Neutral Citation Number: [2025] EWHC 1647 (Comm)

Case No: CL-2024-000694

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
KING'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice
Rolls Building, Fetter Lane,
London, EC4A 1NL

Date: 30/06/2025

Before:

THE HONOURABLE MR JUSTICE HENSHAW

- -

Between:

AAA	**Claimant**
- and -	
(1) BBB (a company incorporated and registered in Curaçao)	**Defendant**
(2) CCC (a company registered in Cyprus) **(3) DDD (a company registered in the Marshall Islands)** **(4) EEE (a limited partnership registered in Scotland)** **(5) FFF (a company registered in Latvia)** **(6) GGG (a company registered in Latvia)** **(7) HHH (a company registered in the Isle of Man)** **(8) III** **(9) JJJ** **(10) KKK** **(11) LLL** **(12) MMM** **(13) NNN**	**Non-cause of action Defendants**

- -

Kamen Shoylev (instructed on a public access basis) for **AAA**
Faisal Osman (instructed by **Quinn Emanuel Urquhart & Sullivan UK LLP**) for **BBB**
Niranjan Venkatesan KC and **Moritz Grimm** (instructed by **PCB Byrne LLP**) for the **Second, Seventh and Eleventh to Thirteenth Non-cause of action Defendants**

Hearing date: 23 May 2025
Draft judgment circulated to parties: 23 June 2025

Approved Judgment

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Mr Justice Henshaw:

(A) INTRODUCTION

1. This is the return date for a worldwide freezing order ("***WWFO***") obtained by the Claimant at a without notice hearing on 7 February 2025, in aid of a Latvian-seated arbitration between the Claimant and the Defendant ("***BBB***"), pursuant to section 44 of the Arbitration Act 1996 ("***the Act***").

2. BBB applies (i) to set aside the claim form, (ii) to set aside an order made by Dias J on 16 April 2025, on the papers, extending the time for serving the claim form, and (iii) to discharge the WWFO.

3. BBB's application to set aside the WWFO was made on five grounds: (1) lack of jurisdiction on the basis that the claim form had expired; (2) lack of jurisdiction under section 44 of the Act; (3) failures to satisfy the requirements for a freezing order test; (4) material non-disclosure, and (5) breaches of the Claimant's undertakings. However, the court made a case management decision prior to the hearing to address ground (a) first, and that ground was the subject of the hearing before me on 23 May 2025. Ground (1) itself has three elements, with BBB alleging that:

    i) the one month deadline for serving the claim form had expired before the WWFO was obtained and BBB was served;

    ii) the court had no jurisdiction, on the facts, to extend the time for serving the claim form retrospectively; and

    iii) there was a concealment of material facts in the extension application.

4. In addition, the Second, Seventh and Eleventh to Thirteenth non-cause of action Defendants ("***the CCC Defendants***") contend that the WWFO should be set aside as against them due to the expiry of the claim form and, in any event, on the grounds that (a) they are not parties to the arbitration agreement between the Claimant and BBB, and (b) the court has no power under section 44 of the Act or Practice Direction 6B § 3.1(3) to grant a freezing order against a non-party to the arbitration agreement.

5. For the reasons set out below, I have come to the conclusions that time for serving the claim form had expired by the time the WWFO was granted and by the time the claim form was purportedly served; the grounds for a retrospective extension of time were not, and are not, made out; and the Claimant failed to disclose material facts on the

extension application. Accordingly, the claim form and the order purporting to extend the time for serving it must be set aside, and the WWFO must be discharged.

(B) MAIN FACTS

6. The underlying dispute arises from a Software License Agreement ("***SLA***") dated 20 May 2019 between the Claimant and BBB, concerning an online casino platform called [C]. By the agreement, BBB agreed to provide white-label online casino services to the Claimant on a revenue-sharing basis (the details of which are disputed). The business relationship continued for over four years. Then on 21 June 2023 the Claimant purported to terminate the SLA with effect from 21 September 2023. However, it appears that the Claimant then requested postponement of termination of the SLA, and there was a period of a little over a year during which the parties corresponded about and discussed the way forward. Eventually, on 23 January 2024, BBB itself sent a notice purporting to terminate the SLA.

7. On 26 January 2024, the Claimant's legal representatives New Balkans Law Office ("***NBLO***") served a notice to arbitrate on BBB. However, matters appear to have moved slowly because, in his affidavit dated 25 November 2024 in support of the application for a WWFO, Mr X (Chief Legal Officer of the Claimant's Group, of which the Claimant is the founder and major shareholder) said only that the Claimant *"expects imminently to refer the claims to arbitration in Latvia"* (§ 58).

8. The merits of the underlying claim are not a matter for the present application. It is sufficient to record that the claims are disputed. The Claimant alleges that he is owed approximately €11.28 million by BBB. BBB contends that the sum claimed has either (as to €6.33 million) already been paid to the Claimant or at his direction, or (as to €4.95 million) is not due to the Claimant because it was used to discharge legitimate operational expenses. BBB also claims to have a counterclaim for €24,702,766.

9. Mr X on 25 November 2024 swore his first affidavit, in support of an application for a WWFO pursuant to section 44(3) of the Act. The arbitration claim form was prepared with a statement of truth, signed by Mr Shoylev, dated 11 December 2024.

10. On 13 December 2024 the Claimant's representative uploaded to CE-file his application notice and Mr X's affidavit seeking a WWFO, and asked when the application could be heard. The same day, the listing office responded asking for a hearing bundle, skeleton argument, and reading and hearing time estimates.

11. The claim form and the application notice were sealed on 18 December 2024. Pursuant to CPR 62.4(2), it was required to be served within one month of its date of issue, i.e. by 17 January 2025.

12. On 23 December 2024, Mr Iordache of NBLO (with Mr Shoylev in copy) told the listing office that the claim had now been issued, provided a link to the skeleton argument and hearing bundle, and gave reading and hearing time estimates. (After circulation of the draft judgment, Mr Shoylev informed the parties and the court that NBLO, which is not on the record for the Claimant in these proceedings, is the trading name of a Bulgarian Law Firm, Kamen Shoylev Law Firm, to which he is affiliated in his capacity as a Bulgarian advocate and separately from his membership of the Bar of England & Wales. NBLO is not, and could not be, instructed to conduct litigation in England.

However, Mr Shoylev uses NBLO's email servers for his email correspondence, and has on occasion been assisted in an administrative capacity by certain NBLO staff including Mr Iordache. The Defendants take issue with some of this. However, it is unnecessary for the purposes of the present judgment to consider the matter further.)

13. In his first witness statement dated 18 May 2025, in response to BBB's present applications, Mr X provides this explanation of the events of December 2024 and January 2025:

> "12. Counsel for [AAA] originally filed the application notice and evidence in support of the Freezing Order on 13 December 2024 and requested a listing of the application as soon as possible on the same date. This filing was rejected at 5 pm on 16 December 2024 due to what was said by CE File to be an incorrect fee payment where the fee paid had been the fee payable for the issue of an application notice only. The application was filed once again on 18 December 2024 and rejected with the following explanation from the Court:
>
> > 'for pre-action injunction applications, the Judges in Charge of the Admiralty and Commercial Courts [had] directed that from now on, a claim form must be submitted alongside the application notice'.
>
> A third filing was made on the same day, 18 December 2024. Following correspondence from Ms Pathan on behalf of the Court on 19 December 2024 in which she required corrections to the submitted claim form (one of which corrections was acceded to and the other resisted) on penalty of rejection of the submitted arbitration claim form rather than its being issued. Still, the arbitration claim form was apparently issued on 19 December 2024, with a seal date backdating it to 18 December 2024 (**Arbitration Claim Form**).
>
> 13. In correspondence with the Court offices (including the Commercial Court Listing Office) starting from 13 December 2024, counsel for [AAA] sought to ensure the listing of the application. In particular, he did so by responding to a request for a reconfirmation of the time estimate for the expected hearing and highlighting the submission of a skeleton argument upon the Court's request. On 23 December 2024, the Listing Office proposed that the case was likely not suitable for listing before a King's Bench vacation Judge and the representative of [AAA] agreed and requested to list the hearing for the first available date after the start of Hilary Term. A message by the Listing Office on 2 January 2025 was to the effect that *"to list an application, the listing office needs counsels' clerks from all sides to email the inbox to fix in accordance with the lead times"*. The clarification that the application was without notice was made the same day on behalf of [AAA]. The Court followed up further with a request to attend Court 37 for an out of hours Judge to hear the matter by the Listing Office. On behalf of [AAA] it was said in reply that:

> 'While the matter is of some urgency (as otherwise an application without notice would not be appropriate), we have determined that the hearing of the application out of hours would not be necessary.'

14. In further correspondence on the same day, the Listing Office requested a bundle and agreement between "counsels' clerks", alternatively requested approach on behalf of counsels' [sic.] clerks (and explained that the matter will in due course be referred to a Judge to fix the date).

15. While there was no further response from the Listing Office between 2 and 13 January 2025, [AAA] expected this time was needed to give the Court's staff the opportunity to further review the listing request and bring it to the attention of a Judge for the review indicated by the Listing Office as above. On 13 January 2025, the Claimant wrote, reiterating his requests for a listing. In response, the Senior Listing Officer convened a telephone call. During the ensuing call with staff acting for counsel for [AAA], I am informed that the Court's representative covered the ground of why [AAA] had not insisted on a hearing in the KBD during the judicial vacation; re-confirmed the urgency of the hearing and tentatively offered (possibly based on judicial input) the date of 7 February 2025 for the hearing. Counsel for [AAA] wrote to the Senior Listing Officer immediately following the call with him.

16. In view of the fact that he had not put forward evidence of immediate dissipatory steps and had relied on ease of dissipation and the liquidity of the respondents' assets as factors going to urgency and of the need to coordinate with respect to the parallel application for an injunction in Cyprus, it did not appear to [AAA] to be an appropriate use of court resources to seek a vacation listing or a listing with extreme expedition. At the same time, [AAA] expected a listing as soon as practicable and had been very hopeful that one would have been offered either between 2-13 January 2025 or at any rate immediately after the resumption of judicial term on 13 January 2025.

17. In the event, following further correspondence with counsel for [AAA], the listing office eventually confirmed on 16 January 2025 that the application would be listed for a hearing on 7 February 2025."

14. Paragraph 13 of that evidence includes the statement that *"[o]n 23 December 2024, the Listing Office proposed that the case was likely not suitable for listing before a King's Bench vacation Judge …"*, which may give the impression that the Listing Office persuaded the Claimant that the matter was not urgent. The Listing Office in fact said, in an email of 24 December 2024:

> "The Court is currently in vacation and no Commercial Court judges are available until Monday 13th January, when the next term starts.
>
> As you have taken two weeks to respond with the hearing bundle this is presumably not sufficiently urgent for a vacation judge sitting in King's

> Bench to hear. If so can you confirm what you are requesting as to when you would like the application listed for a hearing."

The point being made was, accordingly, that the Claimant did not appear to have been pursuing the matter with urgency, so it was assumed not to be urgent. The Claimant responded requesting a hearing *"as soon as there is availability after the commencement of the new term"*. The new Term began on 13 January 2025.

15. On 2 January 2025 Mr Iordache (with Mr Shoylev in copy) reminded the court that the application was being made without notice. The Listing Office responded: *"If this is an application without notice, currently we do not have any judges as it is vacation to hear the matter if a hearing is needed for this week or next week. Parties will need to go to court 37 in the RCJ for an out of hours judge to hear the matter."* Mr Iordache (with Mr Shoylev in copy) replied:

> "We are aware that the court is currently in vacation. While the matter is of some urgency (as otherwise an application without notice would not be appropriate), we have determined that the hearing of the application out of hours would not be necessary. Our request earlier today that the matter be listed as soon as possible after 13 Jan was made on that basis.
>
> If this is a workable starting point, we would be grateful if we could have a date in the light of the above."

16. The hearing was in due course fixed for 7 February 2025. In the meantime, the time for serving the claim form expired on 17 January 2025.

17. The application for a WWFO was heard on 7 February 2025.

18. The Claimant's evidence and skeleton argument in support of the WWFO pre-dated the issue of the claim form. The skeleton argument referred to the claim form as one of the suggested pre-reading items ("*if time permits*"), but at the hearing on 7 February 2025 the court's attention was not drawn to the fact that the claim form (which the Claimant was seeking permission to serve out of the jurisdiction) had expired 21 days previously.

19. Further, no steps had been taken to serve the claim form since its issue. Mr X in his 1st witness statement says:

> "This will be primarily a matter for submission, but [AAA]'s position is that he could not reasonably have been expected to take any steps towards service of the Arbitration Claim Form before 13 February 2025. One reason in support of this is that serving the Arbitration Claim Form prior to the hearing listed for 7 February 2025 (and subsequently before 13 February 2025 when the Freezing Order was sealed) would have defeated the purpose of a without notice application. This view was consistently taken by [AAA] subsequently."

20. The WWFO was sealed on 13 February 2025. Schedule B to the WWFO included an undertaking to serve the claim form and other documents *"as soon as practicable"*. However, no steps appear to have been taken in connection with service of the claim

form until 28 February 2025, when the Claimant contacted the Foreign Process Section ("***FPS***") about service of the claim form and the WWFO (the latter having been informally notified to BBB and various third parties in the meantime).

21. On 25 March 2025, the FPS pointed out that the claim form had expired, and asked whether the Claimant had a court order extending it. Mr Iordache (with Mr Shoylev in copy) replied the same day:

> "Thank you for the below. This response is on behalf of Mr Shoylev.
>
> The arbitration claim form in question was filed solely in order to enable making an application without notice for a freezing injunction in support of a foreign arbitration.
>
> The basis for effecting service is the order of Mrs Justice Dias dated 13 February 2025 (included in the service pack) which requires that service of the order and the associated documentation (set out in paragraph 4 of Schedule B to the order) on the respondents be effected as soon as possible and grants permission for service out.
>
> In these circumstances, we take the view that there is no need for the extension of the arbitration claim form - serving it before the order of 13 February 2025 was made would have been out of the question, as the application was without notice."

22. Similarly, on 27 March 2025 Mr Iordache (with Mr Shoylev in copy) told the FPS that they were *"not seeking to effect any standalone service of the arbitration claim form"*. It is evident from those responses that the Claimant's representatives failed to understand (i) the significance of the claim form, as the document based on whose service the court's jurisdiction was founded, and (ii) the mandatory requirement to serve the claim form within one month of its issue.

23. The claim form was purportedly served on BBB by a process server on 26 March 2025, ten weeks after it had expired.

24. On 28 March 2025 the FPS returned to the Claimant the documents which he had (through his representative) requested to be served, indicating that their in-house lawyer had stated that an extension order was needed before the FPS could serve the Claimant's documents. That letter appears to have been received on 1 April 2025. Mr X says in his 1st witness statement that it is only on receipt of that communication that he *"identified a possible need to apply for extension of time in respect of the Arbitration Claim Form"*. However, it is clear from the email correspondence referred to in § 21 above (to which Mr X also refers in his witness statement) that the Claimant's representative knew by 25 March 2025 that the claim form had expired.

25. On 9 April 2025, the Claimant issued an application for, among other relief, *"[e]xtension of the period for service of the arbitration claim form issued on 18 December 2024 pursuant to CPR 62.4(2)"*. As indicated in §§ 38-40 below, that was the incorrect provision. The evidence in support of the application did not draw attention to the applicable requirements set out in CPR 7.6. It did not explain (a) when the claim form had expired, (b) what, if anything had been done to serve it before its

expiry; (c) what, if any, difficulties the Claimant had with serving during the one-month period; (d) what had been done to resolve those difficulties, or (e) the basis upon which it could be said that the Claimant had made the extension application promptly. The only evidence that touched upon the question of the time for serving the claim form was as follows:

> "[18] I understand that on 28 March 2025, the FPS informed counsel for [AAA] by letter that service of the 13 February Order and associated documentation cannot be effected on SGS Technologies Ltd in the Isle of Man pursuant to Article 5 of the Hague Convention unless an extension of time for the service of the arbitration claim form issued on 18 December 2025 is obtained.
>
> [19] While [AAA]'s position had been that given the service of the arbitration claim form was as a supporting document to the 13 February Order and that therefore such an extension had not been required, to the extent that an extension of the period of validity of the said arbitration claim form is required to enable [AAA] to comply with his obligation to effect service pursuant to the 13 February Order, [AAA] applies for the extension of the period of service of the arbitration claim form prescribed in CPR 62.4(2) such that the claim form may be served for twelve months since its date of issue or such other period as the court may see fit." (X 3, §18 and 19)

26. The extension application was granted, on the papers, on 16 April 2025, some 13 weeks after the claim form had expired.

(C) PRINCIPLES

27. An application to set aside service of an expired claim form has to be made as a jurisdictional challenge under CPR 11(1)(b): see *Joe Macari v Chequered Flag* [2021] EWHC 3175 (QB):-

> "[61] However, the CPR scheme also provides for its own method as to how a defendant who wishes to assert that a Claim Form has been served out of time should seek to prevent the court proceeding with the Claim, being under CPR 11."

See also *Hoddinott v Persimmon* [2007] EWCA Civ 1203:-

> "[22] In our judgment, CPR r11 is engaged in the present context. The definition of jurisdiction is not exhaustive. The word jurisdiction is used in two divergent senses in the Civil Procedure Rules. One meaning is territorial jurisdiction. This is the sense in which the word is used in the definition in CPR r2.3 and in the provisions which govern service of the claim form out of the jurisdiction: see CPR r 6.20 et seq. But in CPR r 11(1), the word does not denote territorial jurisdiction. Here, it is a reference to the court's power or authority to try a claim. There may be a number of reasons why it is said that a court has no jurisdiction to try a claim (CPR r 11(1)(a)) or that the court should not exercise its jurisdiction to try a claim: CPR r 11(1)(b) …It is no answer to say that

> service of a claim form out of time does not of itself deprive the court of its jurisdiction, and that it is no more than a breach of a rule of procedure, namely CPR r 7.5(2). It is the breach of this rule which provides the basis for the argument by the defendant that the court should not exercise its jurisdiction to try the claim…"

28. In the present case, BBB filed an acknowledgement of service contesting jurisdiction and brought this application pursuant to CPR 11(5).

29. The court approaches the question of jurisdiction afresh by considering whether CPR 7.6(3) has been satisfied: see *DDM v Al-Zabra* [2018] EWHC 346 at §62:-

> "The nature of a hearing to set aside an extension order and an appeal from a decision made at such a hearing were considered in *Hashtroodi v Hancock* [2004] EWCA Civ 652, §33): *"It is common ground that in the events which have occurred here, the appeal to this court is a rehearing, rather than a review of the decision of [the deputy master who considered the application to set aside the extension order of the Master]. This is because … an application under CPR 23.10(1) to set aside an order obtained without notice should involve a rehearing of the issue, and not a review of the decision that it is sought to set aside; but, in the present case, the deputy master conducted the application as if it were a review of the decision of [the Master]…""*

30. The general rule under r.7.5(2) is that "a claim form must be served within four months after the date of issue." However, a shorter period applies to arbitration claims, pursuant to CPR 62.4(2): "an arbitration claim form must be served within one month from the date of issue".

31. Extensions of the time for serving a claim form are dealt with in CPR 7.6:-

> "**Extension of time for serving a claim form**
>
> **7.6**
>
> (1) The claimant may apply for an order extending the period for compliance with rule 7.5.
>
> (2) The general rule is that an application to extend the time for compliance with rule 7.5 must be made—
>
> (a) within the period specified by rule 7.5; or
>
> (b) where an order has been made under this rule, within the period for service specified by that order.
>
> (3) If the claimant applies for an order to extend the time for compliance after the end of the period specified by rule 7.5 or by an order made under this rule, the court may make such an order only if—
>
> (a) the court has failed to serve the claim form; or

> (b) the claimant has taken all reasonable steps to comply with rule 7.5 but has been unable to do so; and
>
> (c) in either case, the claimant has acted promptly in making the application.
>
> (4) An application for an order extending the time for compliance with rule 7.5—
>
> (a) must be supported by evidence; and
>
> (b) may be made without notice."

The court retains a discretion to refuse to grant an extension even if the requirements are satisfied.

32. These are jurisdictional requirements, as the words *"only if"* indicate: the court has no power to extend the time when a claimant fails to show that they are satisfied (*Vinos v Marks & Spencer* [2001] 3 All ER 784 (CA) §20). That being so, the court cannot have an inherent jurisdiction to extend the time for serving a claim form without regard to the requirements set out in CPR 7.6.

33. In *Lacey v Palmer Marine Services Ltd* [2019] EWHC 112 (Admlty) it was made clear that if a claimant had failed to serve the claim form in time, an application under CPR r.7.6(3) was the only way to remedy the situation, and an application under CPR r.6.16 to dispense with service could not be used to circumvent this. The judge in that case quoted the statement of Neuberger LJ *in Kuenyehia v International Hospitals Group Ltd* [2006] EWCA Civ 21 that:

> "… the time limits in the CPR, especially with regard to service of the claim form where the limitation period may have expired, are to be strictly observed, and extensions and other dispensations are to be sparingly accorded, especially when applied for after the time has expired. While there may be exceptional cases, we consider that prejudice is only relevant in this sort of case to assist a defendant, where the court would otherwise think it right to dispense with service. In other words, prejudice to the defendant is a reason for not dispensing with service, but the absence of prejudice cannot usually, if ever, be a reason for dispensing with service" ([33])

34. In *Nanglegan v Royal Free Hampstead NHS Trust* [2001] EWCA Civ 127, Thorpe LJ stated that CPR 7.6(3)(b) "is clearly intended to cover cases where the person endeavouring to effect service has taken all reasonable steps, but his reasonable efforts have been frustrated by some near insuperable difficulty or obstacle". The Court of Appeal in *Kaur v CTP Coil Limited* [2001] C.P. Rep 34, §13 clarified that *"[r]ule 7.6(3)(b) is concerned with the actual process of service, and as to whether actual service has been reasonably attempted, not the preparation of documents"*, which was followed in *Dao v Falmouth* [2020] EWHC 609 (Ch) §37. Consistently with those statements, Lord Sumption, writing for the majority of the Supreme Court in *Barton v Wright Hassall LLP* [2018] UKSC 12, said:

> "I note in passing that if Mr Barton had made no attempt whatever to serve the claim form, but simply allowed it to expire, an application to extend its life under CPR r 7.6(3) would have failed because it could not have been said that he had taken all reasonable steps to comply with rule 7.5 but has been unable to do so" (§ 21).

(This may be contrasted with the position under CPR 7.6(3)(a), concerning service by the court, where the position is as set out in *Cranfield v Bridgegrove Ltd* [2003] EWCA Civ 656.)

35. The court should consider only steps taken within the relevant period, not subsequent efforts (*Carnegie v Drury* [2007] EWCA Civ 497 §36; *Dao v Falmouth* §28).

36. The Court of Appeal in *Aktas v Adepta* [2011] QB 894 noted the strictness of the requirements in CPR 7.6(3), and said at § 71:

> "… The negligence of a claimant's solicitor is no excuse. It is not a good reason for an extension, even where the extension is applied for in time. It is a bad reason, a reason for declining an extension. The strictness derives from the wording of CPR r 7.6(3) with its expressly limited reasons ("only if") for allowing an extension out of time, but also from the philosophy that time limits are to be strictly enforced. …"

37. The claimant has the evidential burden of showing that all reasonable steps were taken during the relevant period, and, for example, unexplained delays in locating a defendant will count against extension applications (*MB Garden Buildings Ltd v Mark Burton Construction Ltd* [2014] EWHC 431, §§ 57-59).

38. In CPR 7.6(3)(c), "*promptly*" means with "*all reasonable celerity in the circumstances"* (*Khan v Edgbaston* [2007] EWHC 2444, §§19-29). For instance, in *Joe Macari* a 4-week delay in applying was "*close to the borderline*", and an extension was justified only in the case's unique circumstances (§§52 and 120-121); and in *Chare v Fairclough* [2003] EWHC 180, the court held that 10 weeks was not prompt and would require exceptional circumstances (§30-31).

39. In *Al-Zahra (PVT) Hospital v DDM* [2019] EWCA Civ 1103, the Court of Appeal upheld Master Cook's decision to refuse a without notice, *ex parte* application for an extension on the papers, and made these observations:

> "…In the circumstances, I have concluded that the second order which was granted on the basis of the application notice alone, should be set aside on the basis the court was simply not provided with the required and/or sufficient information to enable it to understand why a further extension of time for service was being sought. This result seems to me to be supported by law, which I have referred to and which makes crystal clear that such applications should be properly supported by evidence which complies with the Rules. I also bear in mind the comments made by Cox J in the case of *Foran v Secret Surgery* [2016] EWHC 1029 (QB) to the effect that it is not good practice to submit such an application on paper and in circumstances where time limits are running out, such applications should normally be dealt with by way of an urgent hearing

> or on the telephone and at which the appropriateness of granting relief should be carefully considered (see paragraph 21 of her judgment)…" (§ 19)

40. CPR 62.4(2) states:

> "Unless the court orders otherwise an arbitration claim form must be served on the defendant within 1 month from the date of issue and rules 7.5 and 7.6 are modified accordingly."

41. The Claimant submits that this rule gives the court a general discretionary power to extend time for service of an arbitration claim form. No authority was cited either way on this point. I do not accept the Claimant's submission, for two reasons. First, rule 62.4(2) states that rules 7.5 and 7.6 are "*modified*" rather than replaced. That indicates an intention to retain rules 7.5 and 7.6, including the distinction drawn in rule 7.6 between applications made before and after expiry of the time for serving a claim form, and the conditions placed on both types of application, subject only to the replacement of the four-month period in rule 7.5 by the one-month period in rule 62.4(2). (The reference to modifying rule 7.6, in addition to rule 7.5, is explicable by the references in rule 7.6 to *"the period specified by rule 7.5"*.) Secondly, given the premium placed in the rules, and the law generally, on speed and finality in relation to arbitration applications, it would be surprising if the rule-makers had intended a less strict regime for extensions of time of arbitration claim forms than for claim forms in general. If anything, one would expect the opposite.

42. Even if that were wrong, I would conclude that any freestanding extension power conferred by rule 62.4(2) should be construed in the light of, and applied by reference to, the criteria set out in rule 7.6.

43. The Claimant also submits that the one-month period in rule 62.4(2) does not apply where the arbitration claim form has to be served abroad. There is no basis for any such distinction either in the wording of the rule, or in the case law, and it would cut against the policy of speedy finality in arbitration matters. Although service overseas sometimes, but not always, takes longer, that does not justify the introduction of gloss on the rules. Delays in service can be, and often are, addressed by the making of an in-time application under rule 7.6(2).

44. In addition, the Claimant submits that the court – in effect meaning the court's listing office or other staff – can impliedly extend the time for serving a claim form by dealings with the claimant of the kind which occurred in the present case regarding the listing of the WWFO application and the issue of the arbitration claim form. That submission is hopeless. The court's staff have no power to grant any such extension: the power to extend is conferred on the court, i.e. the judges and Masters of the High Court, and only in the circumstances set out in CPR 7.6.

45. Further, if and to the extent that the Claimant may be suggesting that Dias J impliedly extended the time for serving the arbitration claim form by granting the WWFO, that submission too is untenable. An extension can be granted only if the court satisfied itself, on the evidence, that the requirements of rule 7.6 are met (cf *MB Garden* §§ 24-26). Dias J did not do so, because her attention was not drawn to the fact that the claim

form had expired, nor to the requirements of rule 7.6, and there was no evidence before her that those requirements were satisfied.

46. Applicants for without notice relief owe a duty of utmost good faith to disclose all material facts (*Memory Corporation plc v Sidhu* [2000] 1 WLR 1443, 1454 F)). The test for materiality is objective, i.e. whether the fact might reasonably have affected the judge's decision *(Brink's Mat Ltd v Elcombe* [1988] 1 W.L.R. 1350, 1356–1357). The duty includes material facts not actually known to the Claimant but which he would have known if he had made such inquiries and checks as the court would reasonably have expected him to make in such a situation" (*ibid*. at 1357 H).

(D) APPLICATION

47. The facts and principles having been stated, the substance of the application can be addressed relatively shortly.

48. As a preliminary matter, the Claimant submits that the present applications should be dismissed because they were not issued within the 7-day period stated in Dias J's extension of time order. Further, it is submitted that BBB/the CCC Defendants have waived any right to challenge, citing *Hoddinott v Persimmon Homes (Wessex) Ltd* [2007] EWCA Civ 1203. The Claimant says informal notice was given of the WWFO on or about 20 February 2025, and of the extension application on 9 April 2025 (the day of the application) following which BBB/the CCC Defendants were immediately notified of the outcome. Dias J's order stated in § 5 that *"The Defendant/Respondent and the Non-Cause of Action/Defendants/Respondents may apply to vary or set aside this order within seven days after the date of service pursuant to CPR 23.10."* No applications were made until 29 April 2025 (BBB) and 6 May 2025 (CCC Defendants).

49. I do not accept those submissions. As set out in § 26, the authorities including *Hoddinott* itself make clear that a challenge in these circumstances should be made pursuant to CPR 11. The defendant in *Hoddinott* failed to make an in-time application under that rule. In the present case, however, such applications were made. There can accordingly be no question of the applications being out of time or of any estoppel.

50. Turning to the substance, it is clear that the time for serving the arbitration claim form was not validly extended, and that the WWFO must be set aside.

51. First, the Claimant did not apply to Dias J for an extension of the time for serving the claim form pursuant to CPR 7.6(3), and did not adduce evidence (as required by CPR 7.6(4)) with a view to establishing the requirements set out in that provision. Nor, at least formally speaking, has the Claimant done so even now.

52. Secondly, the Claimant did not meet the requirements set out in CPR 7.6(3)(b), because he did not take *"all reasonable steps to comply with rule 7.5"* (as modified by CPR 62.4(2)), i.e. all reasonable steps to serve the arbitration claim form before the time for serving it expired on 17 January 2025. In fact, no steps were taken to comply. No application was made for permission to serve the arbitration claim form out of the jurisdiction, and no attempt was made to serve it.

53. The Claimant contends that it was not reasonable to serve the claim form before its WWFO application was heard and disposed of, because that would have tipped off the

respondents. Accordingly, there were no *"reasonable steps"* that could have been taken before 17 January 2025 to serve the claim form.

54. I do not accept that submission. As the cases referred to in § 32 above indicate, the reference to *"all reasonable steps to comply"* is to steps taken in an attempt actually to serve the claim form. The rule does not contemplate that the claimant can simply decide not to serve the claim form during the stipulated period on the ground that it would, for whatever reason, not be *"reasonable"* to do so. That would be inconsistent with the policy underlying the strict criteria for the grant of extensions, particularly retrospective extensions. To the contrary, the rule requires the claimant to have been *"unable"* to serve the claim form, despite reasonable steps: that is inconsistent with the suggestion that the rule can apply where the claimant was able to serve the claim form but chose not to.

55. Moreover, such an approach would mean that a claimant could issue an arbitration claim form, fail to progress its application for a freezing order promptly (perhaps on the basis that it was not regarded as particularly urgent), and then seek an extension of time for service of the claim form on the ground that it was not reasonable to serve it while the freezing order application remained pending. That would presumably need to be subject to the freezing order application having been progressed with all possible speed (whether or not regarded as inherently urgent in itself). However:-

    i) any such approach would cut across the scheme of rule 7.6, by introducing a different test in cases where a freezing order application or some other circumstance might be regarded as making it reasonable for a claimant to delay service of the claim form;

    ii) it would be an unnecessary and inappropriate gloss on rule 7.6: the possibility that circumstances could arise where it might be reasonable to defer serving a claim form is already catered for in rule 7.6(2), whereby an application for an extension can be made during the period allowed for service of the claim form; and

    iii) it would in any event not assist the Claimant in the present case: having prepared the evidence in support of the WWFO on 25 November 2024, the Claimant did not progress the application swiftly, and took the view that it did not need to be heard during vacation, with the result that it came on for hearing only on 7 February 2025. Further, paragraph 16 of Mr X's first witness statement, quoted in § 13 above, indicates that this timing was partly tactical, due to a *"need to coordinate with respect to the parallel application for an injunction in Cyprus"*.

56. For completeness, as to the facts, I also note the evidence of BBB's solicitor, Mr Marsh, that BBB had been put on notice of potential legal proceedings by an email from the Claimant of 5 December 2023, and on notice of the arbitration by a letter from NBLO dated 26 January 2024; yet there was no evidence before Dias J of BBB having taken any steps in the 15 months since then to dissipate assets or conceal evidence.

57. Thirdly, and in any event, the Claimant did not act promptly in making the application for an extension. The claim form expired on 17 January 2025 but the extension application (under the wrong provision, as already noted) was not made until 8 April 2025, more than 2½ months later. The fact that the Claimant's representatives appear,

from the correspondence summarised earlier, not to have realised until too late that the arbitration claim form was an essential document that needed to be served during a one-month period does not turn a very late application into a prompt application. Moreover, the Claimant did not even act promptly after the FPS pointed out to his representatives on 25 March 2025 that the arbitration claim form had expired.

58. Fourthly, the Claimant made a material non-disclosure to Dias J when applying for the WWFO on 7 February 2025. Dias J was not told that the claim form had already expired. That fact clearly might have influenced her decision: it was fundamental, and meant that, absent an extension of the time for serving the arbitration claim form, the court had no jurisdiction to grant a WWFO.

59. Fifthly, the Claimant also made material non-disclosures to Dias J when applying for an extension of the time for serving the arbitration claim form. Dias J ought to have been told that the court had power to grant an extension only if the requirements of CPR 7.6(3) were made. Instead, those requirements were not drawn to her attention at all. It is no answer to say that as CPR 62.4(2) cross-refers to CPR 7.6, the judge should be taken to have been aware of the correct position.

60. The Claimant alternatively seeks a fresh order WWFO to 'hold the ring' until the remainder of the present challenges are determined, or a stay pending any appeal or the end of the time for appealing. The Claimant offers to undertake to issue a new arbitration claim form within 2 business days thereafter.

61. This part of the Claimant's application was not the subject of detailed argument at the hearing before me, and I shall give the parties the opportunity to make further submissions on it if so advised. It is evident, though, that questions are likely to or may arise as to whether, despite the arbitration remaining on foot, it might be regarded as abusive for the Claimant to issue a further arbitration claim form after allowing the first one to expire; whether the Claimant has a good arguable case against BBB; whether permission would be given to serve out of the jurisdiction; whether the urgency requirement under section 44(3) of the Act is met; given that the arbitration is seated abroad, whether it would be inappropriate for the purposes of section 2(3) of the Act to grant a freezing order absent attachable BBB assets in England & Wales; and whether the non-disclosures to Dias J should result in the court refusing to grant a further WWFO. As to the last point, my provisional view is that the non-disclosures went to a fundamental matter of jurisdiction, and were accordingly serious even if negligent (as opposed to deliberate), and that that may be a strong factor against the grant of any further injunction even if the other requirements could be shown to be met.

(E) JURISDICTION TO GRANT FREEZING ORDER AGAINST THIRD PARTIES

62. In the light of the conclusions I reach in section (D) above, it is not necessary for me to determine the further questions of whether there is power under section 44(2)(e) of the Act or under PD6 § 3.1(3) to grant a freezing order against a non-party to an arbitration agreement. The answer to these questions depends mainly on the effect, at least as a matter of comity, and the correctness, of the observations in *Cruz City 1 Mauritius Holdings v Unitech* [2014] EWHC 3704 (Comm), *DTEK Trading v Morozov* [2017] EWHC 94 (Comm) and *A v C* [2020] EWCA Civ 409 and the decision in *Trans-Oil International v Savoy Trading* [2020] EWHC 57 (Comm). There is also a question about whether a positive answer to the questions would in some way undermine the

transitional provisions in the Arbitration Act 2025, section 9 of which will, when in force, resolve any remaining uncertainty.

63. The CCC Defendants invite me to decide the matter now, in case the Claimant makes a fresh application for a WWFO in connection with a fresh claim form. However, even if the Claimant were to take that approach, it is not presently known whether that issue would have to be determined: it might depend on whether any injunction should be granted at all having regard to the considerations mentioned in § 59 above. In my view it would be undesirable for me to decide the point now in circumstances where it is, and may remain, unnecessary to do so.

(F) CONCLUSIONS

64. The applications by BBB and the CCC Defendants succeed. The claim form and the order purporting to extend the time for serving it must be set aside, and the WWFO must be discharged.