

Desirability of proceeding against all defendants in the same jurisdiction takes libel claim over section 9 jurisdiction hurdle (Soriano v Forensic News)

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TMT analysis: This judgment follows the second hearing of the claimant's application for permission to serve proceedings out of the jurisdiction, which relates to the claim against the sixth defendant in the proceedings. The application was refused in relation to the misuse of private information claim, but granted in relation to the defamation proceedings. Although the claimant failed to demonstrate that England and Wales is a more appropriate place to bring the action than Washington, USA, permission was granted in the light of the fact that the claims against the first to fifth defendants are proceeding in England. Written by Mathilde Groppo, associate at Carter-Ruck Solicitors.

Soriano v Forensic News LLC and others [\[2021\] EWHC 873 \(QB\)](#)

What are the practical implications of this case?

The decision provides a helpful summary of the three-step approach that is taken in assessing whether the court has jurisdiction to hear media claims brought against foreign defendants, and the factors to be considered when determining whether England and Wales is clearly the most appropriate jurisdiction to hear the claim. This is of particular importance following the UK's exit from the EU, because this approach will now apply to all international libel claims in which a claimant chooses to sue a defendant domiciled outside the UK.

Applying principles derived from previous cases providing guidance on this issue, the case sets out the three questions that need to be considered:

- whether there is a jurisdictional gateway under [CPR PD 6B](#)
- whether there is a serious issue to be tried (with a test which mirrors that of the summary judgment jurisdiction in [CPR 24](#): the existence of a real, as opposed to a fanciful, prospect of success on the claim), and
- whether England and Wales is *forum conveniens* (with [section 9](#) of the Defamation Act 2013 ([DA 2013](#)) being conceptualised as a special rule for *forum conveniens* in libel actions only)

As regards the issue of *forum conveniens*, the judgment reiterates that this is a 'multifactorial question' which is 'fact specific', and restates the factors that are relevant to that assessment derived from existing libel cases considering the issue of jurisdiction. It also goes beyond the existing list of factors, drawing on *Spiliada Maritime Corp v Cansulex Ltd*, *The Spiliada* [\[1987\] AC 460](#)-a case which considered the issue of jurisdiction outside the context of libel proceedings-and [DA 2013, s 9](#), as it weighs in the balance the 'efficiency, expedition and economy' of two cases being tried in the same jurisdiction.

What was the background?

The claimant is a dual British and Israeli citizen who has been a resident in the UK since 2003 and acquired British citizenship in 2009.

He has issued proceedings against six defendants, including a US-based investigative journalism website, its owner and various contributors (the first to fifth defendants, all of whom are US residents),

and a blogger (the sixth defendant, who is also a resident of the US). The claimant complains about various online publications, two of which were posted by the sixth defendant on his blog, which 'focusses on the perceived excesses of the Israeli national security state'. The claims in relation to these publications are for libel (for allegations involving the making of illegal arrangements for various individuals including corrupt oligarchs and the Israeli Prime Minister, and the hiring of hackers to spy on his client's enemies) and for misuse of private information (in relation to the publication of two photographs of the claimant).

As the defendants to the proceedings are all domiciled in the US, the claimant applied for the court's permission to serve proceedings on them pursuant to [CPR 6.36](#). This was the second hearing of the claimant's application.

The first hearing proceeded in relation to the first to fifth defendants only (*Soriano v Forensic News LLC and others* [\[2021\] EWHC 56 \(QB\)](#); see News Analysis: [High Court considers extra-territorial scope provisions of the EU GDPR \(Soriano v Forensic News\)](#)). Due to a number of procedural difficulties, the sixth defendant did not appear and was not represented at the first hearing, but the judge declined to proceed against him in his absence. The second hearing, which took place after the hand down of the judgment which followed the first hearing, was the same hearing of the claimant's application for permission to service proceedings out the jurisdiction, but only insofar as it related to the sixth defendant.

The hearing also involved a preliminary application issued by the sixth defendant for relief from sanctions which followed his failure to serve his evidence in accordance with the CPR and the court's directions.

What did the court decide?

Application for relief from sanctions

This application was granted, such that the sixth defendant was permitted to rely on his evidence. The judge, applying the test in *Denton v TH White Ltd* [\[2014\] EWCA Civ 906](#), found that the breach (the sixth defendant's delay in serving his evidence) was serious and significant and that there had not been a good reason for the breach. However, he considered that the claimant shared the responsibility for the procedural confusion, that he had been in a position to respond to the sixth defendant's evidence (and had done so) and in fact that he positively relied on parts of that evidence which was relevant and addressed some evidential gaps.

The judge also granted permission to rely on the evidence of a US lawyer exhibited to the claimant's evidence, which was expert evidence as to the law in the state of Washington, although it did not comply with the procedural requirements of a written expert report. He did so on the grounds that it would have been disproportionate, unnecessary and contrary to the overriding objective to require that it be re-served in a form that complies with those requirements.

In reaching his decision, the judge must have been alive to the fact that the absence of any such evidence was criticised in the judgment given in relation to the first hearing of the application, on the basis that it made it 'impossible to make any meaningful comparisons [with the position the claimant would face in England]'.

Application for permission to serve out—libel proceedings

The sixth defendant conceded that the jurisdictional gateway relied on by the claimant (a tortious claim for damage sustained in the jurisdiction: [CPR PD 6B, para 3.1\(9\)\(a\)](#)) applied.

The sixth defendant disputed that the publications bore the meanings pleaded by the claimant, and that the publications had caused him serious harm. The judge declined to reach a concluded view on these points, noting that the claimant only had to show that he had 'a real prospect of establishing serious harm'. He described this as a 'relatively low burden' and considered this had been surmounted on the totality of the material that had been adduced.

On the issue of *forum conveniens*, the judge considered various factors:

- the number of publications and the higher ratio of publication in the US as opposed to the UK
- the absence of clear evidence as to the damage to the claimant's reputation in the UK

- the fact that the publications targeted primarily an Israeli and US audience
- the expert's evidence that an action in Washington could encompass a claim for damage sustained in England and Wales, but that a judgment given by an English court is unlikely to be enforceable in the US)

In the light of this, he considered that if the claim was to be seen in isolation, then permission to serve out should be declined. However, he noted that on the facts of the case this claim could not be seen in isolation, and that in the light of the fact that the claims against the first to fifth defendants are proceeding in England and Wales, it was desirable for the claim against the sixth defendant to be brought in the same place. He therefore granted permission to serve out in relation to the libel proceedings.

Application for permission to serve out—misuse of private information proceedings

The judge declined permission to serve out in relation to the misuse of private information proceedings. Although the jurisdictional gateway in [CPR PD 6B, para 3.1\(21\)\(a\)](#) applied, the second limb of the test failed because the claimant had failed to establish a good arguable case that he had sustained distress and/or alarm as a result of the publication, by the sixth defendant, of the two photographs complained of. This was because the photographs were first published in another, older publication (which is being complained of as against the first to fifth defendants and which resulted in mass public dissemination) and the claimant had not provided any evidence that he suffered distress and/or alarm as a result of their further publication in the sixth defendant's article, beyond that which he had already sustained as a result of their original publication.

Case details

- Court: Media and Communications List, Queen's Bench Division, High Court of Justice
- Judge: Mr Justice Johnson
- Date of judgment: 13 April 2021

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