IN THE COURT OF APPEAL, CIVIL DIVISION

REF: **A4/2019/2927**

GURIEV –v– GORBACHEV

ORDER made by the Rt. Hon. Lord Justice FLAUX

On consideration of the appellant's notice and accompanying documents, but without an oral hearing, in respect of an application for permission to appeal against the Order dated 29 November 2019 ofHHJ Pearce sitting in the Circuit Commercial Court in Manchester declaring that service of the Claim Form was properly effected upon the applicant by way of personal service on 19 October 2018

Decision:

Application for permission to appeal refused.

Reasons

1. Contrary to Ground 1 the judge correctly stated and applied the three limb test laid down by the Supreme Court in *Brownlie* and *Goldman Sachs* as explained and elucidated by this Court in *Kaefer v AMS Drilling* [2019] EWCA Civ 10; [2019] 1 WLR 3398. In relation to issue (i) whether the process server correctly identified the applicant as the person to be served, the judge found in favour of the respondent on the basis of the video footage, so that the respondent had the better of the evidence on that issue. Likewise on issue (iv) whether the documents had been left sufficiently near the applicant, the judge found in favour of the respondent on the basis that the video footage was clear. In the case of both those issues the judge thus applied correctly the three limb test, in particular limb (ii). In relation to issue (ii) whether the applicant knew the process server was trying to serve him and (iii) whether the applicant had sufficient knowledge of the nature of the documents, the judge could not say on the basis of the contested evidence before him who had the better of the argument but concluded that there was a plausible, albeit contested, evidential basis for the respondent's case. Contrary to the applicant's contention in his skeleton argument, this was not an unjustified dilution of the good arguable case test but was the proper application of limb (iii) as explained by Green LJ at [79]-[80] of *Kaefer*.

2. There is no other compelling reason for permission to be granted on this Ground as suggested in the applicant's skeleton argument at [54] given that the good arguable case test in jurisdiction cases has been considered by appellate courts three times in the past two years. To the extent that the applicant is suggesting that the test might be applied differently in cases of personal service within the jurisdiction, that would in fact lead to the application of a less stringent good arguable case test (as shown by the reliance by Phillips J in *Tseitline v Mikhelson* [2015] EWHC 3065 (Comm) at [37] on what was said by Longmore LJ in *Kazakhstan Kagazy v Arip* [2014] EWCA Civ 381 at [25] (a freezing injunction case where a less stringent test clearly applies). The respondent would clearly have satisfied a less stringent test. In any event, any suggestion that a different test should apply is inconsistent with what Lord Sumption JSC said at [9] in *Goldman Sachs* about the three limb test determining issues about jurisdiction.

3. Ground 2 suggests that the judge made findings that there was a conspiracy to deceive the Court and findings of dishonesty on the part of the applicant and his witnesses. This is simply wrong. The judge's conclusion applying limb (iii) was only that there was a plausible, albeit contested, basis for the respondent's case. To the extent that the applicant is inviting this Court to revisit and re-evaluate the evidence, that is not permissible: see [95] of the judgment of Green LJ at *Kaefer* which reiterates a well-established limitation on the function of the Court of Appeal.

4. Contrary to Ground 3, the judge did not apply the wrong legal test in relation to issue (iv). He correctly stated at [27](vii) the *"dominion"* test set out by Waite LJ in *Nottingham Building Society v Peter Bennet Co* (1997) and then applied that test at [60] to [66]. To the extent that the applicant is inviting this Court to interfere with the judge's conclusion based upon his close evaluation of the evidence, particularly the video footage, that is an impermissible exercise for the reason given in [3] above.

5. Despite the ingenuity of the applicant's skeleton argument, the proposed appeal has no real prospect of success and there is no other compelling reason for this Court to hear the appeal.

By the Court

Signed:
Date: 22 January 2020

Notes

(1) Rule 52.6(1) provides that permission to appeal may be given only where –
   a) the Court considers that the appeal would have a real prospect of success; or
   b) there is some other compelling reason why the appeal should be heard.

(2) Where permission to appeal has been refused on the papers, that decision is final and cannot be further reviewed or appealed. See rule 52.5 and section 54(4) of the Access to Justice Act 1999.

(3) Where permission to appeal has been granted you must serve the proposed bundle index on every respondent within 14 days of the date of the Listing Window Notification letter and seek to agree the bundle within 49 days of the date of the Listing Window Notification letter (see paragraph 21 of CPR PD 52C).

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DATED 22ND JANUARY 2020
IN THE COURT OF APPEAL

ORDER

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