.'

45. Where an application is made to serve a Claim Form outside the jurisdiction, one aspect of which the court will need to be satisfied is that there is a serious issue to be tried or (to use the language of CPR r. 6.37(1)(b)) a reasonable prospect of success. A fair presentation on a without notice application for permission to serve out may therefore involve the disclosure of any obvious points which may mean that the claimant does not have a reasonable prospect of success. These can include points as to limitation.

46. In Libyan Investment Authority v JP Morgan Markets Limited [2019] EWHC 1452 (Comm) Bryan J reviewed a number of authorities in relation to the issue of duty of full and frank disclosure, including Knauf UK GmbH v British Gypsum Ltd [2001] EWCA Civ 1570, Konamenemi v Rolls Royce Industrial Power (India) Ltd [2002] 1 WLR 1269, and MRG (Japan) Ltd v Engelhard Metals Japan Ltd [2003] EWHC 3418 (Comm), in the context of whether the applicant should have made further disclosure in relation to possible limitation problems with its claim. Between [104]-[120] Bryan J said this:

> '[104] Limitation under English law (the only law being advanced at this time in the JP Morgan Proceedings) was on any view, and without any benefit of hindsight, a very important potential defence to the claims being advanced. Indeed (as I have found) it was a matter that meant that the LIA did not have a real prospect of success, and as such service should be set aside. But whether that was so or not, it was a matter which indisputably might reasonably be thought to weigh against the making of the order for permission to serve out of the jurisdiction, as it went to the question of a real prospect of success of the LIA's claims. Equally, in terms of the duty of full and frank disclosure, the issues that arose in relation to limitation are matters which might reasonably have caused the judge to have doubt whether he should grant permission to serve out of the jurisdiction, in the context of whether the LIA had a real prospect of success and as such were relevant matters which ought to have been disclosed (*MRG v Engelhard Metals Japan*, supra, at [29] per Toulson J).
>
> …
>
> [107] The duty of an applicant on an application for permission to serve out of the jurisdiction is a duty to make full and frank disclosure of all material facts. The material facts are those which it is material for the Judge to know in dealing with the application made - *Brink's Mat Ltd v Elcombe* [1988] 1 WLR 1350 and 1356 G-H—here an application to serve outside the jurisdiction which would have the effect of bringing a person and an entity outside the jurisdiction, into the jurisdiction. In the present case, LIA should have identified that the claims sought to be advanced against Mr Giahmi and Lands were, under English law, prima facie time barred subject to the application of section 32 of the Limitation Act 1980, and should have provided sufficient particulars of the basis on which the LIA said that it could not with reasonable diligence have discovered all necessary elements of a proper plea of fraud until after 6 April 2012, so that the judge could consider whether he or she was satisfied that the claims nevertheless had a real, as opposed to fanciful, prospect of success. The LIA did not do so. It is no answer to say that limitation is a point taken by way of defence – when

> applying for permission to serve out of the jurisdiction the LIA knew that such a defence would be taken given the stance Mr Giahmi had adopted in the SocGen proceedings, and the fact that the JP Morgan proceedings had been commenced very much more than six years after the Bear Stearns note. It was obvious that limitation was relevant to a reasonable prospect of success.
>
> [108] There was accordingly a failure to comply with the requirements of Appendix 9 paragraph 2(c) of the Commercial Court Guide, and a breach of the duty of full and frank disclosure. Importantly this was not, and was not suggested to be, an inadvertent failure to address such matters (due to lack of familiarity with the case, or pressure of time or the like).
>
> …
>
> [110] Whilst it is rightly not suggested (and could not be suggested) that there was an intention to mislead the court, there was, nonetheless, a conscious, and therefore deliberate, decision not to inform the court of such matters, and the degree and extent of the culpability was of a high order. Nor did the LIA recognise the non-disclosure and apologise for the same. ….
>
> [120] The importance of the duty of full and frank disclosure, on applications for permission to serve out, just as in the context of a freezing injunction, cannot be over-stated. There is a difference in terms of what the disclosure must be directed at, and the matters being considered, but the underlying reason and rationale for the duty remains the same, as is the need to comply with the same. A failure to comply with that duty is by its very nature serious – an individual or entity has been brought into the jurisdiction without having had any opportunity to address the court as to why permission should not be granted, and as demonstrated by the present case, they are then exposed to very considerable costs upon an application to set jurisdiction aside.'

47. In relation to applications to extend time for service of a Claim Form, and given the significance of the issue of limitation in that context, it is of particular importance that this should be fairly addressed in the material put in in support of the application. What was said by Constable J in paragraph [103] of Wragg v Opel is of significance:

> '[103] I would add that the Judge does not appear to have refocussed, when considering the applications for an extension of time, upon the failure within the applications to give full and frank disclosure of the position relating to limitation. Unlike in the context of the Service Out Applications, the existence of potential limitation defences was highly material to the initial exercise of considering whether, and if so for how long, an extension of time ought to have been granted. The existence of limitation defences changed the very test the Judge had to consider and apply when considering the matter ex parte: it was not enough to show a 'good reason': the circumstances were required to be exceptional, in the sense of something out of the ordinary, as considered above. Seen through this lens, the

> conscious decision not to refer to limitation issues in the evidence supporting the Extension Applications was, in my view, a significantly more serious transgression of the duty of full and frank disclosure. In the exercise of my discretion this factor, of itself, militates much more strongly towards setting aside the order and strongly supports the determination I have otherwise arrived at, namely that the extensions of time sought from 10 November 2021 should not be granted.'

The Defendant's grounds for the Set Aside Application

48. As I have already said, the Defendant relies, in relation to his Set Aside Application, both on matters which he says were not fairly presented on the without notice applications, and, in relation to the applications for an extension of time, on a contention that there were not good reasons for those extensions. The points relied on overlap, but I will seek to deal with the two groups of points in turn, and in the order I have mentioned.

Failures of Fair Presentation

49. In the first place, the Defendant contends, that there was a failure to draw the court's attention to the fact that the Claimant's claim is, or at least highly arguably is, time barred.

50. As to this, while there is mention of English law in the Particulars of Claim, it appears from that document and elsewhere to be common ground that the applicable law is that of the UAE. Article 298 of the UAE Civil Code provides:

> '1. An action for damages arising from an unlawful act is prescribed after three years from the date upon which the victim knew of the injury and the identity of the person who was responsible.
>
> 2. Where a claim arises out of a criminal offence and the hearing of the penal action is still pending after the lapse of the periods above-mentioned in the preceding clause, the action for damages may still be heard.
>
> 3. An action for damages is prescribed in any case after fifteen years from the date on which the prejudicial act was committed.'

51. The evidence served by the Defendant includes an expert report from a UAE lawyer, Mr Ali Al Hashimi. Mr Al Hashimi's evidence is to the effect that the three-year period applicable under Article 298(1) is suspended for the duration of any criminal proceedings in respect of the unlawful act; and that the limitation period begins to run from the date of the final judgment in the criminal proceedings; and that, in the present case the final judgment of the Egyptian Court of Cassation of 6 February 2012 was the trigger for the running of the limitation period. Accordingly, this evidence indicates, the Claimant had a right to file a compensation claim until 6 February 2015. The limitation period was not 15 years from Ms Tamim's death.

52. The Claimant served two pieces of evidence in response to Mr Al Hashimi's report. Neither is a Part 35 compliant expert report, nor a Part 31 compliant

witness statement. One was an 'Expert Witness Statement' from Ms Khawla Saeed Mohammed Salem. Ms Salem refers to Article 298 of the UAE Civil Code, but does not say how its provisions apply in the present case, and does not include any statement that the Claimant's claim was issued within the applicable limitation period. The other is supposedly a statement from a UAE lawyer, Mohamed Salman, dated 7 March 2025. This is not an easy document to follow, and it is not clear whether it was in fact the product of one person, as, at times, it talks of 'our' view. It contains a statement that 'the final and irrevocable judgment of the Egyptian Court of Cassation was issued on 6th February 2012. In accordance with Articles 298 and 481 of the Civil Code, we see that the period of hearing the case is still valid according to the UAE law and extends to 15 years in the presence of a legitimate excuse preventing the claim of the right.' The reference to 'legitimate excuse' is to the provisions in Article 481 of the UAE Civil Code, whereby 'prescription barring the admittance of hearing the case is suspended whenever there is a lawful excuse barring claim of the right'; and the particular 'legitimate excuses' which the author has in mind are apparently two matters mentioned earlier in the document, namely the Claimant's alleged psychological condition including PTSD and that the Claimant had been misled by a former solicitor about the progress of the case.

53. Mr Al Hashimi, in his Supplemental Expert Report has stated that, under UAE law, the only 'legitimate excuses' which may extend prescription periods are such as make it 'impossible to claim the right in a timely manner'. Given that the Claimant had actually claimed for compensation for Ms Tamim's death during the Egyptian proceedings, the Claimant's alleged psychological condition '(even if it is proven) is not likely to be considered as a lawful/legitimate excuse suspending the time limitation period/s of Article 298 of the Civil Code'. Further, any misleading of the Claimant by a former solicitor '[does] not appear to have given rise to the *impossibility* for the Claimant to act'; and further that if the Claimant had been dissatisfied with the services of a particular solicitor, but had refrained from instructing other counsel, that might be considered negligence on his part, which would mean that there was not a 'legitimate excuse'.

54. In my judgment, it is clear from the dates of the death, and of the Egyptian proceedings and from the terms of Article 298 of the UAE Civil Code itself, that there is, at the least, a very real question as to whether proceedings commenced in 2022 are time barred. *A fortiori* is this the case when the analysis given by Mr Al Hashimi is considered.

55. I also regard it as clear that an explanation of the potential limitation defence ought to have been given for the purposes of, at least, each of the First, Second and Third *Ex Parte* Hearings, but no such proper explanation was given. I will consider these applications in turn.

56. At The First *Ex Parte* Hearing, as I have said, there was both an application for an extension of time and an impromptu application for permission to serve out. The application in relation to service out was significant not only in itself but also because, without it, no extension of time would have been possible without a showing that the requirements of CPR r. 7.6(3) were satisfied, which could

not have been shown. This is because, in relation to a Claim Form for service within the jurisdiction, the deadline for service would have expired on 26 November 2022, nearly two months before The First Extension Application, whereas in the case of an application for permission to serve out of the jurisdiction made more than four months but less than six months after the date of issue, the court's discretion to grant the application is not constrained by CPR r. 7.6(3).

57. At least in relation to the application to serve out, made at The First *Ex Parte* Hearing, it was, in my judgment, necessary for the limitation position to be properly explained, as it went to the question of whether there was a serious issue to be tried, and whether the Claimant had a reasonable prospect of success. It was not properly explained. The only references to limitation are as I have set out above. The terms of Article 298 were not set out, and there was no attempt made to explain the possible implications of Article 298(1) and (2).

58. While doubtless there was no intention to mislead the court, nevertheless the decision to say no more about limitation must have been a deliberate one. It seems clear that the Claimant and indeed the Claimant's solicitors knew the terms of Article 298 at the time The First *Ex Parte* Hearing took place. An 'expert witness statement' of Ms Salem had been prepared, apparently in 2021, for the purposes of the action which the Claimant was contemplating bringing in England. It is referred to in the 'Pre Action Protocol' letter, which bears the date 1 March 2022, and in the Particulars of Claim (paragraph 6). That 'expert witness statement' sets out the full terms of Article 298.

59. On the occasion of the Second Extension Application, it had become, if anything, more important for the Claimant's representatives to make proper disclosure of the position in relation to limitation. This is because, even on the Claimant's case that the relevant limitation period was 15 years, this would expire on 28 July 2023, which was only 3 days after The Second *Ex Parte* Hearing, and accordingly an extension of time for service would mean the Claim Form being served after the point at which, even on the Claimant's case, the claim had become time barred. On this occasion there was no mention of Article 298 either in Mr Berg's second witness statement, or by counsel during the hearing. The statement in Mr Berg's second witness statement that the claim had been issued 'on the 26th July 2022, which falls within the 15 year limitation period as prescribed under the applicable UAE statute' was not a fair presentation of the position as to limitation.

60. On the occasion of The Third Extension Application, and on the assumption, favourable to the Claimant, that the relevant limitation period was of 15 years, this had expired nearly 6 months before the hearing of the application. This point was not, however, mentioned either in Mr Berg's third witness statement, nor in counsel's submissions at The Third *Ex Parte* Hearing. In my view this was a plain case of a failure to make proper disclosure of a material matter.

61. A second complaint as to unfair presentation is made in relation to statements made in the context of The Second Extension Application.

62. On that occasion, as I have set out, it was stated in the Application Notice that, from the date of The First Extension Order, there had been without prejudice discussions between the parties, and that this had 'paused' the efforts to serve the Defendant in Egypt; and counsel also stated that there had been, in that period, 'quite advanced discussions'. Those statements seem to have been simply not true. The evidence before me is to the effect that there were no without prejudice discussions between the parties in that period at all; and that the only communication between the parties was an email from Mr Berg dated 2 February 2023 to Mr El Hennawy enclosing a copy of The First Extension Order and saying that Mr Berg would be writing again shortly, which, in the event, he did not.

63. The point about discussions had been made to provide an explanation as to why service had not been effected during the period of the first extension. The position as to why there had not been service was materially misrepresented by the statement as to negotiations.

64. A third area about which the Defendant makes a complaint of lack of a fair presentation is that he says that there should have been disclosure of the fact that the Particulars of Claim contain 'legally hopeless causes of action and false factual averments'. In this regard, the Defendant relies on: (i) what he contends are false statements that the Claimant and Ms Tamim were legally married; (ii) the fact that the Particulars of Claim contained legally misconceived causes of action; and (iii) false averments as to the effect of Ms Tamim's death on the Claimant, in particular statements to the effect that her death brought about an end to the Claimant's kickboxing career.

65. In relation to (i) and (iii) in this list, these appear to me to involve proof of facts which are themselves likely to be in issue in the action, should it proceed. I do not regard them as matters which are 'so plain that they can be readily and summarily established', as Carr J put it in (viii) in her enumeration of principles in Tugushev v Orlov, and therefore not points which it is appropriate to go into for the purpose of an application to set aside such as this.

66. The matters referred to in (ii) are equally issues which would arise in the action, but these do in my judgment fall within the exception mentioned by Carr J of matters which can be 'readily and summarily established'. Thus, the Particulars of Claim put forward a claim that the Claimant is entitled to damages under the Fatal Accidents Act 1976. However, given that the law applicable to the Claimant's claim is, and the Claimant accepts it to be, UAE law, the Fatal Accidents Act is of no application: Cox v Ergo Versicherung AG [2014] AC 1379. The Claimant also pleads a claim under the Law Reform (Miscellaneous Provisions) Act 1934, 'in his capacity as the Administrator of the Deceased's estate and on behalf of the estate', which 'will include damages for loss of income of Suzan Tamim as a consequence of her being murdered', which 'will total many millions of pounds on the basis that at the time she was at the height of her career as the most acclaimed singer in the Middle East.' However, s. 1(2)(a)(ii) of the 1934 Act provides that the damages recoverable for the benefit of the estate of the deceased person shall not include 'any damages for loss of income in respect of any period after that person's death.' These obvious defects in the Claimant's pleaded claim should, in my judgment, have been

pointed out to the Master at least in the context of the application for permission to serve out of the jurisdiction, but also, I consider, in relation to the extension applications.

67. A fourth area of complaint, which arises in relation to the application for permission to serve out of the jurisdiction, is that the Claimant failed to bring to the Master's attention various factors which indicated that England was not the appropriate forum for the trial of the claim and that there were other fora which were clearly more appropriate. The Defendant contends that the Claimant and his representatives 'did not point to a single factor which was capable of undermining the Claimant's case that England is the appropriate forum.'

68. In considering this contention, it is necessary to acknowledge that the Skeleton Argument served in advance of The First *Ex Parte* Hearing did mention that the murder had taken place in Dubai; that both Al-Sukari and the Defendant are Egyptian nationals; that both men had subsequently been tried and convicted in Egypt; that the Defendant resides in Egypt; and that the applicable law was the law of the UAE. I accept, however, that these were not identified as points counting against England not being an appropriate forum, which was no doubt in part because no proper application for service out had actually been made, no supporting evidence had been filed, and no skeleton argument directed to such an application had been supplied to the court. There was equally no reference to the location of relevant witnesses and documents. I do not consider that it can be said that the issue of whether England was the appropriate forum was properly and fairly presented. The Master was left to glean the points which might be made against such a contention from material which was put in for a different purpose and which did not identify any points as having that significance, and did not identify some important points at all.

69. In light of my conclusions in relation to the areas in which there was not a fair presentation, considered above, I do not need to consider the Defendant's case that there was a failure to make a fair presentation by reason of a failure to draw to the court's attention matters which 'undermined the Claimant's evidence regarding his alleged impecuniosity'.

No proper basis for the extensions

70. The second aspect of the Defendant's Set Aside Application which requires consideration is his case that there were no good reasons for the extensions of time for service of the Claim Form. As I have said, while overlapping with his case on failures to make a proper presentation, this limb of his Set Aside Application raises the issue of whether there were, and were shown to be, good reasons for the extensions.

71. In relation to The First Extension Application, what was put forward as the justification for the extension was that the Claimant had not been granted permission to serve the Claim Form out of the jurisdiction, notwithstanding that an application had been made. There was, however, no explanation as to why no application for permission to serve out had been made until 12 December 2022, which was 4 ½ months after issue of the Claim Form. There still has been

no such explanation. In my judgment it neither was nor is apparent that there was any good reason for this delay.

72. In relation to The Second Extension Application, the Claimant had not, apparently, lodged any documents with the Foreign Process Section until 1 June 2023, and had not lodged the correct documents until 16 June 2023. No good reason for this delay either was, or has now, been shown. The suggestion that a delay had been caused by without prejudice communications was false. While it was said that the Claimant had had difficulties in raising funds to pursue the claim, as stated in ST v BAI at [62(ii)], awaiting funding may not be a good reason. I do not consider that the Claimant's financial position either was, or has been, shown to be a good reason in this case. To be regarded as a good reason would have required, at least, specifics as to his financial position, and as to why that financial position had delayed the efforts to lodge the relevant documents with the Foreign Process Section before they were. No such specific information was provided. Furthermore, the assertion that his financial position of the Claimant was the result of his 'career and associated earnings [having been] prematurely ended by the facts giving rise to this claim', was one which needed to be justified, in particular in light of the facts revealed in the material summarised in paragraph 95 of Mr Oliver's first witness statement, including that the Claimant has apparently competed in, and won, numerous professional kickboxing events in the years following Ms Tamim's death.

73. While Mr Berg's second witness statement refers to 'delays in procuring and then re-procuring the translation of documents', this does not appear to be a good reason for their being lodged so late with the Foreign Process Section. It should have been obvious to the Claimant and his representatives from the time of issue of the Claim Form, or at latest from the time of the application to serve the Claim Form out of the jurisdiction, that there would be a need to obtain translations of the claim documents.

Conclusions on Set Aside Application

74. As I have found, I consider that there was a failure to comply with the duty to make proper disclosure and a fair presentation in relation to the limitation position in relation to (i) the application to serve out of the jurisdiction, (ii) at least the First, Second and Third Extension Applications. There was what appears to have been a clear misrepresentation in relation to negotiations between the parties in the context of the Second Extension Application. There was a failure properly to disclose the obvious objections to the claims under the Fatal Accidents Act and at least part of the claim under the Law Reform (Miscellaneous Provisions) Act. There was a failure to make a fair presentation in relation to whether England was the appropriate forum.

75. Of these four matters I regard the first two as being the most significant; taken together the four matters represent serious failures to comply with the obligations of a party making without notice applications. At least the first two must have been deliberate, even if not intended to mislead the court. There has been no proper explanation, or apology, for how they occurred. As indicated in paragraph 7(x) of Tugushev v Orlov, the court's starting point will be immediate discharge, without renewal. The court has, nevertheless, a discretion to refuse

to set aside The Relevant Orders, which is to be exercised in furtherance of the interests of justice. In the present case, I do not consider that that discretion should be exercised. The matters not disclosed or misrepresented were important to the issues facing the court on each of the relevant applications; there is a need to encourage proper compliance with parties' obligation to make full and frank disclosure; and the failures to comply with that obligation were culpable and have not been explained. I have considered the injustice to the Claimant which may be said to flow from the setting aside of The Relevant Orders. Given that there is an apparently strong argument that the Claimant's claim is time-barred, the extent of any injustice is in doubt. In any event, I do not consider that any injustice outweighs the factors militating in favour of the setting aside of The Relevant Orders. Thus I will set aside the orders giving permission to serve out, and the First, Second and Third Extension Orders. It follows that there was no service of the Claim Form within the period of its validity.

76. I would also set aside the First and Second Extension Orders on the basis that it was not, and has not been, shown that there was any good reason for the failure to serve the Claim Form within the unextended periods. While it is argued by the Claimant that this gives rise to a windfall to the Defendant, who is not required to answer for the Claimant's claim, founded as it is on a truly appalling incident, this is something which is common in applications of this sort, as pointed out in American Leisure Group v Garrard. If the Claimant cannot now pursue his claims because they are time-barred, the responsibility for that does not rest with the Defendant.

77. For those reasons I accede to the Defendant's Set Aside Application, and will declare that the court has no jurisdiction and will not exercise jurisdiction over the Claimant's claim.

The Stay Application

78. Given my decision in relation to the Set Aside Application, the Stay Application does not arise. I will nevertheless briefly give my views as to its merits, in case I am wrong as to the Set Aside Application.

79. The key principles are well-known, and have been authoritatively stated in Spiliada Maritime Corp v Cansulex Ltd [1987] AC 460 and subsequent cases. They were summarised by the Court of Appeal in Municipio de Mariana v BHP Group (UK) Ltd [2022] 1 WLR 1804 at [333] as follows:

> 'The basic principles which apply where a defendant seeks a stay on *forum non conveniens* grounds of an action in which it has been served here as of right, were authoritatively identified in *Spiliada* and *Kyrgyz Mobil*. The defendant must discharge the evidential burden of satisfying the court that there is another available forum of competent jurisdiction which is clearly and distinctly more appropriate as the forum in which the case may be tried more suitably for the interests of all the parties and the ends of justice: *Spiliada* at pp. 476C, 476E, 477E. This is stage one. If the defendant satisfies the burden, the court will nevertheless refuse a stay if the claimant satisfies it, by cogent evidence, that there are circumstances by

> reason of which justice requires such refusal, including in particular if it is established by cogent evidence that there is a real risk that the claimant will not obtain justice in the foreign forum: *Spiliada* at p. 478D-E, *Kyrgyz Mobil* at paras. [91]-[95]. This is stage two.'

80. In the present case, there are some unparticularised suggestions by the Claimant that he would not get justice in Egypt because of the Defendant's political connexions. These suggestions do not amount to the cogent evidence which would be necessary to establish a real risk that he would not obtain justice in that forum. Furthermore, and perhaps even more significantly, the Claimant has raised no suggestion that he cannot obtain justice in Dubai, which is a jurisdiction where his mother lives and which he visits frequently. I do not consider, therefore, that the stage two question will arise.

81. The question therefore is whether the Defendant has shown that there is another available forum which is distinctly more appropriate for the trial of the action in the interests of all the parties and the ends of justice. In my judgment, the Defendant has shown that Dubai is such a forum. For these purposes, the court will look at various factors that could point to the case having a closer connexion with the foreign forum than this, including the subject matter of the dispute, the governing law, the location where relevant conduct occurred, the location of witnesses and evidence, and the personal connexions which the parties have with that forum.

82. Here, the expert evidence of Mr Al-Hashimi indicates that Dubai is an available forum, with jurisdiction over the claim, notwithstanding the Defendant's domicile, by reason of the fact that the incident occurred in Dubai. As to connecting factors, the alleged tort was committed in the UAE, the post mortem on Ms Tamim was carried out in Dubai, and there was an investigation by the Dubai Police. The applicable law is UAE law. This the Particulars of Claim themselves acknowledge to be 'a very significant and important point in deciding in which jurisdiction the claim should be litigated.' As stated in Dana Gas PJSC v Dana Gas Sukuk Ltd [2018] EWHC 277 (Comm) per Leggatt J at [18]:

> '… it is always preferable, other things being equal, for questions about the law of another country to be decided by the courts of that country. This is particularly so where there are substantial differences between the jurisprudence of the two systems, as there are between English common law and the principles of UAE law that are relevant to this case.'

83. The Claimant, moreover, appears to have significant connexions with Dubai, both personal and business. He spends a substantial proportion of his time there. There have been previous proceedings in the Dubai courts in relation to the validity of the Claimant's marriage to Ms Tamim, which the Claimant describes as 'prolonged and complex'. This reinforces the strength of the Claimant's connexions with Dubai, and indicates that the Claimant is able to obtain legal representation in Dubai and participate in proceedings there.

84. The majority of potential witnesses – who it appears will be based in Egypt or the UAE – are likely to speak Arabic, rather than English as their first language,

and the Defendant's first language is Arabic, and he speaks no English. As the Claimant grew up in Iraq, it appears likely that he speaks Arabic. There are therefore some advantages in the case being tried in a forum where Arabic would be the language in which the proceedings could be conducted. The relevant documentary evidence is likely to be located in the UAE or Egypt and to be in Arabic, rather than English.

85. By contrast, the case has very little to do with England, other than the Claimant's residence here. Mr Sapsford KC made a point that at least one of the threats made by the Defendant to Ms Tamim before her death was received by her in England. However, this is not a connexion of significance, in that the nature of the tort alleged is the murder, not threats to murder, and in any event, any such threats were made by remote communications: it is not suggested that the Defendant ever came to England to make such threats.

86. In my judgment it has been shown that the courts of Dubai are clearly and distinctly more appropriate for the trial of the present claim than the courts of England and Wales. Had it arisen, I would, accordingly, have acceded to the Stay Application, and granted a stay of the present action.

Conclusion

87. For the reasons expressed above, the Defendant's Part 11 Application succeeds. I will ask the parties to agree the terms of an order reflecting my conclusions.