

JERSEY / JUDGMENT

Maywall Ltd and Others -v- Nautech Services Ltd [2014]

JCA 180 (25 September 2014)

[2014] JCA 180

Source: bailii.org · Research copy typeset by Esheria. Not court-issued or certified.

Court of Appeal 25 September 2014 Before : Sir Hugh Bennett, President, Sir Richard Collas, and; A. G. Bompas Esq., Q. C. Between Maywall Limited First Appellant David Kenneth Michael Walpole Second Appellant Mark David Walpole Third Appellant Charles David Murch Fourth Appellant And Nautech Services Limited Respondent Advocate O. A. Blakeley for the Appellants. Advocate E. Moran for the Respondent.

JUDGMENT

BOMPAS ja delivering the judgment of the court : 1. On 20 March, 2014 the Royal Court (the Deputy Bailiff sitting with Jurats Le Cornu and Blampied) dismissed an application ("the Application") by the Sixth to Ninth Defendants to set aside an Act of Court permitting the service on them out of the jurisdiction of a summons requiring them to appear to defend proceedings against them commenced by a Re-amended Order of Justice. This appeal is against the dismissal of the Application, while the Plaintiff seeks to support the dismissal both on the grounds given by the Deputy Bailiff in his judgment ("the Judgment") and on additional grounds. 2. Our conclusion is that the English Defendants' appeal is to be dismissed, for the reasons which we give in this judgment. Background to the appeal 3. The circumstances in which the Application came to be made are set out in the Judgment (

[2014] JRC 71). In brief the Plaintiff, Nautech Ltd ("Nautech") had, on 11 April, 2013 issued an Order of Justice against the First to Fifth Defendants, and on 13 April, 2013 obtained Anton Piller relief. These Defendants are referred to in the Order of Justice as "the Jersey Defendants", an expression we use in this judgment. 4. Subsequently an application was made for the discharge of the Anton Piller relief, and for various other orders. For present purposes the detail of this is not material, but is to be found in the judgment dated 13 May 2013 (

[2013] JRC 89) given by the Deputy Bailiff. 5. The Order of Justice in its original form had claimed that the Second to Fourth Defendants (that is Mr Ryan Dunning, Stephen Coleman and Christopher Inns), employees of Nautech, had misused confidential information and trade secrets of Nautech and had made the same available to the First and Fifth Defendants for

the purposes of the new business which the First Defendant, CSS Ltd ("CSS") had commenced in competition with Nautech. CSS was a newly-formed Jersey company in which the Fifth Defendant, Mr Kevin Gollop, was involved. 6. In his judgment of 13 May, 2013 the Deputy Bailiff was critical of the way Nautech had obtained the Anton Piller relief the previous month. This was because, as the Royal Court found, Nautech by its advocate had misrepresented to the Royal Court the usual practice in the English Court when it came to the making of Anton Piller orders, with the consequence that the relief ordered had gone further than it should otherwise have done. On the other hand the Royal Court found that there was a case for continuing in a varied form the relief which had already been granted. 7. Down to November 2013 time the proceedings started by the Order of Justice had involved only parties resident in Jersey. In November 2013 the Order of Justice was, by a re-amendment, put into its present form, with the Sixth to Ninth Defendants being added. In what follows we refer to this Re-amended Order of Justice as simply "the Order of Justice"; and we shall refer to the Sixth to Ninth Defendants by the expression used in the Order of Justice, namely "the English Defendants". The English Defendants are all resident in England. 8. As amended in November 2013 the Order of Justice pleaded a variety of claims against the English Defendants, as explained in the Judgment. In summary the Order of Justice as amended in November 2013 alleged that the Defendants: 8.1 had made themselves parties to an unlawful means conspiracy with the intention of, and then in fact, causing damage to Nautech; 8.2 had made unauthorised use of confidential information of Nautech; 8.3 had infringed Nautech's database right in certain materials contrary to Article 196 of the Intellectual Property (Unregistered Rights) (Jersey) Law 2011 ; and 8.3 had infringed Nautech's copyright in certain materials. 9. The Judgment contains, at paragraphs 6 to 15, a rather more detailed description of the pleaded case set out in the Order of Justice; and where appropriate we refer later in this judgment to specific allegations relevant to the arguments put before us on this appeal. We shall also give a more detailed description of what appears from the evidence. 10. On 15 November, 2013 the Royal Court, on the application of Nautech, gave permission to serve proceedings on the English Defendants out of the jurisdiction. This order was made pursuant to the Service of Process Rules 1994 ("the Rules"). 11. On the hearing of the Application the Royal Court had before it a mass of evidence generated at earlier stages of the proceedings (including notably two affidavits sworn by Mr Peter Harrison and an affidavit by Mr Kevin Gollop). There was an affidavit sworn on 12 November, 2013 by a Mr Matthew Hanley, a paralegal employed by Nautech's advocates, Messrs Sinels Advocates, in support of the application to serve proceedings on the English Defendants out of the jurisdiction. And there were two affidavits made on behalf of the English Defendants by a Mr Jonathan Sharp seeking to support the application to set aside the order for service out. 12. Mr Sharp's evidence is of no assistance for the purposes of this appeal. Mr Sharp is an English solicitor retained by the English Defendants. His first affidavit contains extensive submission and argument, making criticisms of the way the Order of Justice is pleaded and of Nautech's evidence, but does not itself contain relevant evidence. In particular he does not even say on information and belief from the English Defendants that the claims

put forward against his clients are untrue or denied, only that there is no evidence to support the claims which he says are in any case unclear or otherwise inadequate. The affidavit could more appropriately have been provided as a skeleton argument. His second affidavit merely corrects a typographical error in his first affidavit. 13. In support of their appeal the English Defendants have invited us to consider a further affidavit made by Mr Gollop on 6 June, 2014, an Answer to the Order of Justice served on behalf of the English Defendants on 22 April 2014, and also a judgment given on 26 August 2014 by the Royal Court (Commissioner J A Clyde-Smith sitting with Jurats Kerley and Blampied) on the application for which the further affidavit was made. This application was one by Nautech claiming that certain of the Defendants were in contempt of court. 14. Mr Gollop's recent affidavit contains the statement that he is "the sole owner and Managing Director of CSS Ltd", a statement which the Royal Court's judgment of 26 August, 2014 appears to have accepted for the purposes of the contempt application. In our judgment, however, the statement does not assist the English Defendants on this appeal. Mr Gollop was speaking in the present tense, at June 2014, when he made his affidavit, and says nothing about what the position was in 2013, the time which is material in relation to Nautech's pleaded case and the case for service out of the jurisdiction. It is notable that neither did Mr Sharp when giving evidence on behalf of the English Defendants. We explain later the relevance of Mr Gollop's evidence on this point. 15. The English Defendants' Answer was served after the Judgment had been given, and was served pursuant to a consent order made by the Royal Court. Although the Answer is expressed to be "entirely without prejudice" to the English Defendants' challenge to the decision to permit service on them out of the jurisdiction, it is an Answer on the merits, served following a consent order, and sought to be put before this Court as such. Nautech has not sought to argue that the filing of this might have involved a submission to the jurisdiction on the basis that the English Defendants have taken a step in proceedings which is only useful if the objection to the jurisdiction has been waived. However the Answer is of no assistance to the English Defendants on this appeal. It resembles Mr Sharp's first affidavit in that it puts forward virtually no positive case. In essence it is a simple denial of Nautech's Order of Justice. There is a positive averment in the pleading that the beneficial ownership of CSS is vested in Mr Gollop. What we have said about the equivalent allegation in Mr Gollop's second affidavit applies also to this averment. But in any case it was accepted by Advocate O Blakeley, who represented the English Defendants on this appeal, that the Answer was not itself evidence. 16. The judgment of August 2014 given on the contempt application is relevant and helpful, as it contains a detailed examination of Nautech's pleaded case, and of the facts and law, surrounding its claim to have had confidential information, database rights and copyright which it was entitled to protect and which was subject to abuse in early 2013. 17. With this introduction we turn to the matters which arise on this appeal. The relevant principles in outline 18. The starting position is that if legal process requiring appearance in Jersey is to be served outside Jersey, it may only be so served in the circumstances and manner specifically provided for. Essentially the Court's jurisdiction is territorial except in those cases where special provision is made. So it was that an ability

for the Court to take jurisdiction over persons abroad was given by Article 2 of the Service of Process and Taking of Evidence (Jersey) Law 1960 ; and for the purposes of that Article the relevant Rules of Court prescribing when and how service outside the jurisdiction is to be permitted are the Rules. 19. The material provisions of the Rules are as follows: 19.1 Rule 5 states that " No summons shall be served outside Jersey without the leave of the Court." 19.2 Rule 6 deals with the form which a summons for service outside Jersey is to take. Essentially the summons will be addressed to the relevant defendant and will require the defendant to appear before the Royal Court to defend proceedings started against the defendant by the process (in this case the Order of Justice) by which the proceedings have been started. 19.3 Rule 7 is central to the present case. It provides in paragraphs (a) to (s) various tests, or gateways, any one of which a claim must satisfy if a summons is to be allowed to be served out of the jurisdiction. So far as material for present purposes, and ignoring irrelevant tests, or gateways, Rule 7 is in the following terms: "Service out of the jurisdiction of a summons may be allowed by the Court whenever ... (a) relief is sought against a person domiciled within the jurisdiction; ... (c) the claim is brought against a person duly served within or out of the jurisdiction and a person out of the jurisdiction is a necessary or proper party thereto; (d) the claim is brought to enforce, rescind, dissolve, annul or otherwise affect a contract, or to recover damages or obtain other relief in respect of the breach of a contract, being (in either case) a contract which:- (i) was made within the jurisdiction, ... (e) the claim is brought in respect of a breach committed within the jurisdiction of a contract made within or out of the jurisdiction, and irrespective of the fact, if such be the case, that the breach was preceded or accompanied by a breach committed out of the jurisdiction that rendered impossible the performance of so much of the contract as ought to have been performed within the jurisdiction; (f) the claim is founded on a tort and the damage was sustained, or resulted from an act committed, within the jurisdiction; ... " 19.4 Rule 9 deals with the manner in which an application for leave to serve out is to be made. It provides: "Every application for leave to serve such summons on a defendant out of the jurisdiction shall be supported by affidavit or other evidence, stating that in the belief of the deponent the plaintiff has a good cause of action, and showing what place or country such defendant is or probably may be found, and the grounds upon which the application is made; and no such leave shall be granted unless it shall be made sufficiently to appear to the Court that the case is a proper one for service out of the jurisdiction under this Part. " 20. In Mr Hanley's affidavit of 12 November, 2013 in support of the application for leave to serve out, the affidavit intended to meet the requirements of Rule 9 of the Rules, there was reference to paragraphs (d), (e) and (f) of Rule 7 as being the applicable paragraphs; that is, the paragraphs setting out the gateways which Nautech considered available. As it happens paragraphs

- (d) and (e) are concerned with contracts with a defendant out of the jurisdiction, and were found by the Royal Court not to be relevant. Nautech has not sought to challenge that finding on this appeal and so we say no more about those paragraphs. 21. On the other hand the Deputy Bailiff said this in the Judgment: "I have a recollection that notwithstanding the

absence of any reference in Mr Hanley's affidavit to paragraph 7(c) of the Service of Process Rules 1994, there was in fact some discussion as to whether the English Defendants were necessary and/or proper parties to a claim properly brought in this jurisdiction". 22. The Judgment then went on to explain that, on the Application (that is of course the application to set aside the order giving leave to serve out) the English Defendants had argued that the Rule 7(c) gateway could not properly be considered, not having been referred to in Mr Hanley's affidavit. This argument the Royal Court rejected, referring to the case of *Virani v Virani*

[2000] JLR 203 and concluding that: "given that, as I recall it, there was some discussion about paragraph 7(c) at the time leave to serve out was granted, and given that I am clear in my recollection that paragraph 7(c) of the Service of Process Rules was in my mind at that time whether reference was made to it or not, we are satisfied that leave to serve out could be given under either Rule 7(c) or 7(f) and that Mr Hanley's affidavit is sufficient in that respect." 23. On an application for leave to serve out there are three hurdles for a plaintiff to surmount. 23.1 First, the Royal Court needs to be satisfied that there is a good arguable case that the claim meets the requirements of at least one of the various permissible gateways set out in Rule 7. 23.2 Second, the Royal Court needs to be satisfied that on the merits of the claim there is a serious issue to be tried. 23.3 Third, the Royal Court needs to be satisfied that Jersey is the suitable forum for the trial of the claim. (As mentioned below, on this appeal the English Defendants accept that Jersey is the suitable forum.) 24. We add, however, that on occasion descriptions of the three hurdles reverse the order of first and the second. An example is in the judgment of Lord Clarke of Stone-cum-Ebony JSC in *VTB Capital plc v Nutriek International Corp*

[2013] 2 AC 337 at [164], where he set out a summary of the relevant principles as stated by Lord Collins of Mapesbury in the judgment of the Board of the Privy Council in *AK Investment CJSC v Kyrgyz Mobile Tel Ltd*

[2012] 1 WLR 1804 , in particular at paragraph [71] (a passage relied upon by the English Defendants). For present purposes the order in which the various hurdles are taken is of no consequence. But these recent instances, of high authority, in which the sequence is reversed, is destructive of an argument made orally by Advocate Blakeley, to the effect that it would be wrong to consider first the serious issue to be tried requirement before considering the Rule 7 gateways. 25. However that may be, in this judgment we refer to the process involved in obtaining leave to serve out as a three stage process, with the stages being the three we have set out earlier and in the order there set out. Considering the stages in this way has the merit of highlighting the important principle that the plaintiff needs to bring his case within Rule 7, however weak or strong the case. Specifically, however meritorious a plaintiff's claim may appear to be, it will not qualify for leave to serve out of the jurisdiction unless it has one of the prescribed characteristics in Rule 7. 26. At paragraph 39 of the Judgment the Deputy Bailiff described this three stage process more fully than we have just done in our brief summary, and explained that in this case

the Royal Court proceeded on the basis that it had to be satisfied as to the requirements at each stage. 27. However, in the formulation of the process we have given we have referred to "the claim", the expression used in Rule 7. This was the expression also used in paragraph 39(i) of the Judgment. There is an issue, discussed later in this judgment, as to the requirements for giving leave to serve process out of the jurisdiction where several causes of action are sought to be advanced. The English Defendants submit, among other things, that the three stage process is to be applied separately to each of the separate causes of action, and that in the present case the Royal Court failed to do that. 28. There is also an issue on this appeal concerning the requirements at the first stage of the three stage process. Thus, while the three stage process was followed in the case of *Koonmen v Bender*

[2002] JLR 407 , referred to in the Judgment at paragraph 34, that case gives no help as to the detail of the first stage requirements. In that case, as appears at paragraph [8], it was conceded that the first stage was satisfied in that one gateway was available to the plaintiff. There was therefore no discussion of the strength of the case or relevant elements of the case required to qualify at that first stage, and instead the discussion concerned the second and third stages. 29. We have been referred to the three other cases decided in Jersey on the question of the requirements for service out; but none of these give any real help as to the requirements at the first stage. The cases are *James Capel (Channel Islands) Ltd v Koppel and Fenchurch Trust Ltd*

[1989] JLR 51 , *Virani v Virani*

[2000] JLR 203 , and *SGI Trust Jersey Ltd v Wijsmuller*

[2005] JLR 310 . The only assistance we can find in any of these is in the *James Capel* case at pages 62-3, where Deputy Bailiff Tomes paraphrased the first stage as requiring the plaintiff to "show that his case falls clearly within one or other of the sub-paragraphs of" Rule 7. 30. In the course of oral argument Advocate E Moran for Nautech drew our attention to a further Jersey authority, this being *United Capital Corporation Ltd v Bender*

[2006] JLR 242 . In that case the Court of Appeal upheld the Royal Court's refusal to set aside leave given to serve out where the gateways relied upon at the first stage of the three stage process included that in Rule 7(c). According to the headnote in the report of that case the Royal Court had held, so far as relevant, that the plaintiff had made out a good arguable case that its claims against non-resident defendants fell within Rule 7(c), "ie. that they were brought against persons duly served within the jurisdiction ... and that the other defendants were necessary or proper parties thereto". The Court of Appeal at paragraph 31 of their judgment set out the three stage process in much the same way as we have done, using the "good arguable case" formula in relation to the first stage and the "serious issue to be tried" formula for the second. It seems that nevertheless, perhaps with a view to simplifying matters as there were several of the Rule 7 gateways requiring consideration, both the Royal Court and the Court of Appeal tested the general merits of the claims, the

test at the second stage, against a good arguable case standard (see paragraphs 32 and 33). But the Court of Appeal cannot have been intending to establish as a general principle that that was the approach which the Royal Court should follow, as it would have been inconsistent with their statement of the applicable principles at paragraph 31 of their judgment. 31. There is only limited assistance to be gained from that authority. What does emerge is that the "good arguable case" threshold has been endorsed in this jurisdiction as applicable at the first stage. On the other hand the case does not establish that at the second stage the threshold is any higher than the "serious issue to be tried" one referred to in paragraph 31 of the judgment of the Court of Appeal. And it does not establish the particular elements which must, at the first stage, reach to the "good arguable case" threshold. 32. The "good arguable case" description of the test at the first stage has long been used in the English Courts to describe the first hurdle. It was, for example, the expression used by Waller LJ in the English Court of Appeal, in *Canada Trust Co v Stolzenberg (No.2)*

[1998] 1 WLR 547 at 553C-D when considering provisions in the English Rules of the Supreme Court 1965 equivalent to Rule 7: "There is no doubt that where the English court is considering whether any of the sub-paragraphs under Ord 11, r.1(1) apply in relation to leave to serve out of the jurisdiction, the relevant question is whether the plaintiff has established a good arguable case". For this proposition Waller LJ referred to the English House of Lords case of *Seaconsar Far East Ltd v Bank Markazi Jomhuri Islami Iran*

[1994] 1 AC 438 in which all the members of the Appellate Committee agreed with the speech of Lord Goff of Chieveley. 33. Further, the "good arguable case" description of the first stage requirement has recently been used by the Privy Council, where it was explained that it connoted "that one side has a much better argument than the other" (see *AK Investment CJSC v Kyrgyz Mobil Tel Ltd*

[2011] UKPC 7, [2012] 1 WLR 1084 at [71] per Lord Collins of Mapesbury). 34. It is apparent that the test of what is a "good arguable case" is higher than that of a "serious issue to be tried", the test applicable at the second stage. This appears from Waller LJ's discussion, in *Canada Trust* at page 558D, of those expressions as explained by Lord Goff in his speech in *Seaconsar*. However, quite what is required to meet the "serious issue to be tried" test we discuss later, as the English Defendants have raised this as a matter on this appeal contending that it requires a case which has "a realistic process of success" and that Nautech's claims did not even meet that requirement. 35. It might seem that the second, less stringent test, to be applied at the second stage would be irrelevant, as a claim which passed the test at the first stage would necessarily pass that at the second. However, this is not the case, or at least not always the case. This is because the first stage is concerned only with the question whether the plaintiff's claim is of a type for which Rule 7 establishes a specific gateway as an exception to the general principle that process starting proceedings in Jersey is not to be served on a defendant outside the jurisdiction. The second, on the other hand, is concerned with the general merits of the claim. 36. This

leads on to an issue which arises on this appeal. With some of the gateways the threshold requirement may not have any real connection with, or only little connection with, the matters which must be established by a plaintiff to succeed against the overseas defendants on the merits at a trial of the claim. 36.1 A prime illustration of this is Rule 7(a). All that matters for that gateway is that the defendant to be served overseas is domiciled in Jersey. The "good arguable case" requirement will therefore apply to that issue, namely domicile, while the merits of the intended claim will be beside the point at the first stage. 36.2 Another good example will be the Rule 7(c) gateway. All that matters for that gateway is that the defendant to be served abroad is a necessary or proper party to a claim brought against a defendant duly served with the proceedings. This involves consideration of the position of the defendant who has already been served; and it involves consideration of the nature of the claim and the relevance of the defendant to be served overseas. 37. On the other hand some of the gateways involve some questions which, as expressed in Rule 7, appear to go both to jurisdiction and the very matter to be argued at trial, and other questions which are only relevant to jurisdiction. The conspiracy claim in the present case is a good example. 37.1 First, there is the question whether or not the English Defendants are, or may after a trial be found to be, liable in tort to Nautech. This depends upon whether they engaged themselves in an unlawful means conspiracy to injure Nautech and whether Nautech suffered damage as a result. Rule 7(f) does not appear to be directing particular attention to this question as a requirement for jurisdiction. 37.2 Second, however, is the question whether the "damage" from the tort was either (a) sustained within the jurisdiction or (b) resulted from an act committed within the jurisdiction. This is a question which only arises at the stage of determining whether or not the Rule 7(f) gateway is available: if a decision is taken that the gateway is available, the question will cease to have any further relevance. 38. An issue, then, which arises in the present case is precisely what approach should be adopted at the first of the three stages, so far as Nautech's claims are concerned, and whether in the present case the Royal Court adopted that approach. The English Defendants contend, or at any rate contended at the outset of Advocate Blakeley's oral submissions, that even at the first stage the threshold requires not merely a seriously arguable case that the plaintiff's claim is of a character identified within one of the gateways, but that the claim itself is a good arguable one (and not simply one as to which there is a serious issue to be tried). The Judgment 39. In the Judgment the Deputy Bailiff explained the reasons for the refusal to set aside the order giving leave for service out of the jurisdiction. 40. First, there was sufficient evidence, so it was found, to give rise to a serious case to be tried that the English Defendants were guilty of the tort of conspiring with the Jersey Defendants (paras 42 and 45 of the Judgment), this tort falling within the Rule 7(f) gateway because the Plaintiff's damage was sustained in Jersey or resulted from acts committed in Jersey (para 28). The conspiracy claim found arguably to meet the requirements for that gateway was a claim for an unlawful means conspiracy, that is a conspiracy to injure Nautech by unlawful means, the unlawful means involving breach of the employment contracts of the Messrs Inns, Dunning and Coleman with Nautech, misuse of Nautech's confidential information, breach of contract and

infringement of Nautech's database right. 41. Second, the Royal Court found that the three other causes of action put forward in the Order of Justice were also claims within the Rule 7(f) gateway, as being claims in tort (paras 28 and 43) meeting the "damage" requirement. As there is an issue raised by the English Defendants as to what was decided by the Royal Court as to these three causes of action, we return to the point later. 42. Third, the Royal Court found that the Rule 7(c) gateway was available, as regards the various causes of action, as " the nature of the claims which have been made [against persons who have been duly served] is such that persons out of the jurisdiction can be treated as necessary or proper parties " (paragraph 29 of the Judgment). 43. Fourth, as to the conspiracy claim as well as the three other causes of action, the Royal Court considered that there was a serious case to be tried (paragraph 45 of the Judgment). Again, we come back to this point, as the English Defendants argue that the three other causes of action were not considered by the Royal Court. The argument centres on what was being referred to in the Judgment when the comment was made that in the Order of Justice " the unlawful means conspiracy has subsumed within it the other allegations made " (paragraph 43 of the Judgment). This comment followed the discussion as to whether or not the conspiracy claim raised serious issues to be tried. 44. Fifth, the Royal Court found that the third of the requirements for service out of the jurisdiction had been satisfied. This is the requirement for Nautech to show that Jersey is the suitable forum for the trial of the claims against the English Defendants. As regards this third requirement no point is taken by the English Defendants on this appeal. The issues on this appeal 45. The criticisms of the judgment, set out in the Notice of Appeal, may be summarised as follows: 45.1 First, the Royal Court should not have relied on paragraph (c) in Rule 7 at all, for procedural

reasons.

45.2 Second, the Royal Court failed to ask itself whether each of the claims satisfied the requirements at each of the three stages, notwithstanding that at sub-paragraphs (i), (ii) and (iv) of paragraph 39 the Judgment set out in turn the requirements of each of the three stages. 45.3 Third, the Royal Court in any event applied the wrong test as regards the first stage, and in particular asked itself only whether the claim was a serious one for trial and not whether the claim was a good arguable one, or at the least whether there was a good argument that as regards each claim there was a Rule 7 gateway satisfied. 45.4 Fourth, the Court misdirected itself as to the second stage requirement, the "serious issue to be tried" threshold. 45.5 Fifth, the Court in any event failed to see that Nautech's claims could not satisfy even that requirement. 46. The Respondent's Notice essentially contends that the Court in dismissing the English Defendants' application correctly followed and applied the requirements of the three stage process, and draws attention to three authorities not mentioned in the Judgment. 47. In addition on behalf of Nautech Advocate Moran submits that on this appeal the order made dismissing the English Defendants' application can only be disturbed in the limited circumstances described in *United Capital Corp Ltd v Bender*

- [2006] JLR 269 and in the authorities referred to in Beloff JA's judgment in that case. The present, it is submitted, is a case in which the Royal Court had a discretion the exercise of which can only be interfered with where the judge has either (a) misdirected himself as to the applicable principles, (b) been in error in what he took into account, or
- (c) came to a plainly wrong decision (that is, not simply a decision which the appellate court would not have come to, but one which was outside the boundary of any reasonable decision). 48. We accept this submission. It is well-established that, notwithstanding that appeals to the Court of Appeal are expressed to be by way of re-hearing (Rule 2(1) of the Court of Appeal (Civil) Rules 1964), there are only the limited circumstances we have just referred to in which the Court of Appeal can interfere with an exercise of a discretion given to the Royal Court (as is the discretion to give leave to serve out under Rule 7). 49. While, then, this reminder is helpful, we must consider the English Defendants' arguments that the Royal Court misdirected itself as to, or misapplied, the relevant principles or arrived at an assessment of the facts which was plainly wrong. These are contentions which it is appropriate for the Court of Appeal to decide upon. If the English Defendants are correct, then the Court of Appeal has itself to decide what should be done concerning the order giving leave to serve out of the jurisdiction. 50. We now turn to the issues on this appeal. These we deal with broadly speaking in the order in which they are raised in the Notice of Appeal, although we first draw attention to the evidence which was before the Royal Court, and to certain of the arguments before us in relation to that evidence. 51. In summary, however, we consider the answers to each of these issues to be as follows: 51.1 It was open to the Royal Court to treat the Rule 7(c) gateway as available. 51.2 The English Defendants are correct in their argument that each claim put forward against the English Defendants in the Order of Justice must separately meet the requirements for leave to serve out; but the Royal Court did consider each claim separately. 51.3 The Royal Court did not misdirect itself as to or fail to apply the correct principles at the first stage: in particular the "good arguable case" requirement is - at any rate as regards the Rule 7(c) and Rule 7(f) gateways - only a good arguable case that the gateway conditions are satisfied; and in this case the Royal Court was entitled to conclude that they were. 51.4 At the second of the three stages the Royal Court did not misdirect itself as to the required test. 51.5 There was sufficient evidence to allow the Royal Court to reach the decision it did. The evidence 52. In this part of this judgment we set out what seems to us to appear from the evidence at this stage in the proceedings. We simply say that the summary given by the Royal Court in paragraphs 44 and 45 of the Judgment sets out conclusions which the Royal Court could properly have reached on the materials. However, as the English Defendants have made a sustained challenge to this, it is worth explaining in further detail why we consider the conclusions to be properly supported. Also, there is a challenge made by the English Defendants based on the argument that the Royal Court did not in terms address, and there was insufficient evidence to support a conclusion as to, certain essential elements of the claims sought to be advanced against them. 53. Nevertheless, before we discuss the evidence we stress that at a trial the evidence will be different, most probably being much fuller, and what appears at this present stage may be

seen in quite a different light after a trial. This note of caution should be kept firmly in mind.

54. Nautech is a Jersey incorporated company carrying on business from offices in St Helier. It has been carrying on business for many years. It recruits and provides the services of seismic geophysical engineers and maritime personnel (both officers and crew) for worldwide shipping activities. It was, until the start of the business of CSS, the only recruitment agency in Jersey providing engineers, officers and crew to the worldwide shipping industry.

55. Mr Gollop's affidavit of 31 May, 2013 confirms the organisation of Nautech as explained in the Order of Justice. Nautech was and is owned beneficially by its sole director, Mr Peter Harrison. Its operations manager was the Fourth Defendant, Mr Christopher Inns. Among other responsibilities he supervised Nautech's eight or so staff members, including Messrs Dunning and Coleman.

56. A pleaded allegation in the amended Order of Justice concerning Nautech's business is that "in order to organise and access information in response to its ship-owner clients' requirements for the recruitment of engineers, officers and crew worldwide, Nautech's business has been dependent upon the original selection, arrangement, compilation and maintenance by Nautech of data files of information, including original literary works and confidential information Nautech's data files as at 1 March 2013 were the result of substantial further investment by Nautech giving rise to a new database as listed in Schedule F hereto (the Data Files) with its term of protection". As appears from Nautech's pleading, the listed Data Files, said to comprise together "the Database", were themselves databases of information relating to personnel under contracts of employment with Nautech or available to accept positions with Nautech.

57. As explained by Mr Harrison, Nautech's business involved clients of Nautech contracting with Nautech for the supply of engineers or crew members (or, indeed, a complete crew), and Nautech then pursuant to the contract supplying the services of the personnel under contracts between Nautech and the personnel.

58. The business is seasonal, according to Mr Harrison, with particular highs between April and October and lows between November and March, largely due to the weather in the North Sea and the North and South Atlantic Ocean. Given this, it would be understandable that anyone knowledgeable setting up a business to do the same things as Nautech might be expected to aim to have the business started by April.

59. Like Messrs Inns, Dunning and Coleman, Mr Gollop, is a Jersey Resident. He is a businessman who had, according to his Affidavit of 31 May, 2013, a maritime security company called Gollop Consulting Limited. This company recruited and placed personnel: according to Mr Gollop he employed in excess of 60 ex-UK servicemen.

60. During 2012 Mr Gollop became involved with Messrs Inns and Dunning in considering starting up a new company providing personnel to the maritime crewing industry. At the end of the year, Mr Gollop says, he approached contacts of his in the UK with a view to their providing working capital for the proposed new company. These contacts Mr Gollop refers to as "the UK backers" or "my financial backers"; and he says he met with them face to face during the week of 17 December, 2012, when they made clear that they were willing to provide the necessary funding for the new company. Mr Gollop also says that "since my backers have been in shipping for over 40 years (one used to own a recruitment company in the UK) and have extensive connections worldwide, we decided at this stage that we would aim to service

a far wider spectrum of the nautical market than Nautech, albeit acknowledging that such a move would necessitate employing staff outside of Jersey". 61. Mr Gollop explains that after returning to Jersey he pressed ahead with the set-up of the new company, and he, Mr Inns and Mr Dunning planned to fly over for a meeting with the UK investors. He then says that this meeting was held on 9 February, 2013, giving a brief description of the meeting and concluding by saying that it was agreed with the UK backers that the parties would go ahead and set up the new company; and Mr Dunning was to resign from Nautech at the end of March, presuming that everything could be put in place in time. 62. In evidence before the Royal Court on the hearing of the Application was a document describing itself as minutes of the meeting on 9 February, 2013. This document is described in paragraph 43(i) of the Judgment. It records that Messrs Gollop, Inns and Dunning were present, as were the Seventh to Ninth Defendants (respectively Messrs David Warpole, Mark Warpole and Charles Murch). These three latter individuals were directors of the Sixth Defendant, Maywal Ltd ("Maywal"), according to the Order of Justice, and Messrs Mark Warpole and Murch are shareholders in Maywal. 63. The following indications are given by the minutes: 63.1 There was considerable discussion concerning Nautech's business, with Messrs Inns and Dunning providing information about its operations and clients, notably the client called Western Geco which at the time provided a major proportion of Nautech's business. 63.2 There was considerable and detailed discussion about what would be required for the start up of the new business and progress so far. This discussion included what was involved in forming and staffing a new company and obtaining premises and equipment and so forth. It was said that Messrs Inns and Dunning were required to give 30 days' notice, and that they would like to give their notices at the same time, ideally at the end of the month. Mr Dunning offered the view that Mr Harrison would be likely to tell the pair to leave the office as soon as he received their notice. However the minute does not record whether there was any and if so what discussion about the possibility that Mr Harrison would not take that course and as to what would happen then. 63.3 As to salaries for Messrs Inns and Dunning, it was said that they were happy with what has already been proposed. 63.4 There was discussion about the financing requirement. In this context it was said that " an immediate requirement of £50,000/£60,000 would be spent on equipment and first month salary. How much is required beyond this depends upon how much personnel is placed with clients and how quickly they can be switched to the new company. This will determine how much is required in the first four/five weeks for the payroll". 63.5 In connection with the discussion on financing there is noted a comment by Mr Dunning that " he should be able to bring across all his officers in forty days. The problem will be moving across the officers he already has on ships. " Following this comment the discussion was about the contractual arrangements with the officers, and included " The contracts need to be redesigned to bring them up to date and incorporate the terms of MLC2006 ". The contracts being referred to here must be Nautech's form of contract. 63.6 There was later a reference to the employment contracts for Messrs Inns, Dunning and Gollop with the note " These are in hand ". 63.7 Under the caption " Business Strategy" was the statement " The intention is to uplift as much as (sic) the existing clientele as possible. Ultimately the clientele will either follow Chris or Ryan or got (sic) to

others. Western Geco has offered a contract to the new company before Chris and Ryan leave Nautech. It was agreed it is better to take up this contract sooner. Accordingly Kevin will negotiate with Western Geco, effectively being a puppet for Ryan." 63.8 The text beneath a further heading was " Covered above ", the relevant heading being " Competing companies. Possible loss of Clients/Contractors. Possible repercussions from Nautech " 63.9 Under the caption " Reporting procedure " it was said " there will be a weekly report to all shareholders. This is especially required at the beginning to ensure there are no sudden surprises." 63.10 There was a discussion about the provision of equipment which Western Geco wanted for its vessels. 63.11 Finally there was discussion about a " Provisional Start date (When Notices to be given by Chris/Ryan)". The consensus, so it was said, was to start as soon as possible, but with a requirement for a web site to be built " CSS will realistically look to start at the end of March". The reference to CSS was to the new company which was yet to be formed. 64. It appears from the minutes of the meeting, as well as from Mr Gollop's evidence, that Mr Harrison had assisted Mr Inns with the financing of his house and might be able to cause Mr Inns difficulty when Mr Inns sought to leave Nautech. It was Mr Inns' aim to refinance his house to prevent this. But, says Mr Gollop, Mr Inns became hesitant and indecisive, and so Mr Coleman, another Nautech employee, was approached to join in the start of the new company. However an inference may be drawn from the material referred to below that Mr Inns remained party to, and continued to assist with, the setting up of the new company furnished with materials from Nautech, it being anticipated that he would in due course leave Nautech for the new company. 65. The new company was incorporated in Jersey in late February 2013. As incorporated it is CSS. 66. Exhibited to Mr Harrison's affidavit of 25 April, 2013 are various email chains. Some of these emails showed the Jersey Defendants or some of them working together to pass over to CSS large tracts of material which was really Nautech's. 66.1 One of these emails, one dated 25 February, 2013 is headed "Current Lists" and shows Mr Dunning passing over various Excel files (files with such names as "Nautech Services - Available ROV Personnel") to Mr Gollop with the request " Can you keep these somewhere safe for me please ". Another, dated 30 March, 2013 (the day of the resignation referred to below) is to similar effect: at 9.21 Mr Dunning sent Mr Gollop an email headed "files" with the request " can you store somewhere safe for me please"; and at 9.23 he sent another with the message " And this please" . 66.2 Another email, dated 13 March, 2013, from Mr Inns to Mr Dunning explains how difficult it had been to set up the maritime payroll. He then said " I would suggest that as nothing can be downloaded a copy of each individual payroll entry needs to be printed out and taken with you ". 66.3 A further example is provided by an email chain on 14 March, 2013. At 13.18 Mr Inns received an email from a former Nautech client proposing an extension of its expired contract to the end of March 2014, a copy of the proposed amended contract being attached. At 13.43 Mr Inns forwarded this email to Mr Gollop, commenting that this was " an inroads to a future contract maybe ". Mr Gollop replied " Obviously you have little choice but to respond in the guise of Nautech, but hopefully after 1st April Ryan will be able to re- approach [the client] and get CSS in the door ". 66.4 On 30 March, 2013 Mr Gollop sent an email to Mr Dunning which read " Thanks for your time this morning - much to do. Here are your folders as requested "; and Mr

Dunning replied, tellingly, " There's more relevant data in those files than you could ever hope to acquire by exporting my mail file, this gives me everything I need to run WG from Tuesday ". "WG" would seem to be a reference to Western Geco; and the folders being returned by Mr Gollop would seem to be those passed to him by Mr Dunning for safe keeping. 67. Emails concerning the transition of business to CSS did not pass only among the Jersey Defendants, but also included the English Defendants. Among emails of this character the following may be noted: 67.1 At the start of one email chain Mr Inns raised with Mr Dunning the following question: " As we are the administrators of Nautech Facebook and linked in (sic) when I leave is there a way of hijacking these accounts or would it be best starting from scratch once again? " The comment from Mr Mark Walpole was that he was not sure what the legal implications would be, and that from a practical point of view you would need to delete administrative/managerial privileges from anyone staying with Nautech. Mr Gollop concluded the chain by recommending " leaving well alone and starting again ." But he added, " if you have the admin rights, you would be able to 'extract' all the contacts anyway ." 67.2 In late March 2013 Mr David Murch, apparently with an email address at "@css- shipperservices.com", was in correspondence with Mr Gollop about the form of contract to be used with Western Geco. 67.3 In early April 2013 there was similar correspondence concerning the form of contracts to be used with the service personnel to be engaged by CSS. 68. As Mr Gollop relates it, on 28 March, 2013 Mr Dunning handed to Mr Inns the resignation letters of himself and Mr Coleman, the following day the letters were emailed to Mr Harrison, and on Tuesday 2 April, 2013 Messrs Dunning and Coleman did not attend for work at Nautech but instead commenced their employment with CSS. Mr Harrison's evidence was that he told Mr Dunning to continue working for a month to manage Nautech's Western Geco contract, but he refused. 69. In evidence are emails which passed between Mr Gollop and Mr David Walpole on 29 and 30 March, 2013 in relation to the resignations. In the first of these Mr Gollop described the process of resignation. The short of this was that Messrs Dunning and Coleman claimed to be entitled to terminate their employment forthwith and against the objection of Mr Harrison. Mr David Walpole's response was: " Much as expected! He [Mr Harrison] will now have to rely on [Mr Inns] to rebuild his Company if that is his intention. A few months of losses should put a stop to that plus his inability to recruit in Jersey. His best bet is to relaunch in Dubai! It may be that he will confront you so I hope you have got a good cover story. You can blame Alatau, that mysterious Far East Investment Company with Shipping and Trading connections. Chris is clearly going to take the brunt of his anger! Hopefully he will lose his temper which will give Chris a way out ." Finally Mr Gollop replied " ..both Ryan and I are of the opinion that once the dust has settled and the reality of his loss of revenue becomes apparent in the face of the significant costs of Nautech in Jersey, Peter will retract the business to Dubai and re-launch from there. There is no real reason for him to confront me, but I'm not worried if he does - a business case and opportunity was placed at my feet and I decided to pick it up, thanks to your support. " 70. At the start of April 2013 CSS started carrying on its business. When it did so it had become from a standing start, from nothing only a month or so before, a material competitor offering (according to its website) the services which Nautech offered.

Advertised on its website it had a telephone number in England, which (according to the Order of Justice) was a number switched through Maywal's switchboard. 71. There is evidence to support an inference that the Jersey Defendants worked, even during the period before the end of March 2013 when the individuals employed by Nautech terminated their employment contracts, to bring over to CSS business and contracts till then conducted by Nautech with its clients. Thus there is an email of 8 March, 2013 passing from Mr Dunning to Mr Gollop attaching a proposal for what is obviously to be a contract between Western Geco and CSS, giving Mr Gollop an instruction as to the person at Western Geco to whom the proposal is to be sent, asking Mr Gollop to "initiate discussions (I don't feel it proper for me to do so at this time)", and saying "we can then review once she has made her comments. The rates are for the most part the same as Nautech's, I have however lowered our Mgt Fee as we discussed and traded off against higher finders fee's ". An inference is that this discussion between Messrs Dunning and Gollop was pursuant to the plan at the February 2013 meeting that Mr Gollop would negotiate with Western Geco as Mr Dunning's "puppet". 72. By the beginning of April 2013 Western Geco was set to transfer its custom to CSS: on 1 April, 2013 a representative of Western Geco sent Mr Dunning an email to obtain his approval for a message to be sent out to personnel placed on Western Geco vessels by Nautech. What was to be said was that "an agreement with CSS Limited is in process; all major terms and conditions have already been agreed to "; and the message was to continue "Several officers on various Western Geco vessels have expressed an interest to transition to CSS Limited. The decision is up to each officer as to which agency he/she would like to work for. A transition plan will be in place for each officer who chooses to transition to CSS ... ". 73. On these materials there is a prima facie case that Messrs Inns, Dunning and Coleman, worked systematically with Mr Gollop and CSS, in breach of their contracts of employment with Nautech, to get CSS up and running (and in particular to take over Nautech's Western Geco connection) by using Nautech's confidential information and data. Mr Dunning's walking out on 28 March, 2013, summarily terminating his contract of employment, appears also to have been in breach of that contract and to have enabled CSS to deal immediately with Western Geco. 74. However the English Defendants make the submission, as regards these materials, that there is no evidence that any of the English Defendants ever did anything in Jersey, and in particular that there is no evidence that they ever used in any way any of Nautech's information and data. This submission is the foundation for an argument that, whatever might be said in relation to the claim in conspiracy, there is no worthwhile case against the English Defendants as regards the three other causes of action (breach of confidence and infringement of database right and copyright). 75. On this appeal Nautech has submitted, as regards the three causes of action, that the claim against the English Defendants is not that they themselves did the tortious acts, but that they are liable with the Jersey Defendants who did the acts: Nautech founds its case, as to the three causes of action, on the principle that a person may be liable as a joint tortfeasor with one who carries out the tortious act, where he joins himself with that other in a common design in the course of which that act is carried out. This principle of joint tort liability based on a joint enterprise was described by Scrutton LJ in *The Koursk*

[1924] P 140, in the frequently quoted passage from his judgment at page 155: "Certain classes of persons seem clearly to be 'joint tortfeasors' ... two or more persons who agree on common action, in the course of, and to further which, one of them commits a tort. These seem clearly to be joint tortfeasors; there is one tort committed by one of them on behalf of and in concert with another." 76. We accept that this case is open to Nautech. However the three causes of action will require at the trial both that the Jersey Defendants, or some of them, are found to have carried out the acts complained of and said to have involved breach of confidence or the infringing of database rights and copyright, and also that these acts are found to have been done pursuant to a common design with the English Defendants, this common design being the alleged conspiracy. 77. In relation to the claim based on breach of a duty of confidentiality there is an argument made by the English Defendants that, properly analysed, the cause of action is one not in tort for damages but for equitable compensation for breach of duty; and we were referred in the Skeleton Argument to an English judgment supporting this view. This, if correct, would also lead to the possibility both that the English Defendants could not have been guilty of a joint tort as persons who had embarked on a joint enterprise with another to act in breach of confidence, and also that the Rule 7(f) gateway could not have been available. 78. There are three answers to this argument. First, it is by no means certain that in English law, let alone in Jersey law, the claim for breach of confidence is not after all one for damages in tort. The English authorities on the point are not all one way; and we have not been referred to any Jersey authorities on the point. Neither, it seems, was the Royal Court on the Application. Second, it is well arguable that for the purposes of Rule 7(f) a claim for damages against a person on the basis that he has encouraged breach of confidence is itself a claim in tort. Third, even were that to be mistaken, in the present case the Rule 7(c) gateway is available to Nautech in respect of that claim, as well as all the others, against the English Defendants. 79. When, in the Judgment, the Deputy Bailiff described the claim in respect of the unlawful means conspiracy as having subsumed within it the other allegations made, he was making the point that the three other causes of action are elements of the unlawful means conspiracy, and so far as concerns the English Defendants turn on whether or not the conspiracy claim is well founded. We add that the converse is not the case: the conspiracy claim could succeed even if the tortious acts underpinning the three other causes of action are not established, as the unlawful means alleged to have been involved in the conspiracy included breaches of the contracts of Jersey employees of Nautech. 80. A criticism made by the English Defendants of the case presented by Nautech in relation to the three other causes of action, as well as of the decision of the Royal Court in allowing service out in relation to them, is that the case is insufficiently particularised and unsupported by evidence as regards the substantive acts giving rise to the causes of action. Essentially it is said that Nautech has not identified, and not put forward any evidence to show, any information which was confidential and in respect of which there was breach of confidence, or any data or databases as to which it owned copyright or database rights which were infringed. 81. We have mentioned the August 2014 judgment to which the English Defendants' advocate drew our attention in his Skeleton Argument. In

this judgment (at paragraphs 12 onwards) the Royal Court referred to the parts of the Order of Justice which both described the databases in respect of which database rights were alleged and set out the allegation that information within those databases was confidential to Nautech and that Nautech owned copyright in the databases. At paragraph 39 of this judgment the Royal Court referred to the fact that Messrs Dunning, Coleman and Inns had admitted that before 11 April, 2013, when the proceedings were started, very substantial quantities of information were exported by them from the databases of Nautech. At paragraph 71 to 77 the Royal Court considered whether or not Nautech's databases could be or include databases in respect of which data base rights could exist: very arguably they could. 82. At the end of this judgment we return to certain of the other arguments which the Jersey Defendants have put forward on this appeal in relation to the evidence before the Royal Court. The availability of the Rule 7(c) gateway 83. There is nothing, as it seems to us, in the English Defendant's complaint that Mr Hanley's affidavit had failed in terms to refer to paragraph (c) of Rule 7. Indeed, it is said in the English Defendants' Skeleton Argument for this appeal that Nautech's Skeleton Argument for the application to the Deputy Bailiff for leave to serve out had in fact referred to the paragraph. The same point was made in Nautech's Skeleton Argument for the hearing of the Application, where paragraph (c) was placed centre stage. 84. While rules of court are to be complied with, where an applicant makes a procedural error in an application the application is not necessarily to be rejected. In the present case the Deputy Bailiff's reference to the Virani case

[2000] JLR 203 was entirely apt. In that previous case the Royal Court (Deputy Bailiff Birt, as he then was, with Jurats Quere and Bullen) pointed out as follows: "The fact that an affidavit in support of an application for leave to serve out of the jurisdiction is defective (in that it does not comply with r.9) does not of itself necessarily invalidate any order for leave to serve out. It is primarily for the judge considering the application to serve out of the jurisdiction to consider whether the affidavit is in sufficient form and whether it gives him sufficient information to make a decision. The success of an application to set aside leave on grounds of failure to comply with the requirements of r.9 will depend upon the facts of the case, including any prejudice to the defendant, the extent and effect of any non-disclosure by the plaintiff and whether the court is satisfied that, notwithstanding the failure, there are clearly and valid grounds for leave to serve out." 85. In the present case the Deputy Bailiff had considered the affidavit supporting the application sufficient to show the Rule 7(c) gateway to be available when giving leave to serve out. Bearing in mind that the Skeleton Argument for the application before him drew attention to that paragraph and sought to rely upon it, he was entitled to conclude that that gateway was open to Nautech. Then, on the Application, when the English Defendants challenged the leave to serve out, the Royal Court reached a conclusion, as in our judgment it was entitled to do, that no prejudice had been suffered by the English Defendants as regards any procedural irregularity there might have been by reason of the form of Mr Hanley's affidavit. 86. When Advocate Blakeley opened this appeal to us he did not, in his oral

address, make any further reference to the challenge to the availability of the Rule 7(c) gateway as a matter of procedure. We think he was right not to pursue the argument, which we reject. Ultimately the real and only question on this issue is whether or not as a matter of substance the stated requirements in paragraph (c) of Rule 7 were met to the standard of good arguable case that they were. Are the English Defendants necessary or proper parties to the claims brought in the Order of Justice against the Jersey Defendants? 87. The Royal Court answered this question in the affirmative. This answer was plainly one the Royal Court was entitled to arrive at. The case put forward against the English Defendants is that in respect of the claims against them they were joint tortfeasors with the Jersey Defendants. Avoiding multiplicity of actions and the possibility of inconsistent findings on the same matters points strongly to the English Defendants being appropriately joined in an action against the Jersey Defendants in which the joint torts were the subject of the action. The present is an obvious case, little elaboration being required, in which the liability of several persons depends upon one investigation. 88. In the event Advocate Blakeley did not make any submission to the effect that as a matter of substance the Rule 7(c) gateway was not available because of the absence of a good arguable case that its requirements were met. Rather, his argument distilled itself to one that, contrary to the conclusion we have just expressed, the Royal Court only thought that the gateway was available as a matter of theory, and did not then ask itself whether its requirements had been satisfied. This argument was derived from the inclusion of the words "in theory" in the paragraph of the Judgment in which the Deputy Bailiff explained that the Royal Court thought the gateway to be available because its requirements had been met. In the context, and having regard to the subsequent repetition of the conclusion concerning the availability of the gateway, the Royal Court had addressed itself to the question whether the requirements had been satisfied. In the statement in the Judgment that the gateway was "in theory" available the Royal Court was flagging up that while the substantive requirements of the gateway were met, still it was being argued that as a matter of procedure the gateway was not available as it had not been mentioned in Mr Hanley's affidavit. 89. We therefore reject Mr Blakeley's argument on this point. His only other challenge to the Royal Court's decision concerning the availability of the Rule 7(c) gateway was that Nautech had not sought to particularise the basis on which the English Defendants are necessary or proper parties and to provide evidence to support the particulars. In fact Nautech's argument was simple, namely that the English Defendants were to be sued as joint wrongdoers with the Jersey Defendants, and that by reason of the nature of the claims made they were necessary or proper. No further particularisation or evidence was required. If there were to be some basis for concluding that after all the substantive requirements of Rule 7(c) were not arguably met, it was incumbent on the English Defendants to explain what that basis was. The approach where there are several causes of action 90. On this issue we have been referred by Advocate Blakeley to judgments in several English cases. From these it is clear that where a plaintiff wishes to serve process on a defendant overseas, there being several causes of action intended to be pursued, each of the causes of action must fall within one of the Rule 7 gateways. It is not

sufficient that one of the causes of action falls within a gateway: leave will not be given for those that do not. 91. For present purposes it is convenient simply to quote the passages referred to by the English Defendants: 91.1 The Siskina

[1979] AC 210 at 255A to B where Lord Diplock stated: "... And it is in my view equally well settled now that it is not permissible in any action commenced by service of process on a person out of the jurisdiction to litigate any claim that does not fall within one or other of sub-rules(a) to (o): see Holland

v. Leslie

[1984] 2 Q. B. 346; *Waterhouse v. Reid* [1938] 1 K. B. 743 and *Total Oil Great Britain Ltd. V. Marbonanza Compania Naviera S. A.* June 27, 1975; Court of Appeal (Civil Division) Transcript No. 298 of 1975, C. A. The two latter cases are striking. In each of them the plaintiff sought to rely upon certain facts as constituting in the alternative a breach of contract or a tort. In the former the claim for damages for tort was within the appropriate sub-rule dealing with torts, then numbered (ee), but the claim for damages for breach of contract was not within the appropriate sub-rule relating to actions founded on contract, then numbered (e); in the latter the position was reversed, the claim for damages for breach of contract fell within the appropriate sub-rule; the claim for damages for tort did not. In both cases it was held that the only action for which the High Court had jurisdiction to give leave for service of its process out of the jurisdiction was one confined to the particular cause of action that did fall within a sub-rule or Ord. 11, r.1 (1)." 91.2 *Glencore International AG v Exeter Shipping Ltd*

[2002] All E. R. (Comm) 1 at [50], where Rix LJ put the position in the following terms: "The case of the foreign defendant who has not invoked the jurisdiction of these courts, however, is different. In this case, in the absence of a general submission to the jurisdiction (see *The Kapetan Markos* [1986] 1 Lloyd's Rep. 211 at 228/9) the general rule is that permission has to be obtained within the four corners of the English long-arm statute for each separate claim made against him: see *Holland v. Leslie*

[189] 2 QB 346 and *Waterhouse v Reid*

[1938] 1 KB 743." 91.3 *Masri v Consolidated Contractors Int (UK) Ltd (No 3)*

[2009] QB 509 at 528/9, *Lawrence Collins LJ* (giving the judgment of the Court) stated: "In my judgment the decision in *Glencore International AG v Exter Shipping Ltd*

[2002] 2 All ER (Comm) 1 is entirely orthodox and does not assist the judgment debtors. A defendant who submits to the jurisdiction is subject to the incidents of litigation. I accept that both under CPR r 6.20 (and its predecessor RSC Ord 11, r 1) and under the Brussels I Regulation, it is not permissible to add by way of amendment additional claims unless the jurisdictional requirements are fulfilled for those claims unless the jurisdictional requirements are fulfilled for those claims (including, in the case of CPR r 6.20, the obtaining of permission to serve out of the jurisdiction): *Dicey, Morris & Collins, The*

Conflict of Laws 14th ed (2006), para 11-154; *Parker v. Schuller* (1901) 17 TLR 299, *News International plc V Borgognon* [1998] CLY 583; *Société Commerciale de Réassurance V Eras International Ltd* (formerly Eras (UK)

[1992] 1 Lloyd's Rep 570, 612-613; *The Jay Bola*

[1997] 2 Lloyd's Rep 279 , 290; *Glencore International AG v Exter Shipping Ltd*

[2002] 2 All ER (Comm) 1 , para 50 and *Donohue V Amco Inc*

[2002] 1 All ER 749 , para 21." 92. These judgments appear to be concerned chiefly, if not exclusively, with the first stage requirements, namely the availability of a Rule 7 gateway for each cause of action, rather than the second or third. In principle, however, it is difficult to see any reason why a different approach should be adopted at the second or third stages; and the comment of Rix LJ in the *Glencore* case, quoted above, indicates that there should be no different approach. 93. It is worth adding a further comment, however. The fact, if it were the fact, that several causes of action set out in the Order of Justice against the English Defendants failed to meet the requirements for service out would not necessarily lead to the position that no leave should have been granted for service out, so that any leave given should be simply set aside. It would be possible for leave to be given only as regards the causes of action meeting the requirements, the English Defendants not being pursued as regards the remainder; and the order made on an application to set aside could set aside the original leave as regards only those causes of action for which no leave should have been given in the first place. This, indeed, is what had happened in the *Seaconsar* case referred to above (see [1994] AC 438 at 439C-D). In that case there were two causes of action against the defendant. Hobhouse J had given leave to serve out as regards both. Saville J set aside the order of Hobhouse J as regards one, but not the other. Ultimately the House of Lords, reversing the majority decision of the Court of Appeal (Stuart-Smith LJ dissenting) upholding Saville J's order, concluded that the order of Hobhouse J should stand as both causes of action were fit for service out. 94. On the other hand, and supporting the conclusion that each cause of action should be considered separately, Lord Goff made it perfectly clear that the second cause of action should not be allowed to go forward, and to be the subject of service out, if it failed on its own merits to qualify for leave to serve out: the fact that the first cause of action would be going forward to trial and the second might be tried appropriately at the same time and in conjunction with the first would not justify the giving of leave for a claim which otherwise was insufficiently worthwhile (see at page 456E-F). The approach taken by the Royal Court 95. We reject the English Defendants' argument that the Royal Court failed to look at each claim separately and to ask itself whether each claim met all three requirements for leave to serve out. 96. The Royal Court was fully alive to the fact that there were different causes of action being advanced. It was perfectly clear from the Order of Justice that there were different causes of action, and the description of the case in the Judgment makes it apparent that the Royal Court had that well in mind. Further, in the Judgment there was express reference to the need to give consideration to each cause of action separately

when stating the applicable test at paragraph 39(iii) of the

Judgment.

The argument that despite all this the Royal Court failed to look at each claim separately invites the surprising supposition that the Royal Court thought it sufficient for the test at the first of the three stages, the availability of a relevant gateway, to be met as regards only one of the causes of action. 97. Specifically as regards the first of the requirements, whether each of the claims was within a relevant gateway, the Judgment, immediately after setting out the words of Rule 7(f), had explained at paragraph 28 "we are satisfied that the claims brought by the Plaintiff against the English Defendants are based in tort". That was the paragraph in which the Royal Court set out in brief its reasons for concluding that the Rule 7(f) gateway was available. The use of the plural, "claims" was in the context a reference to all of the four causes of action, in other words claims, advanced in the Order of Justice. 98. Also, in the following paragraph of the Judgment, when discussing the Rule 7(c) gateway, the Royal Court referred to "the nature of the claims which have been brought": again, the use of the plural, "claims", shows clearly that the Royal Court had in mind all the claims, not only the single claim in conspiracy. 99. The English Defendants' argument that the Royal Court failed to consider separately whether each claim met the second of the three requirements for service out fails, we conclude, for essentially the same reason. The test at the first stage 100. We have already made preliminary observations about the test at the first stage and in particular as to the need for there to be a good arguable case that the requirements of at least one of the gateways are satisfied in relation to the claim. In essence the issue is whether in the present case this involves showing that on each of Nautech's causes of action it has a good arguable claim, and not simply a claim which raises a serious issue to be tried. 101. There is, perhaps, some confusion possible on this question, having regard to the fact that reference to a "good arguable case" may invite attention to the whole of a plaintiff's case, rather than simply the case whether or not the claim for which he wishes leave to serve out falls within a Rule 7 gateway. Indeed, it might be simpler to say that the first requirement is that the claim falls clearly within one of the paragraphs of Rule 7, following the language of Deputy Bailiff Tomes in the James Capel case; whether, in other words, the claim clearly has the relevant characteristics prescribed by a paragraph of the Rule. 102. At all events, the English Defendants' Skeleton Argument appeared to put forward an argument, repeated at the outset of Advocate Blakeley's oral submissions, that what was required at the first stage was that the plaintiff's claim, or in other words each cause of action the plaintiff was seeking to present and for which leave to serve out was being sought, should be a good arguable one, not merely that there should be a good arguable case that the claim fell within a Rule 7 gateway. Later, however, in his oral argument, Advocate Blakeley accepted that this argument would be mistaken, a concession which must be correct. Instead his argument focussed on the Rule 7(f) gateway. 103. As to this gateway his submission was that in contrast with some others such as the Rule 7(a) and 7(c) gateways, there was a requirement for a good arguable claim; but he also submitted that at the least there had to be a good arguable claim that the damage from the tort founding the claim was either sustained within or resulted from an act committed within the jurisdiction. 104. Before

commenting further on the Canada Trust case, which was placed at the forefront of the English Defendants' argument on this point, we draw attention to certain aspects of the Seaconsar case. We have already referred to the way the appeal came to the House of Lords. It is worth keeping in mind that the judgment of Lord Goff was explaining why Saville J and the majority in the Court of Appeal had set too high, not too low, a bar for the claim as to which they thought there should be no leave for service out. 105. In the Court of Appeal it had been common ground that a jurisdictional gateway was available as regards both claims. The question was the quality of case necessary to meet the second stage requirements. This can be seen in the explanation given by Lord Goff at pages 448H to 449C, where Lord Goff also pointed out that the view of Stuart Smith LJ was that the question as to merits was whether the plaintiff's claims were worthy of consideration. This view of Stuart Smith LJ's was referred to by Lord Goff, with approval, when at page 455F-H he said that he preferred the approach of Stuart-Smith LJ and then quoted the following passage from his judgment: "It seems to me to be wholly inappropriate once the question[s] of jurisdiction and forum [conveniens] are established for there to be prolonged debate and consideration of the merits of the plaintiff's claim at the interlocutory stage." 106. The Seaconsar case, when it reached the House of Lords, involved consideration of the requirements for establishing the availability of the gateways for contractual claims which were equivalent to those in paragraphs (d) and (e) of Rule 7, as well as the requirements more generally for a claim to be sufficiently worthwhile to be allowed to be pursued within the jurisdiction against the overseas defendant. 107. As to the more general question the test noted and accepted by Lord Goff was one requiring there to be a substantial question of fact or law requiring to be tried (page 452D), or a serious question to be tried (page 452D) or a serious issue to be tried (page 456G). Further, as to the test required at the stage of establishing the availability of a relevant gateway, Lord Goff noted that the various gateways are of different character and complexity (page 449H). He discussed in detail the case of *Vitkovic Horni a Hutni Tezirstvo v Korner*

[1951] AC 869, a leading case on the principles in relation to leave to serve out, but one concerned with the paragraph (e) contractual gateway; and he concluded that as to that paragraph the applicable weight of case that the gateway was available involved establishing a good arguable case as to each of the claims' elements so that there would be no separate need to examine whether generally merits of the claim were satisfied to a lower standard (page 454C). 108. However, and of importance, it is apparent that this last conclusion was directed at the specific gateway under discussion, a contractual one. This is because at page 454C-D Lord Goff indicated a view that on this point Korner had been misunderstood, before he then went on to explain why other gateways in the equivalent to Rule 7 differed from the contractual ones (see at page 454D-E), and why as to those the second stage test was relevant, although requiring a lower standard than "good arguable case", namely only that of a "serious issue". 109. Relevantly, in this discussion Lord Goff pointed out that in *Korner* Lord Tucker had expressed the opinion that claims founded on tort under the equivalent to the Jersey Rule 7(f) involve a lesser burden falling on the plaintiff with regard to the merits of the claim, namely a claim as to which the affidavits disclose a case which appears to merit consideration at the trial (see at page 455B-C). Lord Tucker, when giving

his opinion, had said that for the tort gateway what was important to establish to the higher standard was the occurrence of damage within the jurisdiction or from acts within the jurisdiction. In other words a proposition from which Lord Goff did not dissent was that in considering the availability of the tort gateway, the Rule 7(f) gateway, the focus to the good arguable case standard is on the damage requirement specified in paragraph (f) of the Rule, and as to the merits of the claim generally what is required is a serious issue to be tried. 110. In the present case the Royal Court, in considering whether the Rule 7(f) gateway was available, directed itself correctly that what it required to be satisfied about was the critical element of the tort claim noted in paragraph (f), namely the suffering of the damage from the tort in Jersey, or the doing in Jersey of acts causing the damage: this appears at paragraph 28 of the Judgment. 111. Further, although the English Defendants argue that there is no evidence of Nautech having suffered any damage from anything done pursuant to the alleged conspiracy, or from the other claimed causes of action, the Royal Court was in our judgment entitled to reject the submission. On behalf of Nautech it has been stated on affidavit that Nautech's business was badly affected in the important period of the year for the business, the downturn in new contracts having been the result of the breaches of contract of Nautech's employees, the misuse of Nautech's confidential information and copyright material and the infringement of its data rights. No evidence at this stage has been put forward to contradict this. And while Nautech has yet to quantify precisely the loss it has suffered, the present is a case in which measurable damage would ordinarily and naturally follow, if the wrongful acts were established. 112. It is convenient at this point to refer to the criticism of paragraph 28 of the Judgment which Advocate Blakeley made in his oral submissions to us. This paragraph is in the following terms: "We are satisfied that the claims brought by the Plaintiff against the English Defendants are based in tort. Furthermore, it seems to us that to the extent that the Plaintiff claims that the English Defendants were party to a conspiracy or agreement for the Jersey Defendants to take various steps within the jurisdiction, the Plaintiff is entitled to say that the damage was sustained or resulted from an act committed within the jurisdiction even though the agreement between the Jersey Defendants and the English Defendants as pleaded may equally have been completed in England rather than in Jersey. We think that in paragraph 7(f) the words "within the jurisdiction" qualify the second part of the sentence, namely where the damage was sustained, or where the act was committed which lead to that damage taking place. Accordingly, even if the agreement which gives rise to the conspiracy was made out of the jurisdiction and the English Defendants did nothing themselves within the jurisdiction, the claim falls within paragraph 7(f) because the damage was sustained within the jurisdiction; and alternatively, because the damage resulted from acts committed within the jurisdiction. Accordingly, we think that the claim for service out of the jurisdiction falls within paragraph 7(f) and that the Plaintiff can bring its application for service out on that basis." 113. The argument put forward by Advocate Blakeley was that the word " Accordingly " in the last sentence shows that the conclusion reached was unreasoned, arrived at without reference to the evidence before the Royal Court or any attempt to consider whether to the standard of a good arguable case the evidence

supported the conclusion. This argument, if we have correctly understood it, we unhesitatingly reject. In the first place the Deputy Bailiff explained, at paragraph 39(i) of the Judgment, that the Royal Court was proceeding on the basis that to justify an order for service out the first threshold for Nautech was to establish a good arguable case that its claim falls under one or more of the paragraphs of Rule 7. That, therefore, is the threshold which was being considered at paragraph 28, when the Deputy Bailiff explained why the Rule 7(f) gateway was in the opinion of the Royal Court available to Nautech. 114. It can be seen, as we have said, that in considering the Rule 7(f) gateway the Royal Court's focus was on the damage from the English Defendants' alleged tort. Was there, in other words, a good arguable case that it was suffered in Jersey or that it resulted from acts committed in Jersey? This question was the question which was answered in the affirmative in paragraph 28 of the

Judgment.

Admittedly the Royal Court did not elaborate on its reasons for giving the answer. It did not need to. There was evidence before the Royal Court, capable of supporting a good arguable case, that damage had been suffered. And it is self-evident, and the contrary has not been suggested by the English Defendants, that if damage had been suffered it was suffered in Jersey and resulted from acts committed in Jersey. 115. As to the suffering of damage by Nautech the only substantive argument made to us by the English Defendants is that any damage suffered will have been, not from the wrongful acts carried out pursuant to the conspiracy claimed by Nautech, but only from lawful acts which the Jersey Defendants would have been entitled to carry out, as for example, competing in business with Nautech following a lawful termination of the contracts of employment of Messrs Inns, Dunning and Coleman. For present purposes we need say only that we would be very surprised if, the Jersey Defendants' alleged torts and breaches of contract complained of by Nautech having been established after a trial, it should also be found after the trial that after all Nautech had suffered no damage from any of those matters. 116. However, this still leaves us to conclude on the question whether the first stage test as regards the Rule 7(f) gateway was concerned with Nautech's damage, or with the cause of action as a whole. For reasons we have given we think it is concerned with the former. All that we need to add is to explain why the Canada Trust case does not cause us any doubt about this. In that case Waller LJ's judgment subjected the speech of Lord Goff in *Seaconsar* to very detailed analysis, from which Waller LJ drew a variety of conclusions, many of them illuminating. However, while the "good arguable case" test was discussed, that was discussed in relation to the question whether one of the defendants to be served in the proceedings was domiciled in England. If, but only if, he was, the equivalent of Rule 7(c) could have been invoked in relation to the remaining defendants. What mattered, in substance, was whether it could be said that the defendant domiciled in England had been duly served. The Court of Appeal was invited to determine, as a preliminary point of principle, what standard of proof should be applied to that question, in the hope that that determination might assist with the disposal of the appeal in due course (see at page 552H). 117. Our conclusion as to the Canada Trust case can be summarised as follows. Earlier in this

judgment we have set out the passage in the judgment of Waller LJ (at [1998] 1 WLR 553C-D) where he said " There is no doubt that where the English court is considering whether any of the sub-paragraphs under Order 11 r.1(1)", that being the equivalent to Rule 7 of the Service of Process Rules, "apply in relation to leave to serve out of the jurisdiction, the relevant question is whether the plaintiff has established a good arguable case". However, the later extract from his judgment at page 555B-C, quoted in the Judgment at paragraph 38, shows that Waller LJ was only concerned with the elements of a claim which were specified in the equivalent to Rule 7 as material for the particular gateways, not with the quality of the claim more generally. Even then, the Court of Appeal was not concerned to identify all of the elements in all of the gateways which required to be established to the level of a good arguable case. What Waller LJ said was " But Lord Goff was not concerned to explore in the *Seaconsar* case ... the application of the standard 'good arguable case' to all the various factors that can arise ... " . 118. In line with this, the decision of the Court of Appeal was that the first instance decision was to be upheld, that being that there was a good arguable case as to the English domicile of one of the defendants; and it was held that the good arguable case test is not a balance of probabilities one, the standard applicable at a trial (see per Nourse LJ at 572H). Neither the judge at first instance nor the Court of Appeal considered that the claim for which leave was being given to serve out had also to be shown to be one as to which there was a good arguable case on the merits. The test at the second stage 119. The Royal Court in the *Koonmen* case to which we have referred held that it is inappropriate at the second stage for there to be a prolonged debate and consideration of the merits of the plaintiff's claim. This must be correct. In this the Court was applying what had been said by Lord Goff of Chieveley in the *Seaconsar* case at 455 (described at paragraph 105 above). In the Judgment the Deputy Bailiff referred to the *Seaconsar* case and also quoted from Lord Goff's speech the passage in which Lord Goff explained that meeting the second stage, namely the requirement that the case raises a serious issue to be tried, is essential for permission to be given under Rule 7, even where the requirements at the other two stages are met. 120. It is clear from paragraphs 37 to 39 of the Judgment that in the present case the Royal Court was concerned about the risk of over-refinement of the tests for obtaining leave to serve out of the jurisdiction, a conclusion with which we agree. However, the Royal Court clearly recognised that a claim which could be struck out as lacking any foundation could not raise a serious issue to be tried. It would not follow that a claim which could not be struck out would necessarily be found to raise a serious issue to be tried, however; and the Royal Court did not suggest that it would. As the Deputy Bailiff pointed out in the Judgment, the fundamental question for the Court, once a Rule 7 gateway is shown to be available, is whether it is appropriate for a non-resident who owes no allegiance to this jurisdiction to be brought before the Court (paragraph 39(ii) of the Judgment). We can see nothing wrong with this approach. The non-resident should not be required to respond to a claim lacking in substance, such that there is no serious issue to be tried. Beyond that, however, the matter is for the discretion of the Royal Court as to whether or not there is a serious issue to be tried. 121. The English Defendants contend that the Royal Court should have considered whether or not Nautech had demonstrated that it has realistic prospects of success in its claim; and for this submission reliance was place on a passage from the opinion of the Privy Council given by Lord Collins in the *AK Investments* case at [71]. In that case, on an Isle of Man appeal, Lord

Collins pointed out that the claimant " must satisfy the court that in relation to the foreign defendant there is a serious issue to be tried on the merits, ie a substantial question of fact or law, or both. The current practice in England is that this is the same test as for summary judgment, namely whether there is a real (as opposed to a fanciful) prospect of success ". However the Privy Council did not hold that the current practice in England, influenced as it is by the Civil Procedure Rules and in particular the ability to give summary judgment dismissing a claim, should now regulate in Jersey what might be involved in determining whether or not a plaintiff has shown himself to have a serious issue to be tried in relation to the foreign defendant.

122. The Skeleton Argument put forward on this appeal on behalf of the English Defendants criticised a paragraph in the Judgment in which the Royal Court had referred to the fact that English case law on service out and forum conveniens will have been affected by the Lugano Convention to which the United Kingdom is a party and to the statute which gave that convention the force of law. In the same paragraph the Royal Court alluded to the unwelcome possibility of " the more historical arguments over forum being resurrected in our courts ". 123. The principal criticism sought to be made was that Royal Court conflated the good arguable case first stage test with the serious issue to be tried second stage test. What the Royal Court said at the introduction to the paragraph was " Given that the different tests are applied to different questions, we did not find the argument before us over whether we should apply the " good arguable case " test or the " serious issue to be tried " test to be particularly helpful". Based on this it is submitted that the Royal Court failed to distinguish between the two tests. We would reject the submission, for the reason that the point being made was precisely that there are two different tests applied to two different questions. The point being made in the Judgment was that the argument before the Royal Court had been confusing in failing to distinguish between the issues to which the tests were directed. 124. The Judgment made this clear in that at paragraph 36, which had immediately preceded the criticised passage, there was an accurate summary of the position in England and Wales as regards the three-stage process and the relevant tests; and then at paragraph 38, the next following paragraph after the criticised passage, the Judgment repeated in a little more detail the same key stages and the same relevant tests as representing the law in Jersey. 125. A second submission made on behalf of the English Defendants is that the Deputy Bailiff was simply wrong to say that the case law of England and Wales has been affected by the Lugano Convention. As to this it is sufficient, we think, to say that one issue in the Canada Trust case, an issue which is not directly relevant for the present appeal, involved the English court giving consideration to the Lugano Convention and its decision was influenced by it. However that may be, we do not understand the Royal Court's decision in the present case to have been affected by any supposed misunderstanding concerning the relevance of the Lugano Convention. 126. The short of this is that we can see no error of principle made by the Royal Court in the Judgment when deciding on the appropriate approach to the quality of the case required to be shown by Nautech to satisfy the Royal Court that the English Defendants were appropriately to be served. The quality of the case against the English Defendants 127. Earlier we have drawn attention to features of the evidence at present available to support the claims against the English Defendants. This evidence was amply sufficient as a basis for the conclusion reached by the Royal Court. 128. We have referred to the August 2014 judgment given by the Royal Court on the

contempt application. That judgment was of course given after the decision which is the subject of this appeal; and it was given after the hearing of a number of days of evidence and argument. What may safely be said about it is that it confirms that the materials, referred to earlier, which we have been shown and which were shown to the Royal Court on the Application, amply supported a case of the wholesale extraction and copying by Messrs Dunning, Coleman and Inns, in conjunction with Mr Gollop, of electronic databases which had been compiled by Nautech and which were central to its business; and by the description of the databases in the Order of Justice and in the materials which we have been shown there would be a reasonable inference that the materials in whole or part were confidential to Nautech and materials in which Nautech had database rights and copyright ownership. 129. The necessary ingredients for the conspiracy claim involving the English Defendants may be sufficiently summarised for present purposes as follows, namely that two or more persons, including the English Defendants and the Jersey Defendants or some of them, combined and between them took action which is unlawful in itself with the intention of causing damage to Nautech, which did incur the intended damage. The purpose of causing damage must have been part of the combiners' intentions; but this it will have been if the defendants embarked deliberately upon a course of conduct involving unlawful acts appreciating the likely consequences for the plaintiff. 130. That there was a combination involving the English Defendants may be inferred from the meeting, together with the minutes of the meeting, of 9 February. 131. There is a question whether the English Defendants intended unlawful action to be taken pursuant to the combination. On the Application the Royal Court concluded that on the materials, for the reasons given at paragraphs 44 and 45 of the Judgment, Nautech had raised a serious issue that there was. This conclusion was in our judgment well open to the Royal Court. Indeed, we agree with it. Whether, in the event, there was such an intention will be a matter for trial. 132. An issue raised by the English Defendants is whether there is any evidence that they were involved in the funding or ownership of CSS. Ultimately this is of relevance, we think, only to the extent to which they may have come to be involved directly in what was done following the 9 February meeting. If what was contemplated at the 9 February, 2013 was carried into effect, the English Defendants or some of them would have been investors in CSS and should have been receiving weekly reports. As to this, the Order of Justice pleads that the English Defendants " have funded through Maywal or otherwise the activities of the Jersey Defendants in Jersey "; and it pleads that CSS is beneficially owned in whole or in part by Maywal and/or each of the English Defendants or Mr Gollop. 133. Evidence from which the funding of CSS, and indeed the creation of an ownership interest may be inferred is: 133.1 The evidence of Mr Gollop concerning his financial backers, plainly in this context being the English Defendants or some of them; and concerning the conclusion of an agreement at the 9 February 2013 meeting and its subsequently being carried out; 133.2 The email, referred to above, in which Mr Gollop thanked Mr David Walpole for his support which enabled him to pick up a business case and opportunity. 133.3 An email from Mr David Walpole to Mr Gollop on 7 April, 2013 in which he said " This system of bonuses on gross earnings is worrying me a lot. I think I would not have invested at all, if I had realised it was the system Nautech had instigated ... " 134. Whether or not the inference is made good following a trial remains to be seen. However the basis for the English Defendants' submission that the inference is mistaken and not to be drawn is the recent

evidence of Mr Gollop that he is the beneficial owner of CSS. That, it seems to us, is irrelevant to the position in 2013, which Mr Gollop's evidence together with the other material referred to above suggests to have been different: that evidence supports a view that at the 9 February, 2013 meeting agreement was reached about what was to be done as regards CSS, and that the agreement was then acted upon including by the English Defendants. 135. Nevertheless, founded upon this argument the English Defendants' Skeleton Argument submitted that "The only involvement of the English Defendants in the events which have led to Nautech seeking to join them to the present action was a meeting and some limited e-mail correspondence at a time when the Jersey Defendants had offered the English Defendants an opportunity to invest in CSS. The English Defendants did not take up that opportunity and have no involvement in CSS." As it seems to us, the first sentence mischaracterises the evidence which was before the Royal Court on the application. The second sentence is not supported by any evidence put forward by or on behalf of the English Defendants, or indeed by Mr Gollop, as Advocate Blakeley accepted during the course of his oral argument. 136. As to the intention on the part of the English Defendants to cause injury to Nautech, little discussion is needed. Misuse of Nautech's confidential information, copyright and data, together with breach of contract by its employees, in the setting up of a rival business was likely to cause Nautech harm. At the present stage it is a reasonable inference that this was obvious to and understood by the English Defendants. The issue is whether there is any basis for an inference that the parties also intended that these actions or any of them would be carried out. 137. The Royal Court concluded that there was. We consider that that conclusion was open to the Royal Court, for the reasons given by the Royal Court. What was contemplated was that a new company, CSS, would spring to life as a fully-formed competitor of Nautech. How the English Defendants expected this feat to be achieved by CSS without plundering Nautech for its information and data has not been stated by the English Defendants in their evidence. The Royal Court was left on the Application in a position where there was no further evidence put forward to negative the inferences which Nautech's evidence suggested. 138. This judgment is lengthy. What has led to this is the English Defendants' attack on the Judgment seeking to subject the text to microscopic analysis and numerous subtle criticisms in order to justify an argument that there was a material error of principle or approach. This is to be regretted. Read as a whole the Judgment dealt sufficiently with the important points, both identifying them and stating in succinct but sufficient detail the reasons for the Royal Court's decisions. A judgment on an interlocutory application should not require to be written with perfect accuracy, provided it deals with the substance of the matter for decision; and it is wrong to base an appeal on criticism of the language when, as a matter of substance, it is difficult to see any material error. In this case we can see no criticisms of the Judgment which can fairly be made. Authorities Nautech Services Ltd-v-CSS Ltd and others

[2013] JRC 89 . Nautech Services Ltd-v-CSS Ltd and others

[2014] JRC 159 . Intellectual Property (Unregistered Rights) (Jersey) Law 2011 . Service of Process Rules 1994 . Service of Process and Taking of Evidence (Jersey) Law 1960 . Virani v Virani

[2000] JLR 203 . VTB Capital plc v Nutriek International Corp

- [2013] 2 AC 337 . The Board of the Privy Council in AK Investment CJSC v Kyrgyz Mobile Tel Ltd
- [2012] 1 WLR 1804 . Koonmen v Bender
- [2002] JLR 407 James Capel (Channel Islands) Ltd v Koppel and Fenchurch Trust Ltd
- [1989] JLR 51 . SGI Trust Jersey Ltd v Wijsmuller
- [2005] JLR 310 . United Capital Corporation Ltd v Bender
- [2006] JLR 242 . Canada Trust Co v Stolzenberg (No.2)
- [1998] 1 WLR 547 . Seaconsar Far East Ltd v Bank Markazi Jomhuri Islami Iran
- [1994] 1 AC 438. AK Investment CJSC v Kyrgyz Mobil Tel Ltd
- [2011] UKPC 7 , [2012] 1 WLR 1084. United Capital Corp Ltd v Bender
- [2006] JLR 269 . The Kursk
- [1924] P 140. The Siskina
- [1979] AC 210. Glencore International AG v Exeter Shipping Ltd
- [2002] All E. R. (Comm) 1. Masri v Consolidated Copntractors Int (UK) Ltd (No 3) [2009] QB 509.
Vitkovic Horni a Hutni Tezirstvo v Korner
- [1951] AC 86. Page Last Updated: 23 Sep 2016 BAILII: Copyright Policy | Disclaimers | Privacy
Policy | Feedback | Donate to BAILII

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bailii.org/je/cases/UR/2014/>

CASE PAGE <https://chat.esheria.ai/case-law/jersey/maywall-ltd-and-others-v-nautech-services-ltd-2014-jca-180-25-september-2014>

Prepared on 26 October 2026 · Esheria