

ENGLAND AND WALES / JUDGMENT

David Standish & Anor v Daniel Walter Hill & Anor

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[2025] EWHC 2954 (Ch) Case number: BL-2024-001074 IN THE HIGH COURT OF JUSTICE
BUSINESS & PROPERTY COURTS OF ENGLAND AND WALES BUSINESS LIST(ChD) Royal
Courts of Justice, Rolls Building Fetter Lane, London, EC4A 1NL Date: 11/11/2025 Before:
PENELOPE REED KC (Sitting as a Deputy Judge of the High Court)

- ----- Between:

(1) DAVID STANDISH

(2) MICHAEL LEEDS (as Joint Trustees in Bankruptcy of Daniel Hill) Claimants/ Respondents

- and -

(1) DANIEL WALTER HILL

(2) ANNE HILL

- -----

- ----- Defendants/ Applicants MR MATTHEW COLLINGS KC (instructed
by Simon Burn Solicitors Limited) for the Applicants MR DAN MCCOURT FRITZ KC AND MS
JENNIFER MEECH (instructed by Stewarts Law LLP) for the Respondents

- ----- Approved Judgment This judgment was handed down remotely at
11.30am on 11 November 2025 by circulation to the parties or their representatives by e-mail
and by release to the National Archives. Approved Judgment

[2025] EWHC 2954 (Ch) Miss PENELOPE REED KC:

Introduction

1. I have before me three applications made by Daniel Hill and his wife Mrs.. Anne Hill in these proceedings which has been brought by the joint trustees in bankruptcy of Mr. Hill (“the Trustees”) and which are dated 6 March 2025, 8 April 2025 and 12 September 2025 respectively. Only part of the relief sought in the March application has been argued fully before me and the arguments have concentrated on the relief sought in a draft order which

seeks:- i) ii) iii) iv) v) vi) vii) A declaration that Mr. Hill has not been properly served; That there be no order on the application of March 2025 save in respect of costs on the basis that Mr. Hill has not been served with the claim form in respect of the proceedings; There be no order on the March application in respect of the second part of the relief sought by Mrs. Hill who had sought a declaration that the court had no jurisdiction in relation to the claim against her or should not exercise that jurisdiction; There be no order on the April application brought by Mrs. Hill whereby she sought summary judgment; The time limit in paragraph 7 of an order which I will come to below made by Deputy Master Linwood on 8 January 2025 be extended by 12 days to 6 March 2025; That Mr. Hill be granted relief from sanction and that the time limit in paragraph 7 of the order be extended by 12 days to 6 March 2025; That paragraph 4 of that order which extended time for service of the claim form be set aside in respect of paragraphs 36, 48, 65, 106b and 113 of the Particulars of Claim as well as the relief sought in respect of those paragraphs; viii) Those paragraphs and the related claims and relief be struck out; and ix) Mr. and Mrs.. Hill's time for service of the defence be extended until first 42 days after the final disposal of the March application. 2. It is that relief in respect of which I have heard very full argument from Mr. Collings KC on behalf of Mr. and Mrs. Hill and Mr McCourt Fritz KC and Ms. Meech on behalf of the Trustees. I am extremely grateful to Counsel for their clear written and oral arguments.

Background

3. Mr. Hill was made bankrupt as long ago as 24 July 1988. The case on behalf of the Trustees is that Mr. Hill has claimed that he has no assets or very limited assets since the early 1990s and he has been failing to pay creditors since the 1980s. The Trustees Approved Judgment

[2025] EWHC 2954 (Ch) 4. 5. 6. 7. 8. 9. point to the very valuable properties that Mr. Hill has lived in during that period in Florida, the Bahamas and Windsor and the expensive litigation in which he has been involved in a number of jurisdictions. I'm not concerned save in one respect as to the merits of the claim but I have read the Particulars of Claim and in essence the Trustees' case is that there have been a series of transactions by which the value of assets has been transferred from Mr. Hill to a series of entities and those transactions can be impugned pursuant to section 423 of the Insolvency Act 1986. The Trustees further assert that three trusts set up by Mr. Hill or on his behalf, namely a trust set up in the Isle of Man known as the Condor trust; a settlement called the Falcon Settlement also established in the Isle of Man and a Jersey discretionary trust known as the Falcon Trust were all shams. The claim form in this matter was issued on 23 July 2024 and insofar as a six-year limitation period applies that was right at the very end of that period. On 2 January 2025 the Trustees issued an application without notice seeking permission to serve out of the jurisdiction and an extension of time to serve the claim form. This was of course some time after the claim form had been issued and when the time for serving the claim form was due to expire on 23 January 2025. On 8 January 2025 there was a hearing before Deputy Master Linwood at which he gave permission to serve out of the jurisdiction and extended time for service until 22 April 2025. He provided in

paragraph 7 of the Order that: “The defendants (or any of them) are entitled to apply to set aside paragraphs 1-2 and 4 of this order pursuant to rule 23.10 of the Civil Procedure rules 1998 within 28 days of service of this order upon them or (in case of any defendant that is currently dissolved) within 28 days of the date of their restoration whichever is the later.” On 22 January 2025 Stewarts, solicitors for the Trustees sent a covering letter dated 19 January 2025 enclosing the claim form, particulars of claim and other documents to Mr. Hill by e-mail. It is common ground that on 22 January 2025 Mrs. Hill and another defendant, Casa Marisol de Augustin LLC were served personally by Ms. Schutska a process server at Mr and Mrs. Hill's home at 53 Avista Circle St Augustine Florida. I will come back to what exactly occurred on that occasion as it is important to the question of whether service was properly effected on Mr. Hill by way of substituted service. It is the Trustees’ case that Mr. Hill was served by way of substituted service through Mrs. Hill at their Florida address on 25 January 2025. That issue has become a crucial and hard fought matter in this case. Mr. Hill's case is that he was not properly served on 25 January but he accepts that a few days later he found the papers that were left by Ms. Schutska. On 9 February and therefore some time after having discovered the papers Mr. Hill contacted a barrister he knew in London who recommended his current solicitors to him. In fact, he initially instructed Russell Cooke solicitors who filed an acknowledgment of service on his behalf on 13 February 2025 stating that he intended to defend all of the claim. The acknowledgment of service did not indicate that he contested the jurisdiction of the court in any way. The covering letter enclosing the acknowledgment of service dated 13 February 2025 sought an extension of time for Mr. Hill to file his defence to Friday 30 May 2025 and Approved Judgment

[2025] EWHC 2954 (Ch) requested a hard copy of the documents referred to in the covering letter of 19 January

2025. On 18 February 2025 Stewarts wrote to Russell Cooke refusing the long extension that had been sought for filing of the defence but offering an in between solution of an extension to 10 March 2025. The contents of that letter have attained some significance, and I will set them out in full here: “We note your request for hard copy copies of the documents listed in our 19 January 2025 letter to your client. We can arrange for hard copy documents to be sent to your offices, however we can instead provide a file transfer link containing the documents as served on your client, which were also sent to him by email on 22 January 2025. Please confirm your preference here. Going forward we confirm we are willing to accept service (on behalf of the Claimants) of documents in the proceedings by email to StandishGroup@stewartslaw.com but please note that email and combined attachment size should not exceed 40MB. Please confirm if you are willing to accept service on behalf of your client by email, and if so the email address or email addresses to which documents must be sent and any limitations to your agreement to accept service by email (to include the format and maximum size of attachments).” Russell Cooke responded to that letter on 19 February agreeing the extension proposed by Stewarts and stating that “We confirm that we agree to accept service of documentation in these proceedings by email” and later: “We

are willing to accept an electronic file transfer link containing the documents served on our client We would be grateful if you could provide that link... at your earliest convenience.” The same day Stewarts sent a link to Russell Cooke attaching the documents. It is the Trustees’ case that this was effective service of those documents on Mr. Hill, even if service on him in Florida was not effective. On 20 February 2025, Mr. Hill changed solicitors and Simon Burn went on the record. There followed some correspondence between Stewarts and Simon Burn. It is the Trustees’ case that time for making an application to set aside the order of Deputy Master Linwood expired on 22 February 2025 on the basis that he was served on 25 January 2025. Application was in fact made on 6 March as set out above, 12 days after the time limit expired if service was effective on 25 January and in time if it was effected on 19 February 2025. 10. 11. 12. 13.

Issues

14. Mr. Hill’s primary argument is that he has never been properly served, and therefore the claim is a nullity and that is an end to the matter: the Court need not go on to consider any of the other arguments. There is evidence from the process server and Mrs. Hill in relation to this as well as expert evidence from two Floridian lawyers. 15. On the other hand Mr. McCourt Fritz for the Trustees argues that this is in effect a dispute as to the jurisdiction of the court and a defendant who wishes to dispute the court’s jurisdiction to try a claim must apply to the court for an order declaring that it does not have such jurisdiction within 14 days of filing his acknowledgment of service supported by evidence (CPR r.11(4)). Failure to do so will result in his being treated as having accepted that the court has jurisdiction. Mr. Hill has not complied with these rules and so it is argued he has lost his right to challenge jurisdiction. Approved Judgment
- [2025] EWHC 2954 (Ch) 16. 17. 18. 19. 20. The Trustees also argue that by his actions, Mr. Hill has waived his rights at common law to challenge jurisdiction. On the basis that it is still open to Mr. Hill to challenge jurisdiction, and he is not within the time limited by Deputy Master Linwood to apply to set aside, the question arises as to whether the approach of the Court to extending time should be on the basis that he requires relief from sanctions or on the basis of the overriding objective. If time is extended the question is whether there are grounds for setting aside the order made by Deputy Master Linwood extending time for service, in part. That involves amongst other things some consideration of whether there are limitation issues in respect of some of the claims which have been brought against Mr. Hill. The Trustees’ fall back position if he was not properly served is that he was served on February 19 when documents were forwarded electronically to his solicitors who had indicated their willingness to accept service. Counsel approached these issues in a different order depending on their respective cases: Mr. Collings dealt with the question of whether service had been effected first on the basis that if it had not, that was an end to the matter. Mr. McCourt Fritz dealt with the question of whether it was open to Mr. Hill to take a point on service having served an acknowledgment of Service but failed to make an application within 14 days under CPR 11(1) therefore being deemed to accept the court’s

jurisdiction or whether there was a common law waiver of the question of jurisdiction. 21. It seems sensible to me to deal with the question of CPR r.11 and common law waiver first. CPR 11 22. CPR 11 so far as relevant provides as follows:-

- (1) A defendant who wishes to—
 - (a) dispute the court’s jurisdiction to try the claim; or
 - (b) argue that the court should not exercise its jurisdiction, may apply to the court for an order declaring that it has no such jurisdiction or should not exercise any jurisdiction which it may have.
- (2) A defendant who wishes to make such an application must first file an acknowledgment of service in accordance with Part 10.
- (3) A defendant who files an acknowledgment of service does not, by doing so, lose any right that he may have to dispute the court’s jurisdiction.

(4) An application under this rule must— Approved Judgment

[2025] EWHC 2954 (Ch)

- (a) be made within 14 days after filing an acknowledgment of service; and
 - (b) be supported by evidence.
- (5) If the defendant—
- (a) files an acknowledgment of service; and
 - (b) does not make such an application within the period specified in paragraph (4), he is to be treated as having accepted that the court has jurisdiction to try the claim. 23. 24. 25. The Trustees argue that this rule provides an insuperable problem for Mr. Hill in that he did file an acknowledgment of service but failed within 14 days to file an application disputing the jurisdiction of the court on the basis that he had not been properly served. He is therefore to be treated as having accepted that the court has jurisdiction to try the claim. It was accepted that the court does have power to extend time for such an application retrospectively but there is no application to that effect before me. The Trustees relied on the Court of Appeal decision in *Hoddinott and others v Persimmon Homes (Wessex) Ltd* [2008] 1 W. L. R. 806 whereby it was held that “jurisdiction” in CPR 11 did not just connote territorial jurisdiction but any case where a party argued that the court did not have jurisdiction to try a claim, including where there were issues, as there were in that case, as to whether the claim had been correctly served. The facts of *Hoddinott* are worth considering. The claimants issued a claim form on 22 May 2006, the four-month time limit for service of the claim form expiring on 22 September 2006. On 13 September the claimants applied without notice pursuant to CPR 7.6(2) to extend the time for service on the ground that they were unable to serve particulars of claim in time and wished to serve the claim form with full particulars to promote the chances of the claim being settled. An extension of two months until 22

November was granted. The claimants' solicitors wrote to the defendant on 14 September enclosing a copy of the claim form expressed to be for information purposes only. In October the defendant applied to set aside the order extending time on the ground that the claimants did not have a good reason to obtain an extension of time. The claim form and particulars of claim were served on the defendant on 21 November. On 28 November the defendant filed an acknowledgment of service indicating an intention to defend the claim but not indicating an intention to contest jurisdiction. The District Judge set aside the order extending time for service of the claim form and struck out the claim. 26. The Court of Appeal held that as the defendant had not contested jurisdiction in the acknowledgment of service form (in itself not fatal) and had failed to make an application under CPR11(1) within 14 days (the application served before the acknowledgment of service applying to set aside the extension of time for service of Approved Judgment

- [2025] EWHC 2954 (Ch) the claim form not counting for these purposes) it was not open to the defendant to dispute jurisdiction as it was treated as having accepted the jurisdiction of the court. 27. I find it difficult to see why Hoddinott does not apply in this case. Mr. Hill did file an acknowledgment of service on 13 February 2025. He did not tick the box indicating that he was intending to contest jurisdiction. That in itself was not of course fatal to his ability to challenge the court's jurisdiction on the grounds that service had not been properly effected but he was, in my view, clearly required to file an application within 14 days if he intended to challenge jurisdiction. He did not do so and indeed made no application within that period that might be regarded as a challenge. There was no indication that there was going to be a challenge to jurisdiction until he issued his application on 6 March 2025.
28. Mr. Collings sought to distinguish Hoddinott on a number of grounds. His first point was that if he is right on service not having taken place at all (including during the extended period) then the proceedings were a nullity and the court was seised of nothing. 29. However, it seems to me that the question of whether an originating process has been served is a question of jurisdiction. In *Barton v Wright Hassall LLP* [2018] 1 W. L. R. 1119, the Supreme Court said after considering the relief from sanctions jurisdiction (at para 8): – “CPR r 6.15 is rather different. It is directed specifically to the rules governing service of a claim form. They give rise to special considerations which do not necessarily apply to other formal documents or to other rules or orders of the court. The main difference is that the disciplinary factor is less important. The rules governing service of a claim form do not impose duties, in the sense in which, say, the rules governing the time for the service of evidence, impose a duty. They are simply conditions on which the court will take cognisance of the matter at all. Although the court may dispense with service altogether or make interlocutory orders before it has happened if necessary, as a general rule service of originating process is the act by which the defendant is subjected to the court's jurisdiction.”

30. Mr. Collings argues that without proper service of the originating process, the defendant is not subjected to the court's jurisdiction at all. However, it seems to me that in itself is an argument about jurisdiction. It was argued in *Pitalia v NHS England* [2023] 1 WLR 3584 before the Court of Appeal that Barton had impliedly overruled *Hoddinott*. The Judge at first instance had rejected that argument and the Court of Appeal upheld him. His reasoning was that although where time for serving a claim form has expired, the claim form is no longer valid, if the defendant has lost the right to challenge the validity of the claim form, it remains valid. It has not expired in the sense that a living person may have died, but can be revived. 31. In *Pitalia* the defendant had not ticked the box on the acknowledgment of service stating that it was contesting jurisdiction but the covering letter under which it sent the acknowledgment of service raised the issue of late service. Further, three days after Approved Judgment
- [2025] EWHC 2954 (Ch) acknowledging service, the defendant brought an application to strike out the claim for non-compliance with CPR 7.5. The Court of Appeal upheld the Judge's decision to exercise its power under CPR 3.10 to treat the application to strike out as being an application within CPR r11(1). It is notable that the claim form in that case had been served late and so would have been a nullity on Mr. Collings' argument. 32. I do not see how *Pitalia* assists Mr. Hill. It reinforces that there has to be an application made under CPR 11(1) if jurisdiction is to be disputed (including on the basis that there has not been service) once an acknowledgment of service has been filed. Further, in this case there is no application made within 14 days of the acknowledgment of service in respect of which the court could exercise its powers under CPR 3.10.
33. Mr. Collings further relied on a recent decision of the Court of Appeal in *Robertson v Google LLC* [2025] EWCA Civ 1262. In that case it was clear that the claimant had not complied with the requirements of service on Google. His counsel raised the issue that Google had failed to serve an acknowledgment of service and had failed to make an application under CPR 11(1). The issue which arose was not one which arises in this case and was whether a defendant faced with defective service is obliged to acknowledge service and make an application under CPR 11(1). Perhaps unsurprisingly, the Court of Appeal held that there was no obligation to serve an acknowledgment of service where the claim form had not been properly served. Mr. Collings relied particularly on para 74 of the judgment of Coulson LJ where he said: "In accordance with the analysis in both *Pitalia* and *Hand Held* I do not consider that *Hoddinott* is authority for any contrary proposition. It is limited to where an AoS has been served in response to a claim form served in time and where the absence of any indication of a jurisdictional challenge meant that the presumption of acceptance set out in r. 11 must apply. That is simply not this case." 34. 35. Insofar as it is suggested that this case confined *Hoddinott* to cases where the claim form was served in time, it seems to me that is not an accurate summary. Of course, the decision in *Robertson* was on the basis that there was no acknowledgment of service and therefore no requirement for an application under CPR 11. The reference to a claim served in time is in my view a reference to the fact that there is no requirement that a defendant who has not been properly served in time

acknowledge that defective service. A few days after I heard argument in this matter, the Court of Appeal handed down judgment in *Bellway Homes Limited v The Occupiers of Samuel Garside House*

[2025] EWCA Civ 1347, a case in which the lead judgment was also given by Coulson LJ. That was a case where Bellway Homes Limited had not been properly served but had not acknowledged service and the Court of Appeal rejected the argument that it should have acknowledged service and made an application under CPR 11(1). Attempts to distinguish the case from *Google* failed. 36. At paragraph 51 of the judgment Coulson LJ summarised the principles adumbrated in the previous cases as follows:- Approved Judgment

[2025] EWHC 2954 (Ch)

- (a) If a defendant acknowledges service without making an application under CPR 11(1) for an order declaring that the court has no jurisdiction (or should not exercise jurisdiction) to try the case, that is taken to be a *prima facie* acceptance of jurisdiction: see *Hoddinott* at [22] – [27] and *Pitalia* at [33].
- (b) However, even then, if it is plain that jurisdiction is in issue then, depending on the surrounding circumstances, the failure to tick the relevant box on the AoS form may not be fatal: see *Pitalia* at [34].
- (c) Neither *Hoddinott* nor *Pitalia* are authority for the proposition that, if the defendant denies there has been any effective service and has not served an AoS, the defendant must still use Part 11 to challenge the effectiveness of the service: see *Hand Held* at [79] [my emphasis].
- (d) Where a court has concluded that a claim form has not been served within time and no extension of time can be granted, a defendant is not obliged to file an AoS: see *Shiblaq*, *Dubai Financial Group* and *Robertson*.
- (e) The CPR operates on the basis that the defendant's obligation under Parts 9 and 11 are only triggered by the valid service of the claim form: see *Robertson* at [70]. If a claim form has not been validly served and an extension of time is refused then, if the defendant does not accept the court's jurisdiction, the proceedings that are the subject of the claim form cannot be pursued against that defendant: see *Robertson* at [69] – [77].
- (f) The reason that cases such as *Hoddinott* and *Koro* stress the importance of the defendant making an application under Part 11 is because such an application makes plain to everyone that the defendant is taking a service - and therefore a jurisdiction - point. But such an application is unnecessary if the claimant has already unsuccessfully raised with the court the question of service, and therefore jurisdiction: see *Robertson* at [73]. 37. That most recent decision makes it abundantly clear in my view that if a defendant files an acknowledgment of service, it must comply with CPR 11. I therefore consider that what has happened in this case falls squarely within *Hoddinott*. Mr. Hill acknowledged service and failed to make an application under CPR 11(1). In the circumstances he is treated as accepting that the court has jurisdiction to hear the claim. This is precisely the situation the

court in Hoddinott was envisaging where a party had given no indication of a challenge to jurisdiction, had acknowledged service and made no application under CPR 11(1) within the requisite 14 days. Approved Judgment

[2025] EWHC 2954 (Ch) 38. In the circumstances, there is no requirement for me to consider the other matters raised but in case it may assist if this matter goes further and in deference to the very full arguments I heard on other points, I will deal with them. Waiver at Common Law

39. Mr. McCourt Fritz points to the fact that the response of Mr. Hill when he received the claim and other documents which it is alleged were properly served on him, was to acknowledge service and seek an extension of time to file a defence. There was in fact no indication until the service of the application on 6 March that there would be a challenge to service, and hence jurisdiction. 40. I have been referred to the judgment of the then Chancellor in *Global Multimedia International Ltd v ARA Media Services* [2007] 1 All E. R. (Comm) where he said at para 28: “Thus the test to be applied is an objective one and what must be determined is whether the only possible explanation for the conduct relied on is an intention on the part of the defendant to have the case tried in England.” He then set out a number of factors in that case which pointed to a common law waiver including seeking an extension of time for the defence and there being no indication of a jurisdiction challenge until there was a change of heart after counsel was instructed.
41. Mr. Collings distinguishes the cases on common law waiver as applying to cases relating to territorial jurisdiction but I can see nothing in them which suggests this is the case, and Hoddinott indicates that a challenge to jurisdiction is not confined to territorial jurisdiction, albeit in a different context. 42. In light of my judgment in respect of CPR 11, this is academic but I would also have held that Mr. Hill had waived his right to object to the Court having jurisdiction in light of his indication that he was going to defend the claim vigorously and his request for an extension to file a defence. Service 43. The question would have been whether substituted service on Mr. Hill through Mrs.. Hill was effective on 25 January 2025 during the period when time for service had been extended. In this regard, I have a witness statement from Ms. Schutska and a witness statement from Mrs.. Hill. I also have (with leave of the court) expert evidence from two Floridian lawyers, Mr. Milne and Mr. Collins. There has been no cross examination of those experts, although there has been trenchant criticisms of both by counsel. I have regarded their role as assisting me in understanding how a Florida Court would be likely to approach the question of whether valid substituted service had taken place. 44. The requirements of service are set out in Florida Statute §48.031(1)(a) which provides: “Service of original process is made by delivering a copy of it to the person to be served with a copy of the complaint, petition, or other initial pleading or paper or by leaving the copies at his or her usual place of abode with any person residing
- Approved Judgment

[2025] EWHC 2954 (Ch) therein who is 15 years of age or older and informing the person of their contents . . .”.[my emphasis]

45. Ms. Schutska in her witness statement gave the following evidence:- i) ii) iii) iv) v) vi) vii) On 22 January 2025, she attended the Florida property where the door was opened by a female of approximately 75 years of age who confirmed that she was Mrs. Hill. She advised her that she was being served with process in the matter and that she was also serving Casa Marisol and Mr. Hill. Mrs. Hill took the documents for Casa Marisol and on her own behalf but she refused to take the Documents for Mr. Hill. Mrs. Hill told Ms. Schutska that Mr. Hill was her husband and resided at the address but he was out of town and would be back on 25 January 2025, and that she should return then to serve Mr. Hill. Ms. Schutska was then told by lawyers instructed by the Trustees that Mrs. Hill had not been entitled to refuse service on behalf of her husband and she should have left the documents with Mrs. Hill. Ms. Schutska returned to the property a couple of times over the following days but nobody answered the door. She then returned to the property on 25 January 2025 at approximately 6:45 pm EST, again rang the doorbell several times and saw that there was a male of approximately 75 years of age through the window. She then reported seeing the silhouette of another person, whom she recognised as Mrs. Hill. Mrs. Hill spoke to her through an intercom. She immediately said that he (this must mean Mr. Hill) was not there. Ms. Schutska said that was not the case as she had seen him. Ms. Schutska says that Mrs. Hill was “yelling” at her through the intercom at this point saying that she had already told her that she was not accepting his documents. Ms. Schutska then said: “I told her that because I could confirm that I was speaking with Ms Hill, I am leaving the Documents at the door for Mr Hill. She continued to yell, and I left the Documents at the door, told her that Mr Hill was served through her, and walked away while she was still yelling over the intercom.”
46. Mrs. Hill’s evidence does not dispute what happened on 22 January. She also agrees with Ms. Schutska that they spoke through the intercom on 25 January, although she denies yelling saying instead she spoke up to make herself heard. She denies that Ms. Schutska said that she was leaving documents for Mr. Hill and that he was served through her. 47. Ultimately the question boiled down to whether Ms. Schutska had informed Mrs.. Hill of the contents of the documents. Mr. Collings rightly conceded that one of his arguments (that leaving the documents at the door was insufficient) could not stand in light of authority relied on by Mr. Milne which his expert Mr. Collins appears to have missed. Approved Judgment

[2025] EWHC 2954 (Ch) 48. Turning to the expert evidence, that was subject to criticism on both sides. Dealing first of all with Mr. Collins on behalf of Mr. Hill, his report was not compliant with CPR 35 although I understand some of those deficiencies have been rectified after the report was filed, and although it was not seriously urged upon me that I should disregard the report, the report has to be approached cautiously. Further it is clear that Mr. Collins had not taken into account Florida authority to the effect that leaving documents at the property rather than handing them to a resident could constitute substituted service.

49. Mr. McCourt Fritz urged me notwithstanding this to rely on Mr. Collins' assertion that in determining whether service of process is valid, the court examines the return of service and if the return of service is facially valid, the burden then shifts to the defendant to rebut it by clear and convincing evidence: (*Kemmerer v. Klass Assocs.*, 108 So. 3d 672 (Fla. 2d DCA 2013)). The return of service in this case reads: I told her that because I can confirm that I was speaking with Ms. Hill, I am leaving the documents at the door for Mr. Hill. She continued to yell, and I left the documents at the door, told her that Mr. Hill was served through her."
50. Mr. Milne does not rely on this and it seems to me that the return does not prima facie deal with the point of whether Mrs.. Hill was informed of the contents of the documents. 51. There are undoubtedly difficult questions in this case as to whether the fact that Mrs. Hill, because of her interactions with Ms. Schutska on 22 January, knew that she was a process server and that she had left documents with her which she also wanted to serve on her husband is enough.
52. Mr. Milne's approach is to say that the Florida Court would regard as the overarching objective of the service statute "to give proper notice to the defendant in the case that he is answerable to the claim of plaintiff. . . . The major purpose of the constitutional provision which guarantees 'due process' is to make sure that when a person is sued, he has notice of the suit and an opportunity to defend." 53. 54. He also points to the fact that the courts have interpreted the Statute in a rather more flexible way when there is evidence that service is being avoided. Mrs. Hill refusing to accept her husband's papers on 22 January, asking Ms. Schutska to come back on 25 January but then not opening the door and refusing service seem to me to demonstrate an attempt to avoid service. It is clear from one of the authorities appended to Mr. Collins' report (Mauro) that the bar for explaining the contents is relatively low. How low that bar might be is not clear. However, Mr. Milne expresses the view that "the statute states that the recipient must have been informed of the contents of the papers. This was done on January 22 and needed no reiteration on January 25." Ms. Schutska of course told Mrs. Hill on 22 January that she was serving process in the matter and that she was also serving Casa Marisol and Mr. Hill.
55. Mr. Milne is of the view that the Florida Court would find that service had been effected in this case. I accept that the issue is not a straightforward one. There appears to be no Floridian authority which is on all fours but I am entitled to prefer the view of one of the experts over the other and in my opinion the report of Mr. Milne is Approved Judgment
- [2025] EWHC 2954 (Ch) compliant and can be relied on as expressing an opinion on what the court in Florida would be likely to do in light of the evidence. 56. I am therefore of the view that substituted service was effected on Mr. Hill on 25 January 2025. Service in the Jurisdiction 57. 58. The Trustees rely on the letter from Russell Cooke as indicating a willingness on the part of Russell Cooke to accept service of the claim form electronically. Mr. Collings on behalf of Mr. Hill argues that cannot possibly be an indication of an intention to accept service of proceedings by email. CPR 6.3(1)(d) provides that a claim

form can be served by fax or other means of electronic communication in accordance with Practice Direction 6A. Para 4.1 of that Practice Direction provides: “Subject to the provisions of rule 6.23(5) and (6) where a document is to be served by fax or other electronic means –

- (1) the party who is to be served or the solicitor acting for that party must previously have indicated in writing to the party serving –
- (a) that the party to be served or the solicitor is willing to accept service by fax or other electronic means; and
- (b) the fax number, e-mail address or e-mail addresses or other electronic identification to which it must be sent;” 59. The difficulty I have with the argument that Russell Cooke indicated that it was willing to accept service by email is that it clearly was not referring to the originating process. At this time, both parties were proceeding on the basis that Mr. Hill had already been served. Stewarts in their letter to which the 19 February letter is a reply speak of service of documents in the future. I therefore do not consider that service took place by email on 19 February 2025. Mr. Hill’s Application to Set Aside the Order of Deputy Master Linwood 60. Para 7 of Deputy Master Linwood’s order of 8 January 2025 provided that:- “The Defendants (or any of them) are entitled to apply to set aside paragraphs 1, 2 and 4 of this order pursuant to rule 23.10 of the Civil Procedure Rules 1998 within 28 days of service of this order upon them or (in the case of any Defendant that is currently dissolved) within 28 days of the date of their restoration, whichever is the later.” 61. On the basis that Mr. Hill was served with that order on 25 January 2025, he was out of time by 12 days (8 working days) in making his application. The first question is therefore whether the court should extend time to allow him to make that application. Approved Judgment

[2025] EWHC 2954 (Ch) 62. 63. 64. 65. 66. There was some debate before the court as to the applicable principles it should apply in extending time in such circumstances. Mr. Hill submitted that this was not a relief from sanctions case, relying on three recent Court of Appeal cases: *Lufthansa Technik AG v Panasonic Avionics Corp* [2024] 1 WLR 2012; *Yesss (A) Electrical Ltd v Warren* [2024] EWHC Civ 14; and *Viegas v Cutrale* [2025] 1 WLR 1467. The Trustees on the other hand argued that Mr. Hill had to satisfy the Denton principles in order to satisfy the court that time should be extended. The difference as explained in the *Lufthansa* case [para 23] is that “the characteristic feature of applications for relief from sanctions is not these factors as such, it is the fact that the application arises in circumstances in which the sanction is already properly in place and the applicant is seeking to disapply it.” The *Lufthansa* case involved an Island Records order made in an intellectual property case, but although the facts are a distance from the facts before me, it established that it was not the case that breach of any rule, practice direction or court order which required something to be done within a specified time required an application for relief from sanctions under CPR 3.9. In the *Yesss* case the Court of Appeal made clear that for CPR 3.9 to be applicable there needed to be an express sanction or a sanction which could be implied although it was made clear that there was a very high

hurdle for sanctions to be implied and made reference to the limited circumstances in which the Court had done so, such as *Salford Estates v Altomart* [2015] 1 W. L. R. 1825 and *Sayers v Clarke Walker* [2002] EWCA Civ 645 (Appellant and Respondent notices out of time). As for the third case, *Viegas*, Mr. McCourt Fritz candidly accepted that it was a problem for him but suggested that it appeared to be at odds with *Yesss*. That case involved an application to set aside amendments made under CPR 17.1 (without the permission of the Court) to the claim form. CPR 17.2 provides that such an application must be made within 14 days of the service of a copy of the amended claim form and the application to disallow the amendments was made outside that period. The Court of Appeal held that there was no express or implied sanction for non-compliance with the time limit, and therefore the correct approach was to determine whether time should be extended by reference to the overriding objective, and not to the *Denton* principles. 67. Newey LJ said at para 58: "It is evident from *Yesss* that the scope for identifying further implied sanctions is "very narrow". I do not think the "high" "hurdle for identifying something as an unexpressed but implicit sanction" can be surmounted in the case of CPR 17.2(2). In my view, therefore, CPR 17.2(2) is subject to neither an express sanction nor an implied one. That being so, the question whether a defendant should be permitted to make an application under CPR 17.2(2) after the period specified in it has expired must be determined by reference to the overriding objective. It may still be relevant to consider the matters reflected in the *Denton* three-stage test (seriousness and significance of the delay, the reasons for it and other Approved Judgment

[2025] EWHC 2954 (Ch) relevant circumstances), but, unlike an application for relief from sanction, the matter should not be approached on the basis that the "starting point" is that "the sanction has been properly imposed and complies with the overriding objective" (to use words of Lord Dyson MR in *Mitchell v News Group Newspapers Ltd* (Practice Note) [2013] EWCA Civ 1537,

[2014] 1 WLR 795, at paragraph 45). 68. I do not consider that there is any difference of approach in the *Yesss* case and *Viegas*. Newey LJ rightly considered that *Yesss* established that the scope for finding implied sanctions was narrow and apart from established cases such as appellants' and respondents' notices, the Court would be slow to find one.

69. Mr. McCourt Fritz argued that paragraph 7 of Deputy Master Linwood's order included an express sanction but I am unable to see what it is. It seems to me that this is a situation where a time limit has been imposed, there is no express sanction for it and (as in the *Viegas* case) no grounds to imply one. 70. In those circumstances, the starting point is not that a sanction applies. Instead there is an application of the overriding objective which includes of course enforcing compliance with rules, practice directions and orders as well as dealing with a case justly.

71. Mr. Collings argued that Mr. Hill's late application was not in reality that late, particularly as it had taken 7 months for it to be listed. There is no satisfactory evidence from Mr. Hill as to why he did not apply in time as he did have solicitors (Russell Cooke) acting for him but it is

clear from his evidence and the correspondence that he changed to his current solicitors whose first letter was on 20 February. It seems there was a consultation with counsel on 4 March and as a result there was a change of tack and the 6 March application was issued which for the first time indicated a challenge to jurisdiction. 72. 73. 74. The grounds for extending time in terms of there being a good reason (change of legal advice) are not compelling but the period of delay was not unduly long and application was made relatively quickly after new solicitors were on board. I consider that to shut Mr. Hill out from being heard on an application which the Trustees took the risk of bringing ex parte would be unduly harsh. Mr. Hill does not have to satisfy the court in respect of the higher Denton hurdles and I consider that to deal with the case justly, if he had been able to contest jurisdiction, I would have extended time so that his arguments could be heard. I turn therefore to the arguments as to why time should not have been extended in case it should prove anything more than academic. Both parties accepted that I was approaching the matter afresh and considering the merits of the application. Deputy Master Linwood was referred to the Court of Appeal decision in *ST v BAI (SA)* [2022] EWCA Civ 1037 at paragraph 62 of which Carr LJ set out the applicable principles:-

- i) The defendant has a right to be sued (if at all) by means of originating process issued within the statutory period of Approved Judgment

[2025] EWHC 2954 (Ch) 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.

75. Mr. Collings points to the fact that there was no good reason for the Trustees not serving Mr. Hill in time and funding issues are not a good reason (*Cecil v Bayat*

[2011] 1WLR 3086 (CA)). Mr. McCourt Fritz accepted that service could have taken place earlier.

76. Mr. McCourt Fritz invites the Court to take into account what has happened in the period between the order of Deputy Master Linwood and now on the basis that I am considering the matter afresh on the merits. While there is an air of unreality about that, it is clear that

in Hoddinott the Court of Appeal considered that the setting aside of the ex parte order was wrong on the basis that the claim was not even by then time barred (a matter in this case which I will deal with below) and a copy of the claim form had been sent to the defendant within the four month period (para 58). I therefore consider that I can have regard as to what has occurred since Deputy Master Linwood made his order. 77. Notwithstanding all of this, it is clear that the main focus of the attack on the extension is that a limitation period may have expired. That is reflected in the order (which relates only to certain paragraphs of the particulars of claim and not all the relief sought against Mr. Hill). It is clear that the court does not have to determine the limitation question with finality (*City & General (Holborn) Ltd v Royal & Sun Alliance Plc* [2010] EWCA Civ 911 at paragraph 7). 78. This is a claim made under s. 423 of the Insolvency Act 1986 amongst other things. It appears to be accepted that there are no applicable limitation periods in respect of the Approved Judgment

[2025] EWHC 2954 (Ch) sham trust claims. In respect of the s. 423 claims as far as Mr. Hill is concerned (and the court of course is only looking at matters from his perspective) the applicable limitation period depends on whether the claims under s. 423 are money claims (therefore governed by s. 9 of the Limitation Act 1980 with a 6 year limitation period) or a claim on a speciality (section 8) where the limitation period is 12 years: *Hill v Spread Trustee Co Ltd*. [2007] 1 W. L. R. 2404. 79. 80. Having examined the particulars of claim, there are no money claims brought against Mr. Hill. At the moment the relief sought against him is declaratory or injunctive. Mr. Collings invited Mr. McCourt Fritz to concede that the Trustees would not seek a money judgment against Mr. Hill in the future. Mr. McCourt Fritz was not prepared to do that but it seems to me that the Trustees' statement of case would require amendment if they did seek to do so in the future and at that point limitation issues might well present a difficulty for them. However, although I am very conscious of the fact that the test is only that there may be a limitation defence, I do not consider that there is an arguable one. Insofar as Mr. McCourt Fritz indicated before Deputy Master Linwood that he had to show exceptional circumstances in light of a possible limitation defence, I accept that he made it clear that he reserved his right to argue otherwise on an inter partes basis. He was also seeking an extension of time in respect of a whole host of defendants including Mrs.. Hill who might well have had limitation defences. 81. I further rely on the fact that since the order extending time was granted:- (a). Mr. Hill was sent all the relevant documents by email on 22 January 2025 within the original time period which it is not clear to me he did not receive.

(b) Mrs. Hill and Casa Marisol De Augustin LLC were served at Mr. Hill's home address within the original time period and it was Mrs.. Hill's refusal to accept service on his behalf that meant that Mr. Hill was not served by way of substituted service within the 4 month period. 82. In the circumstances, if I had to consider the matter of whether to set aside the order of Deputy Master Linwood, I would not have been inclined to do so for the reasons set out above. Conclusions 83. 81. For the reasons set out above, I consider that Mr. Hill's failure to serve a notice under CPR 11(1) has prevented him from challenging service and the jurisdiction of the court to hear the claims against him. Even if I had not come to that

conclusion, I consider that service was properly effected on him in Florida and his application to set aside the extension would have failed in any event. 82. I therefore propose to dismiss the March application and the April application. 17

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