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PUBLIC INSTITUTION FOR SOCIAL SECURITY v AL RAJAAN [2025] EWCA Civ 1505, [2025] 11 WLUK 382

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EXECUTIVE SUMMARY

The Court of Appeal upheld a decision joining four children who were the heirs of a deceased defendant ('the Appellants') as parties to proceedings against the deceased, and for service out of the jurisdiction upon them as "necessary or proper" parties.

The Court found that successors under a foreign system of law can be joined as parties to a claim for the purposes of binding them to declaratory relief against the deceased on the question of liability. This was held to be the case even where there is an English personal representative named as a defendant to the proceedings. The children were the heirs of the deceased and it was necessary and proper for them to be joined as parties under CPR PD 6B para.3.1(3)(b), where there was prospective enforcement against assets in Switzerland which would otherwise belong to them.

BACKGROUND

The Appellants appealed an order made by Jacobs J dismissing their challenge to the Court's jurisdiction in respect of the claim of the respondent institution ('the Respondent') against the deceased's estate.

The Respondent had alleged that the deceased, who was its former director general, had abused his position to secure payment of secret commissions to himself and others. The deceased had been domiciled in Switzerland but had submitted to the jurisdiction and had defended the claim until his death. The Respondent anticipated that the English assets would be insufficient to satisfy the judgment debt and that it would need to enforce the judgment against the Swiss assets.

The Respondent accepted that the Appellants were all resident outside the jurisdiction and, therefore, required permission to serve the claim form upon them out of the jurisdiction. The Respondent had been granted permission to serve the Appellants out of the jurisdiction on a without notice application. It sought to join the Appellants under CPR PD 6B para.3.1(3)(b) (Gateway 3) on the basis that they were a "necessary or proper party to the

claim” because they were their father’s heirs and it would seek to enforce any judgment obtained against the estate.

The bases of the joinder were twofold. First, the “Enforcement Basis”, which was to be regarded as a claim for purely declaratory relief against the heirs, namely a declaration as to the liability of the deceased (at [19]). Second, the “Substantive Basis”, which would involve a money judgment against the heirs.

The Appellants contended that they could not be made defendants to the claim merely because they were the deceased’s successors under Swiss law, and that the only proper defendant was the deceased’s personal representative who was the administrator of his English estate and whose authority was limited to assets in England. The Appellants’ challenge and appeal assumed that the deceased was domiciled in Switzerland at the time of his death, where most of his assets were located.

Dismissing the application to challenge the Court’s jurisdiction and to set aside service of the claim form, the learned judge found that where the heirs were closely associated with the deceased and where there was prospective enforcement against assets in Switzerland which would otherwise belong to them, it was necessary and proper for them to be joined as parties to the present proceedings, so as to ensure that they were bound by the result. Absent joinder, the Respondent would potentially have to surmount a substantial obstacle to enforcement in Switzerland.

JUDGMENT

The Court of Appeal dismissed the appeal against service out on the heirs solely on the Enforcement Basis. The reason for the joinder was said to be the desirability of their being bound to the outcome of the issue between the claimant and the deceased person (at [34]), and the fact that that issue should only be determined once (at [32]). Importantly, that outcome would apply to proceedings entirely within the jurisdiction (at [34] and [36]).

THE RESPONDENT’S EXPERT EVIDENCE ON SWISS LAW WAS UNCHALLENGED:

Swiss law followed the principle of universal succession. The heirs, as a group, jointly assumed the deceased’s legal position pertaining to assets and liabilities. All heirs were jointly and severally liable for the debts. The deceased’s estate did not have legal personality and could not be sued.

Owing to the principle of joint ownership of the estate assets, any judgment had to be binding on all the individuals who owned the estate to enforce the judgment against those assets in Switzerland. If a judgment was only against “the estate”, from a Swiss perspective it was not binding on the heirs. If judgment was against one heir only, it could be enforced

only against that heir and their quota of the estate. If judgment was against all the heirs, it bound the whole community of heirs and the entirety of the estate assets could be used to satisfy it.

Under Swiss private international law, a defendant's domicile or habitual residence at the time of filing the claim was decisive. Accordingly, the fact that heirs succeeding a deceased defendant in English proceedings might not have been domiciled in England when the Court reached its decision would not prevent recognition and enforcement of the judgment in Switzerland so long as, from a Swiss law perspective, the English court had jurisdiction over the deceased.

The principle of universal succession applied to procedural particularities, such as the rules relating to jurisdiction, that applied to the deceased. Therefore, if court proceedings had been initiated against the deceased before their death and the court had jurisdiction over the deceased, the court continued to have jurisdiction over the deceased's heirs (at [12]-[15] of the Judgment).

NECESSARY OR PROPER PARTIES

The Court of Appeal applied the test in *Altimo Holdings and Investment Ltd v Kyrgyz Mobil Tel Limited* [2011] UKPC 7, [2012] 1 WLR 1804 and found that the learned judge's decision was correct for the reasons he gave. Given that the Appellants declined either to admit that the deceased was liable to the Respondent as alleged or to accept the English Court's determination of that liability, the same issue arose as between the Respondent and the Appellants as between the Respondent and the estate, namely whether the deceased was liable to the Respondent as alleged. That issue would only become material as between the parties if and when the respondent attempted to enforce any English judgment against the appellants in Switzerland, but nevertheless the issue remained the same. That issue should be determined only once. Given that it would be determined as between the Respondent and the estate in proceedings properly instituted in this jurisdiction for that purpose, it should also be determined as between the parties in the same proceedings. If the Appellants were present in this jurisdiction, it would be proper for them to be joined as defendants pursuant to CPR r.19.2(2)(b) to enable the issue of the deceased's liability to be determined. It followed therefore, that the Appellants were proper parties to the claim within Gateway 3. That conclusion was reached starting from first principles but was also consistent with *Commercial Bank of Dubai PSC v Al Sari* [2024] EWHC 3304 (Comm), [2024] 12 WLUK 391 ([32]-[36]).

Arnold LJ rejected the arguments that this was contrary to principle because (a) it involved the Court collapsing the distinction between administration and succession where under English domestic and conflict rules no succession had or could take place, or (b) because it breached the principle that foreign personal representatives could not be sued in England (at [32]-[36]). He reasoned that no such collapse had occurred because the heirs could still seek to disclaim their inheritance.

COMMENTARY

The Judgment provides useful guidance on the approach of the Court to the issue of both joinder and service on heirs resident outside the jurisdiction of England and Wales in a dispute involving the estate of deceased persons.

The Judgment is also helpful as it gives a succinct overview of the principles of English law distinguishing between the administration of an estate and succession in the context of a cross-border dispute at [23] to [29].

The Court of Appeal declined to deal with the “interesting arguments” on which the appellants “might have more traction” concerning whether “substantive relief” (i.e., a money judgment) could be awarded against the heirs (at [37]). It will be interesting to see how the law develops in this area in subsequent authorities.



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