



Neutral Citation Number: [2025] EWHC 2006 (Comm)

Case No: CL-2023-000457

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND & WALES
KING'S BENCH DIVISION
COMMERCIAL COURT

Rolls Building, Royal Courts of Justice
London

Date: 30/07/25

Before:

THE HON MR JUSTICE ROBIN KNOWLES CBE

Between:

SUCDEN FINANCIAL LIMITED

Claimant

- and -

(1) TMT METALS AG

(2) PRATEEK GUPTA

(3) MINE CRAFT LIMITED

Defendants

Jason Robinson KC (instructed by **Macfarlanes LLP**) for the **Claimant**
Samantha O'Brien O'Reilly (instructed by **Preston Turnbull LLP**)
for the **Second Defendant**

Hearing dates: 1 May 2025

JUDGMENT

Robin Knowles J, CBE:

Introduction

1. The Second Defendant (“Mr Gupta”) contests the jurisdiction of the English Court to hear and decide these proceedings. Mr Gupta applies to set aside Orders obtained by the Claimant (“Sucden”) giving leave to serve the proceedings on him out of the jurisdiction, and giving permission for service of the proceedings on him to be by alternative means.

The dispute and the proceedings

2. Sucden is a derivatives and commodities broker incorporated in England & Wales. Mr Gupta is resident in Dubai. He has described himself as an indirect shareholder in, and sole director of, the First Defendant (“TMT”), a metal trader incorporated in Switzerland.
3. In February 2010 Sucden and TMT contracted for Sucden to provide TMT with a futures and options trading facility (“the Facility”). The Facility was governed by English Law and English jurisdiction was agreed. In March 2022 Sucden made margin calls on TMT, in respect of the Facility. TMT did not pay.
4. It is Sucden’s case that it was induced by TMT, Mr Gupta and the Third Defendant (“MCL”) to refrain from taking enforcement action against TMT, and in that connection to rely on a bill of lading (“the Bill”) as security for TMT’s liability to it. A Memorandum of Deposit dated 19 August 2022 in favour of Sucden was eventually signed, by Mr Gupta, for TMT, in respect of the Bill (“the Memorandum”).
5. The Bill recorded that the shipper was MCL, a company that Sucden allege to be headquartered in Hong Kong and of which Mr Gupta “is or was at all material times the *de facto* controller”. The Bill described as “particulars furnished by shipper” 9 containers “said to contain” bundles of nickel full plate cathodes.
6. The containers were shipped to Shanghai from Rotterdam. There, they were opened and found to contain a low value composite rather than high value nickel. Sucden alleges that TMT and Mr Gupta represented, fraudulently, that these were shipping containers containing nickel. A conspiracy between Mr Gupta, TMT and MCL is alleged.
7. The proceedings in this jurisdiction were issued on 11 August 2023. Against TMT, Sucden included a contract claim under the Facility, for debt (“the Contract Debt”) or damages, of US\$6,637,746.65. Against both TMT and Mr Gupta, Sucden made a claim in tort, for deceit or fraudulent misrepresentation, for US\$6,746,847.45. The same sum was also claimed by Sucden from all three Defendants for alleged conspiracy “to harm [Sucden] by causing it to accept security for the debt that was not of the value suggested”.
8. I do not in this judgment enter into the question whether the figure claimed in tort, or for the alleged conspiracy, is correctly based. However, I do record that the difference between US\$6,637,746.65 and US\$6,746,847.45 comprises demurrage charges in Shanghai and customs fees, warehousing and storage and other associated costs in

relation to the goods in the containers (collectively, “the Expenses”, and totalling the difference of US\$109,100.80).

9. On 18 April 2024 Picken J granted summary judgment in favour of Sucden and against TMT for the Contract Debt.

Service out of the jurisdiction on Mr Gupta: gateway 3.1(3)

10. On the present applications, Mr Gupta challenges service by Sucden on TMT. The challenge is not relevant to TMT itself, because it was not a challenge made by TMT, which has accepted jurisdiction. However, the challenge is relevant as regards Mr Gupta because Sucden has relied on gateway 3.1(3) under CPR PD 6B as a gateway for serving Mr Gupta out of the jurisdiction.

11. Andrews J (as she then was) in Gunn v Diaz [2017] EWHC 157 (QB); [2017] 1 All ER (Comm) 129 at [86] summarised the principles applying to that gateway, starting with the point:

“The “necessary or proper party” gateway is anomalous, in that, by contrast with the other heads of jurisdiction, it is not founded upon any territorial connection between the claim, the subject-matter of the relevant action, and the jurisdiction of the English courts: *AK Investment* at [73];

12. The gateway is these terms:

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

13. By Clause 26.1 of the Memorandum, TMT and Sucden agreed that the English Court would have exclusive jurisdiction “to settle any dispute arising out of or in connection with” the Memorandum “including any non-contractual obligation arising out of or in connection with” the Memorandum. Clause 26.3 of the Memorandum contained agreement by TMT for Sucden to serve proceedings on TMT by service on an agent within the jurisdiction, and this course was used by Sucden.
14. For Mr Gupta, Ms O’Brien O’Reilly challenges the entitlement of Sucden to rely on CPR 6.11(1) to serve TMT by this method on the basis that that rule permits service only where the claim started is “a claim solely in respect of” the contract containing the term for service on an agent (that is, here, the Memorandum).
15. If that challenge is good then the agreement in the Memorandum as to jurisdiction would still mean that service of the claim form out of the jurisdiction on TMT, without permission, would be allowed under CPR 6.33(2B)(b). However, in that event, CPR 6.34 would require a “notice containing a statement of the grounds on which [Sucden] is entitled to serve the claim form out of the jurisdiction” to be filed before service, “unless the Court gives permission”. In the present case there is neither notice nor permission under CPR 6.34, and no permission to serve TMT out of the jurisdiction was or is sought.

16. Whilst, in a case such as the present, it is understandable that a claimant should turn first to gateway 3.1(3), the careful points made by Ms O'Brien O'Reilly and summarised above appear to present arguable obstacles to reliance on that gateway.
17. However, Sucden also relies on gateway 3.1(9) and, as I address below, I consider that reliance is good and sufficient regardless of the position on gateway 3.1(3). It is therefore unnecessary to reach a final view on gateway 3.1(3). Although asked on behalf of Mr Gupta to reach a final view on gateway 3.1(3), I do not consider it is appropriate to do so where the point is not necessary to my ultimate decision.

Service out of the jurisdiction on Mr Gupta: gateway 3.1(9)

18. Gateway 3.1(9) allows a claimant to serve a claim form out of the jurisdiction with the permission of the court under CPR 6.36 where a claim is made in tort and “(a) damage was sustained ... within the jurisdiction”.
19. In its Particulars of Claim Sucden refers to a letter dated 24 March 2022 by which Sucden agreed “to delay taking action to enforce the [Contract] Debt against TMT (the “Reliance Letter”)”. At paragraph 33 it continues:

“On 22 June 2022, Mr Marc Bailey (CEO of Sucden) met with representatives of TMT (including Mr Gupta). During that meeting, the latter confirmed that TMT would agree to formalise further the agreement contained in or evidenced by the Reliance Letter by way of a pledge of the [Bill] as security for the [Contract] Debt”.

The statement of case continues with allegations of the provision of a draft of the Memorandum and negotiations over its content and then the signing of the Memorandum.

20. Mr Gupta’s solicitor has given evidence that he is “instructed that this meeting likely took place in London”. In his own evidence, given on behalf of TMT on the summary judgment application, Mr Gupta refers to an in-person meeting with Mr Bailey on 22 June 2022 in Portman Square.
21. The damage alleged to have been sustained by Sucden by reason of the deceit and fraudulent misrepresentation alleged against Mr Gupta, and the conspiracy in which he is alleged to have taken part, took two forms. First, delay in pursuing the Contract Debt and, second, the incurring of the Expenses. The alleged meeting is sufficient in my judgment to show damage sustained within the jurisdiction, in the form of delaying pursuit of the Contract Debt. On the allegations made, the meeting in England caused Sucden, itself in England, to continue to wait rather than act to enforce the Contract Debt, including through proceedings here.
22. I am satisfied that there is a good arguable case that the claims fall within at least one of the heads of jurisdiction.
23. I should add that Sucden also focused on the fact that its bank account into which the Contract Debt would (if paid) have been received was in the jurisdiction. I do not consider the point advanced Sucden’s position where the case is not about payment of the Contract Debt but inducement to delay the enforcement of the Contract Debt.

However, Sucden does not need the point in order to succeed on the present applications.

Service out of the jurisdiction: remaining considerations

24. Ms O'Brien O'Reilly also challenged the strength of the alleged claims in deceit, fraudulent misrepresentation and conspiracy. Having reviewed the evidence I am however satisfied that there is a serious issue to be tried against Mr Gupta on the merits.
25. In this connection, it was argued that the claim against Mr Gupta is based on his silence, but it is better seen as a claim based on his alleged participation (and of which, I should record, there is evidence on various dates beyond simply the 22 June 2022 meeting and the point at which he signed the Memorandum). It was argued that damage is not sustained when a party is induced to delay enforcement, but that point does not persuade me that there is not a serious issue to be tried. I am not persuaded, on the limited evidence, by the argument that earlier enforcement against TMT would have achieved nothing. There was reference to the case now being about the amount of the Expenses, given the summary judgment granted against TMT in relation to the Contract Debt, but it is in fact about the full sums claimed whilst the Contract Debt remains unpaid.
26. The Court must then consider whether the English Court is clearly and distinctly the most appropriate forum to determine the claim against Mr Gupta, and whether to exercise its discretion to permit service of the proceedings out the jurisdiction.
27. The facts of the case involve a number of jurisdictions in Europe, the Middle East and the Far East. It is possible to make points for and against the appropriateness of a number of jurisdictions. However, the balance clearly and distinctly shows the English Court to be the most appropriate forum. I am also clear that the Court's discretion should be exercised in favour of permitting service of the proceedings out the jurisdiction. Sucden is here, including its management and at least some of its employees who could give evidence. It is Sucden's case that the commercial context included access by TMT to trading on the London Metals Exchange. Mr Gupta was here for the meeting on 22 June 2022. The Memorandum that followed is governed by English Law. Proceedings against TMT as an alleged co-conspirator are here in England. Mr Gupta is closely connected with TMT, and he has already given evidence here for TMT. There is evidence that he is closely connected with MCL.

Alternative service

28. This leaves the remaining challenge, to the order for alternative service. With the benefit of the understanding of this case that I have been able to reach as a result of this hearing, in my judgment the use of the power to order alternative service is appropriate.
29. It is in the interests of all parties that the proceedings, which have already seen a summary judgment stage in which Mr Gupta participated by providing evidence, are not delayed now. Further passage of time will not assist the quality of recollections of events. The allegations go to reputations as well as money. The overriding objective is well served by the Order that was made, and would not be well served by reversing that Order at this stage.