

NWL Costs Update – March 2022

Service Under the Companies Act

SERVICE ON DIRECTOR AT COMPANIES REGISTERED ADDRESS IS VALID

Farrer & Co v Julie Marie Meyer [2022] EWHC 362 (QB).

Whilst the case deals with a number of issues, our focus is on the method of service.

The Background

This was a simple debt claim for unpaid solicitors' fees. The Defendant is a businesswoman and a USA citizen resident in Switzerland. She or her companies use or have used 3 addressees in London, one in WC, one in SW1 and one in SW5. The Claimant is a firm of Solicitors in London.

The Claimant acted for the Defendant in relation to her business interests. Invoices were rendered, only partial payments were made, and the Claimant ceased acting for the Defendant.

The Claimant issues proceedings on 15 November 2019 for recovery of the unpaid invoices for about £187,000 plus interest. The claim was served upon the Defendant at two London addresses used by the companies of which she was then a director.

On 06.12.19 the Defendant e-mailed the Claimant to say she had heard a claim had been made. The Defendant did not acknowledge service and default Judgment was obtained on 10.12.19.

On 16.01.20 the Court issued a standard order with penal notes stating the amount owed was now just over £190,000.

On 20.01.20 the Claimant applied to set aside the Judgment. There followed a protracted series of applications and hearings culminating in a hearing on 22.01.22.

The Law

Section 1140 of the Companies Act 2006 provides:

(1) A document may be served on a person to whom this section applies by leaving it at, or sending it by post to, the person's registered address.

(2) This section applies to—

(a) a director or secretary of a company;

And further:

(3) This section applies whatever the purpose of the document in question.

It is not restricted to service for purposes arising out of or in connection with the appointment or position mentioned in subsection (2) or in connection with the company concerned.

Defendants Arguments

It was unfair and outside the services rules of CPR rule 6 for the Claimant to have sent pre-action correspondence to a different email and postal address and then sought to use section 1140 to support service under that provision before obtaining default judgment.

The cross-reference in rule 6.3(2)(b) to service under the 2006 Act should not be interpreted so as to apply to service on an individual under section 1140 in her capacity as an individual.

It was argued that the Claimant should either have sought the court's permission to effect substituted service or should have served at the usual or last known residential address, under rule 6.9, having taken steps to ascertain what that address was.

The Defendant's Skeleton Argument set out:

"It is implicit within section 1140 CA 2006 that the claimant cannot serve at that address in circumstances where it would be required, because of its knowledge of the defendant's circumstances, to take reasonable steps to confirm the service address under r6.9. Therefore there has not been good service.

Further and alternatively, that CPR Part 12 is not available where service has not been effected pursuant to Part 6. The wording of Part 12 does not permit it and there are strong policy reasons why it should not be available."

Claimants Response

The Claimant maintained that service at an address provided to Companies House by a director of a company is good service for the purposes of the CPR – even if that person is not physically present in the jurisdiction – this was clear from section 1140 and the reasoning of the Chancellor at [46]-[56] in the **PJSE Bank "Finance and Credit"** case.

The Defendant was properly served, and the default Judgment properly obtained in accordance with the rules.

There is no restriction under CPR Part 12 or 13 as to the manner in which service must have been effected in order for default judgment to be obtained

The Decision

The Judge stated:

"The decision and reasoning of the Chancellor in the PJSE Bank case, applies directly to this case. It legitimises service on a company director but in the capacity of an individual not corporate person under section 1140 of the 2006 Act at the company address until 14 days after that address is cancelled at Companies House.

Contrary to Ms Perselli's attractively put submissions, there is no limit to the purpose for which that service can be effected, whether it be of a claim in tort, contract, debt or other proceedings. Nor is there any basis for

excluding that mode of service where default judgment is sought. The rules do not so provide expressly and I decline to read into them any implied exclusion for default judgment.

There is nothing unfair about using section 1140 to serve a claim which is then subject to a default judgment. A company director making use of the privilege of incorporation in this country must also accept the burdens and other consequences of that. That means monitoring receipt of documents at the given address while it is in use for the company and for 14 days thereafter.

It was up to the defendant to do that. It is not the claimant's concern if she failed to do so, any more than it would be if she had been served at her home and had not bothered to open the envelope containing the claim documents before a default judgment was obtained. In both cases, the served party is unaware of the claim until after judgment. In neither case is that unfair".

Thoughts

Well worth being aware of Section 1140 of the Companies Act 2006 where the party to be served is a director or company secretary but otherwise evasive. It doesn't matter that the documents to be served are not related to that person's position in the company.