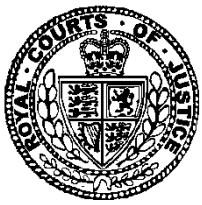

Neutral Citation Number: [2025] EWHC 300 (Comm)

Case No: CL-2024-000082

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
COMMERCIAL COURT (KBD)

7 Rolls Building
Fetter Lane
London
EC4A 1NL

Date: 24 January 2025

Before:

THE HON. MR JUSTICE BRYAN

- -

Between:

(1) AGROFIRMA ONIKS LLC
(2) AGRO UG V LLC

Claimants

- and -

(1) ABH UKRAINE LIMITED
(2) EMIS FINANCE B.V.
(3) MIKHAIL FRIDMAN
(4) PJSC SENSE BANK
(Formerly PJSC ALFA BANK UKRAINE LIMITED)

Defendants

- -
- -

MICHAEL MCLAREN KC and **HENRY REID** (instructed by **Janes Solicitors**) for the **Claimants**
NICHOLAS CRAIG KC and **KATE HOLDERNESS** (instructed by **Gherson LLP**) for the **Defendants**

Hearing Date: 24 January 2025

APPROVED JUDGMENT

MR JUSTICE BRYAN:

A. INTRODUCTION

1. There are two applications before me today concerning the service of proceedings on the Third Defendant, Mr Fridman, the first brought by the Claimants, the second brought by the Third Defendant.

2. By their Application Notice dated 5 June 2024 (the "Service Application"), the Claimants seek:

   (1) a declaration that the Third Defendant be deemed served with the Claim Form in this action on 22 March 2024 or on 28 March 2024, pursuant to CPR 6.15(2); alternatively

   (2) an order that the Claimant may effect service of the claim form on the Third Defendant by alternative means and/or at an alternative place pursuant to CPR 6.15(1);

   (3) the period for service of the Claim Form in this action provided for in CPR 7.5 be extended to enable the Claimants to effect such service pursuant to CPR 7.6; and

   (4) the Court to give appropriate directions pursuant to CPR 6.15(4).

3. For the purpose of the matters argued before me, it is the first of those matters which I need to address within this judgment.

4. There is the following witness evidence before the Court in relation to the Service Application:

   (1) the First Witness Statement of Mr Berg ("Berg 1");

   (2) the Third Witness Statement of Mr Berg ("Berg 3"); and

   (3) the Witness Statement of Mr Kingston-Lee.

5. I have also been asked to order that the period for service of the Claim Form be extended pursuant to CPR 7.6 to enable the Claimants to effect service by other means (for example service out of the jurisdiction with permission pursuant to CPR 6.36). As a result of raising the matter during the course of the hearing, there was no objection taken by either party (whatever the outcome of the applications) to the period of validity of the Claim Form being extended, and I will return to this matter in due course below.

6. By its Application Notice dated 10 July 2024 ("the Jurisdiction Challenge Application") brought under CPR Part 11, Mr Fridman:

   (1) challenges the jurisdiction of the court (the "Jurisdiction Challenge"); alternatively

   (2) seeks a retrospective extension of time for the service of an Acknowledgement of Service/relief from sanctions to the extent that such is required (the "Relief Application").

7. There is the following witness evidence before the court in relation to the Jurisdiction Challenge Application:

(1) the Witness Statement of Mr Gherson ("Gherson 1"); and

(2) the Second Witness Statement of Mr Gherson ("Gherson 2").

8. Mr Fridman has not, himself, served a witness statement in relation to the Service Application or the Jurisdiction Challenge Application, which is of course his prerogative. It does mean, however, that he has not personally led any evidence himself, nor has he himself verified any matters stated on his behalf. Any statement by him would, of course, have had to comply with Practice Direction 32, paragraph 18.1(2), which requires that the maker states "his place of residence" and would have had to have been verified by a Statement of Truth as required by Practice Direction 32, paragraph 20.1.

9. Should Mr Fridman's Jurisdiction Challenge Application fail, I have been asked to consider granting him relief from sanctions, applying the applicable principles. However, in fact, during the course of oral submissions before me, it was clarified that if Mr Fridman's Jurisdiction Challenge Application fail, the Claimants would not oppose either an extension of time for Acknowledgment of Service or the granting of relief from sanctions.

10. I was taken to various exhibits and evidence relied upon by the parties in support of their applications to which I have had careful regard.

11. The core question before me is whether service of the Claim Form on the Third Defendant at Athlone House, Hampstead Lane, London, N6 4RU ("Athlone House") on repeated occasions was valid. The main issues before me are: (1) whether Athlone House was Mr Fridman's usual or last known residence within CPR 6.9(2); and (2) if so, given that Mr Fridman was known not to be there, at the time of service whether the Claimants have taken reasonable steps to ascertain Mr Fridman's then current residence for the purposes of CPR 6.9(3)-(5).

B. BACKGROUND

12. These applications stem from an underlying dispute between the Claimants and the Defendants about various statements and advice of the Defendants about Loan Participation notes ("LPNs"). The claims, as alleged by the Claimants, are set out in the Claim Form in the bundle. It is convenient to set out such claims at this point, as it places in context the Claimants' claims against Mr Fridman. Of course, what is stated is no more than the claims as asserted by the Claimants against the Defendants:

> "The First and Second Claimants … are wholesale producers and distributors of oilseed and grain owned and controlled by Mr Yuriy Putko. [The Claimants] were a client of the Fourth Defendant, PJSC Alfa Ukraine Bank ("Alfa Bank Ukraine").
>
> At all material times, Mr Fridman was the majority shareholder and Chairman of the Alfa Group consortium, which owned and controlled the First Defendant ABH Ukraine Ltd ("ABHU") and Alfa Bank Ukraine and so their directing mind and will. The Second Defendant, E.M.I.S Finance B.V. ("EMIS") is a special purpose vehicle and the issuer of certain Loan Participation Notes (the "LPNs") that are the subject matter of this claim. Under each LPN, EMIS provided loans to ABHU which, under each loan agreement, ABHU was obligated to repay.

By 2019, [the Claimants] had generated cash deposits from their business activities. Accordingly, Mr Putko wished to deposit these in a way to protect them against inflationary pressures and the adverse exchange rate movements (the "Value Protection Strategy"). For this purpose, Mr Putko engaged Mr Roman Hnidets, in his capacity as the Head of Western Regional Corporate Business by Alfa Bank Ukraine

Between May 2019 - 2020 Mr Hnidets during various in person and telephone conversations advised Mr Putko to invest in the LPNs including by making various statements as to their safety and suitability for achieving the value protection strategy. On 27 June 2019, Mr Fridman, acting in his capacity as Chairman of the Alfa Group, also made statements when speaking at the Lviv Jazz Festival encouraging [the Claimants] to invest in the LPNs that they were "a safe investment", and personally stated to Mr Putko they were akin to making a deposit with Alfa Bank Ukraine.

In reliance on the advice and statements of Mr Hnidets and Mr Fridman from November 2019 [the Claimants] invested in excess of $11.442m in acquiring various LPNs in which EMIS was obliged to: (i) pay noteholders fixed rate interest payments under Conditions 5(a)-(c) of the Master Terms of each [of the] LPNs; and (ii) under Condition 6 to redeem the principal sums invested (Redemption Payments). The Master Terms of each LPN series provided that: (i) they be governed by English Law; and (ii) subject to the exclusive jurisdiction of the English Courts.

Contrary to the advice of Mr Hnidets and the statements of Mr Fridman and Mr Hnidets, the LPNs have since proved to be unsafe investments unsuitable for the Value Protection Strategy. Since 24 February 2022, EMIS has paid no coupon payments (the "Unpaid Coupons") and are yet to receive redemption payments (the "Unpaid Redemptions").

Alfa Bank Ukraine owed a duty of care to [the Claimants] (i) in respect of advice given to [the Claimants]; and/or (ii) not to misstate facts in respect of the LPNs by reason of its status as [the Claimants'] banking services provider and/or by assuming responsibility for the advice and statements from Mr Hnidets and Mr Fridman. Further/alternatively Mr Fridman assumed a duty of care to [the Claimants] when making the statements to Mr Putko. In breach of that duty, the advice given to [the Claimants] was negligent and the statements were false and/or otherwise inaccurate because the LPNs were, *inter alia*, high risk, unsafe and not suitable for achieving the Value Protection Strategy.

Accordingly, [the Claimants] bring claims (i) as against ABHU and EMIS damages for breach of contract in respect of the LPNs under the Master Terms and associated documentation for the Unpaid Coupons and Unpaid Redemptions; (ii) as against Alfa Bank Ukraine and Mr Fridman for damages for negligence in respect of losses arising from investing in the LPNs; (iii) interest pursuant to s.35 of the Senior

> Courts Act 1981; and (iv) such other relief as the Court thinks appropriate.
>
> Damages are sought in US dollars being the currency in which the LPNs were mostly purchased by [the Claimants]. [The Claimants] anticipate the value on the claim to be in excess of $11.442m (presently equivalent to £8,724,100 at a USDGBP rate of 0.79 provided by Bloomberg finance). Pre-Action correspondence was sent to each of the Defendants to which as at the date of this claim form, no response has been received."

13. Obviously, that is the case as set out in the Claim Form. I set it out purely to identify what claims have been made. No doubt each of the Defendants will be defending the claim in due course and will no doubt join issue with much of what is said on behalf of the Claimants.

14. On the basis of the evidence before me, Mr Fridman is an immensely wealthy "Russian oligarch", with dual Russian and Israeli nationality (such nationality being confirmed by Mr Gherson in Gherson 1 at [20]). According to open sources, in 2013, Mr Fridman moved to London and, in 2016, he acquired Athlone House as a residence for himself and his family. There is before me both the associated registered title for Athlone House at HM Land Registry (in his name) and a press article reporting its purchase.

15. In January 2019, Mr Fridman was granted indefinite leave to remain in the UK and on the evidence before me, there can be no doubt that Athlone House, where he resided, was his usual residence. Indeed, during the course of the oral submissions before me, Mr Nicholas Craig KC, who appears on behalf of Mr Fridman, confirmed that that was not disputed. However, subsequently, on 15 March 2022, Mr Fridman was designated under regulations 5 and 6 of the Russia (Sanctions) (EU Exit) Regulations 2019 ("the Russia Regulations") and Part 1 of the Sanctions and Anti-Money Laundering Act 2018. Mr Fridman's assets were frozen in consequence. In addition, he became an "excluded person" within section 8B of the Immigration Act 1971. This means that his leave to remain in the UK was cancelled and he is not permitted to enter the UK (the "Travel Ban").

16. In an interview with Mr Fridman published by Bloomberg on 22 March 2022, Mr Fridman stated he did not own a house in Israel and that his only other property apart from Athlone House was a house in Moscow.

17. I am satisfied that on 16 August 2023, the Claimants' solicitors sent a Letter Before Action to Mr Fridman at Athlone House. It is notable that this was sent at a time when Mr Fridman himself accepts that he was resident at the property. In this regard, Mr Gherson, in Gherson 1, at [19], asserts that Athlone House has not been Mr Fridman's residence "since September 2023". That is consistent with Mr Fridman being resident at Athlone House before that time. Mr Fridman made no response to the Letter Before Action.

18. Mr Fridman physically left UK soil on 27 September 2023, in part for medical reasons (per Gherson 1 at [21]). In a posting by Bloomberg News dated 9 October 2023, Mr Fridman is quoted as saying: "A week ago, I moved to Israel … Now I've flown to Moscow because of the current situation [i.e. the attack on Israel by Hamas militants]".

19. On the evidence before me it appears that Mr Fridman continues to be the beneficial owner of Athlone House and that it continues to be staffed by people who report to Mr Fridman via Athlone House Limited ("AHL"), which is the entity said to manage Athlone House on behalf of Mr Fridman in *Fridman v HM Treasury* [2023] EWHC 2657 (Admin) (the "Sanctions Judgment"), to which I refer below. That AHL manages Athlone House is, in fact, expressly confirmed by Mr Gherson in Gherson 1 (at [6]).

20. Following his designation, Mr Fridman was granted a number of licences by the Office of Foreign Sanctions Implementation ("OFSI"), which is part of His Majesty's Treasury, to make payments to various entities. However, the OFSI refused to grant licences to make certain payments to AHL, which had concluded a service contract with Mr Fridman for the purposes of managing Athlone House. This refusal was challenged unsuccessfully by Mr Fridman on an application heard by Saini J on 17 October 2023. The Sanctions Judgment recorded at [1] that:

> "As at the date of the hearing before me, Mr Fridman had left the UK for Israel and had then travelled to Russia. **However, he has informed the Court through his Solicitors, that he intends to return to this country**. As a result of the sanctions described in more detail below that return will not be possible because he is an 'excluded person' within section 8B of the Immigration Act 1971."
>
> (emphasis added)

21. At [86] of the Sanctions Judgment, Saini J recited an extract from a letter written by Mr Gherson to the OFSI on Mr Fridman's behalf (in response to the OFSI informing Mr Fridman that he could submit further information to justify the fee of an entity "Ideaworks" as a "basic need") in which it was stated:

> "Ideaworks are responsible for maintaining all communication, TV and audio equipment at Athlone House by virtue of a service agreement. This includes the maintenance of internal phonelines that allow security to keep in touch with residents of Athlone House and to inform them of any potential emergencies or visitors. Payment of this service is therefore necessary for the maintenance of the property and the security of its occupants, which amount to the basic needs of [**Mr Fridman**] and his dependent family members."
>
> (emphasis added)

22. Whilst such correspondence was in response to OFSI's communication in June 2022, Mr Fridman was at the hearing before Saini J on 13 October 2023, pursuing a licence for payments for expenses required for his own personal security and that of his family. Mr Berg submits that if these expenses were no longer required to be incurred for that purpose because Mr Fridman was not planning to return to live at Athlone House, Mr Gherson would have been bound to have informed the judge this was the case, but it is not suggested he did see the fourth witness statement of Robert Berg ("Berg 4") at [21]).

23. On 9 February 2024, the Claimants commenced proceedings against all of the Defendants. The Claim Form listed Athlone House as the location for service of Mr Fridman. Mr Fridman disputes that he was a resident at Athlone House at the time. I address that issue in due course below.

24. The Claimants then took various steps to effect service, as described below. I address in more detail later in this judgment whether service was effected and was effective. However, at this point it suffices to note that, on the witness evidence and the contemporaneous evidence that I have before me, I am in no doubt that the Claimants took the steps described below and on the specified dates, as is addressed in the witness evidence on which the Claimants rely (from Mr Robert Berg, a solicitor of the Senior Courts and partner in Janes Solicitors, who has conduct of the claim on behalf of the Claimants, together with the evidence of Mr Kingston-Lee, a paralegal with Janes Solicitors).

25. On 20 March 2024, the Claimants posted (by first class post) the Claim Form to Mr Fridman at Athlone House (but without a response pack, although, ultimately, during the course of the hearing before me, it was confirmed on behalf of both the Claimants and Mr Fridman that nothing ultimately turns on this). Accordingly, if service were effected, it would have been deemed to have occurred on 22 March 2024. (see CPR 6.14). Berg 1, at [6] to [9], explains that the decision to identify that address in the Claim Form and the subsequent decision to serve there followed various enquiries which led him to conclude that Mr Fridman's usual or last known address was Athlone House.

26. On 28 March 2024, Mr Kingston-Lee, a paralegal at Janes Solicitors, personally delivered the Claim Form and the documents comprised in the response pack to Athlone House and (on the instructions of the security staff) left it there in an envelope addressed to Mr Fridman at Athlone House.

27. On 16 April 2024, the time for a service of an Acknowledgment of Service pursuant to the terms of CPR 10.3 expired. The Claimants thereafter filed an application for default judgment (the "Default Judgment Application"). The Default Judgment Application was listed for 7 June 2024. However, the hearing was vacated because the papers were not filed in time with the Court.

28. On 5 June 2024, Gherson LLP contacted the Claimants' solicitors, stating they had been instructed on behalf of Mr Fridman in respect of the Default Judgment Application, but denying that the Claim Form had been served. Also on 5 June, in the light of Mr Fridman's correspondence, the Claimants filed their protective Service Application.

29. On 6 June 2024, the Claimants took various further steps again to effect service of the Claim Form and Response Pack, as follows:

    (1) On 6 June, posted them (first class) to Mr Fridman at Athlone House.

    (2) On 6 June, posted them (first class) and hand delivered them in person to three further possible alternative addresses that had been identified by Mr Berg during his enquiries, pursuant to the rationale detailed by Mr Berg in Berg 1 at [19] to [21] (the "Alternative Addresses"). These were:

        (a) AHL: at the registered address of AHL (as already noted, AHL is the entity said to manage Athlone House on behalf of Mr Fridman in the Sanctions Judgment). Ms Zairova, Mr Fridman's assistant, was its Director (Mr Fridman is not himself a director or shareholder of AHL).

        (b) Gherson LLP: the address of Mr Fridman's solicitors in respect of the earlier Sanctions Proceedings (Gherson LLP at 17A to 19 Harcourt Street, London W1H 4HF). In a letter of 5 June 2024, i.e. the previous day, Gherson LLP had stated

that they had been instructed by Mr Fridman in respect of the Default Judgment Application, but were not instructed more generally and were "not authorised to accept service of the claim".

(c) LetterOne Limited: the address of LetterOne Limited at Devonshire House, 1 Mayfair Place, London W1J 8AJ. Mr Berg's enquiries revealed that this investment holding company appeared to have been founded by Mr Fridman. Current HM Land Registry records showed it to be the "c/o", i.e. care of, address for Mr Fridman in respect of his purchase of Athlone House in 2016. The evidence of Mr Gherson (in Gherson 1 at [24]) is that Mr Fridman is not a shareholder or director of LetterOne.

(3) On 7 June, by Mr Kingston-Lee again hand delivering them at Athlone House in an envelope addressed to Mr Fridman.

30. On 12 June 2024, Mr Fridman filed an Acknowledgment of Service stating his intention to contest the court's jurisdiction pursuant to CPR Part 11.

31. On 25 June 2024, the Claimants filed an Updated Certificate of Service attaching a Schedule updating the position that service had been effected on the various dates outlined above at Mr Fridman's usual or last known residence (i.e. Athlone House, as well as the alternative addresses).

32. On 10 July 2024, Mr Fridman filed and issued his Jurisdiction Challenge Application, supported by Gherson 1, on the basis that: "[Mr Fridman] is not resident in England or Wales and his usual or last known address is not there as more particularly detailed in [Gherson 1]."

C. ISSUES

33. The central issue is whether the Claimant have jurisdiction to effect service in England, both at common law and under the CPR rules. In this regard, was Athlone House Mr Fridman's usual address at the time of service; alternatively, was Athlone House Mr Fridman's last known address and, if so, were reasonable steps taken to identify his address? Was service at Athlone House validly effected by a step prescribed under the CPR 7.5? Should the Court decline to exercise jurisdiction?

D. APPLICABLE LEGAL PRINCIPLES

Steps for Service

34. The Claimants must satisfy the Court that purported service at a valid place was in fact effected in accordance with at least one of the steps permitted under CPR 7.5(1) within the period of validity of the Claim Form (i.e., here, by 9 June 2024).

'Usual Residence'

35. The Claimants must establish the property where service was effected was a valid place at which to effect service under CPR 6.9. The relevant rules under the CPR provide:

(1) A Claim Form served on a defendant who is an individual must be served at his/her "usual or last known residence" (CPR 6.9(2));

(2) "Where a claimant has reason to believe that the address of the defendant referred to in [CPR rule 6.9(2)] is an address at which the defendant no longer resides … the claimant must take reasonable steps to ascertain the address of the defendant's current residence …" (CPR 6.9(3))

(3) "Where, having taken the reasonable steps required by paragraph (3), the claimant … (b) is unable to ascertain the defendant's current address, the claimant must consider whether there is (i) an alternative place where; or (ii) an alternative method by which, service may be effected." (CPR 6.9(4))

36. The CPR provides no guidance as to the meaning of "usual or last known residence" owing to the fact-specific nature of the enquiry (see the White Book at notes paragraph 6.9.3.1). However, certain authorities shed light on the issue of "usual residence".

37. The meaning of "usual residence" was considered by the Court of Appeal in *Relfo Ltd (In Liquidation) v Varsani* [2010] EWCA Civ 560. In *Maloobhoy v Kanani* [2012] EWHC 1670 (Comm), Stephen Males QC (sitting as a Deputy High Court Judge) derived at [51] to [56] the following propositions from *Relfo* as regards the meaning of "usual" and "residence":

(1) It is for the claimant to satisfy the Court that there is a good arguable case that the particular property is the defendant's "usual residence", and this means that the claimant must establish it has much the better argument on the available material than the defendant (see at [52]);

(2) A person can have more than one "usual residence" at any given time (see at [53]);

(3) In determining whether a place constitutes a defendant's residence what matters is the "quality of the defendant's use and occupation of the property as a home, which is a question of fact and degree" (see at [54]);

(4) In the event the place is the defendant's residence, it must also qualify as his usual residence; and a critical consideration for this purpose is the defendant's settled pattern of life, and this means, in particular, whether the defendant's use of the property has a degree of continuity and permanence (see at [55]);

(5) In considering the question of residence and usual residence, it is not relevant to compare the durations of periods of occupation (see at [56]).

38. In determining whether a residence is "usual residence" for the purposes of CPR 6.9, in *Varsani v Relfo Ltd (In Liquidation)* [2010] EWCA Civ 560 Etherton LJ stated that the "critical test is the defendant's pattern of life (at [29]); see also *Dicey, Morris & Collins on the Conflict of Laws*, 16th Ed., para 8-011). To similar effect, Lord Warrington in *Levene v Commissioners of Inland Revenue* [1928] AC 217 held that:

> "A member of this House may well be said to be ordinarily resident in London during the Parliamentary session and in the country during the recess. If it has any definite meaning I should say it means according to the way in which a man's life is usually ordered".

<u>Where a defendant is absent from the jurisdiction</u>

39. In *SSL International plc & Anor v TTK LIG Ltd & Ors* [2012] 1 WLR 1842, Stanley Burton LJ (with whom Mummery and Arden LJJ agreed) held as follows at [57]:

> "It is a general principle of the common law that absent specific provision (as in the rules for service out of the jurisdiction) the courts only exercise jurisdiction against those subject to, i.e. within the jurisdiction. **Temporary absence**, for instance on holiday, **does not result in a person not being subject to the jurisdiction**. In my judgment, Lawrence Collins J's statement of principle in *Chellaram (No.2)* … at paragraph 47 that ' … it has always been, and remains, a fundamental rule of English procedure and jurisdiction that a defendant may be served with originating process within the jurisdiction only if he is present in the jurisdiction at the time of service, or deemed service' was correct if read with that qualification, and was not inconsistent with the decision in *City & Country Properties Ltd v Kamali* …"
>
> (emphasis added)

40. In *Shulman v Kolomoisky* [2018] EWHC 160 (Ch), Barling J at [28] gave guidance in addressing when, once an individual is resident in the UK, he ceases to be so resident for jurisdiction purposes:

> "(i) The inquiry is a multi-factorial and fact-dependent evaluation, in which all relevant circumstances are considered in order to see what light they throw on the quality of the individual's absence from the UK.
>
> (ii) For residence to cease there should be a distinct break in the sense of an alteration in the pattern of the individual's life in the UK.
>
> (iii) This may well encompass a substantial loosening of social and family ties, but does not require a severance of such ties.
>
> (iv) **The individual's intention to cease residing in the jurisdiction is relevant to the inquiry but not determinative.**
>
> (v) Actions of the individual after the material time (here, the issue of the claim form) may be relevant, if they throw light on the quality of the individual's absence from the UK.
>
> (vi) If the individual has in fact ceased to be resident according to the applicable criteria, the fact that his motive for doing so was unworthy or even unlawful will not affect the position.
>
> (vii) One should be careful to avoid the risk of over-analysis in applying what are ordinary English words."
>
> (emphasis added)

41. I have emphasised point (iv) above because, as shall appear below such a situation is to be contrasted with the present case where the evidence shows that not only does Mr Fridman not intend to cease residing in the jurisdiction, per [1] of the Sanctions Judgment of Saini J he intends to return to this country and per the Grand Chamber Judgment considers himself to be resident in the UK.

42. In *Alimov v Mirakhmedov* [2024] EWHC 3322 (Comm), a defendant purporting to reside out of the jurisdiction was found to have been validly served at a UK residence. In so finding, the court affirmed that:

> "It is not a bar to a finding under CPR 6.9 that an address in the UK is a defendant's 'usual residence' when he also has a residence in another country: see *Relfo* at paragraph 28."

43. While not a matter that fell to be decided, the court impliedly accepted at [60] that a UK address could amount to a valid place for service for a person no longer resident in the UK when stating that:

> "As a result, service at 26 Holne Chase was service at D1's usual residence within the meaning of CPR 6.9(2). Even if, contrary to that, it was not his usual residence, it was his last known residence."

44. See also, in this regard, the case of *Bestalov v Povarenkin* [2017] EWHC 1968 (Comm) (in which I sat as a Deputy Judge of the High Court), in particular at [28] and the cases there cited, which demonstrate that it is possible for a defendant to reside in more than one jurisdiction at the same time. In this regard I also referred to the case of *Foote Cone & Belding Reklim Hizmetleri v Theron* [2006] EWHC 1585 in which Patten J stated at [23] (in the context of domicile) that, "One can have a residence in more than one place and domicile under the statutory definition depends on residence, not on the old common law test of where one intended to permanently reside in the sense of indefinitely and exclusively".

<u>Meaning of "last known residence"</u>

45. In *Dr Marcus Boettcher v XIO (UK) LLP (In Liquidation) & Ors* [2023] EWHC 801 (Comm), Peter MacDonald Eggers KC (sitting as a Deputy Judge of the High Court) summarised the concept of a defendant's "last known" residence at [49]:

> "(1) The claimant must establish that there is a good arguable case that the address at which service was effected was the defendant's last known residence. This means that, on the evidence available, the claimant has the better of the argument on this issue than the defendant,
>
> "(2) The defendant's last known residence need not be the defendant's usual residence,
>
> "(3) The defendant may have more than one last known residence,
>
> "(4) The defendant's last known residence may be a residence at which the defendant is residing or no longer resides (having once resided there) at the time of the purported service of

process. It cannot be an address at which the defendant never resided,

"(5) Knowledge of the defendant's residence in this context refers to the claimant's actual knowledge or constructive knowledge, i.e. knowledge which the claimant could have acquired exercising reasonable diligence. An honest or even reasonable belief is not sufficient if the defendant never resided at the address,

"(6) The claimant's state of knowledge is to be assessed as at the date on which the proceedings were served at the address in question."

46. As to the nature of the test to discern a person's last known address, O'Hare & Browne, Civil Litigation 21st Edition at paragraph 8-011 provide that,

> "Rule 6.9 adopts a test which is not solely subjective (what the claimant actually knew) nor solely objective (knowledge available to the general public regardless of what the claimant actually knew) but something in between: the actual knowledge of the claimant or their agents but also imputing to them knowledge they could or should have acquired by taking reasonable steps to ascertain or check the address."

Good Arguable Case

47. *Dr Markus Boettcher* at [41] sets out the requirement for a claimant to show a good arguable case in the context of showing that service within the jurisdiction was valid, as follows:

"(1) The claimant must supply a plausible evidential basis for his or her position.

"(2) If there is a dispute of fact about or some other reason for doubting the claimant's position, the Court must take a view on the material available if it can reliably do so.

"(3) However, if the nature of the issue and limitations of an interlocutory application are such that no reliable assessment can be made, **the good arguable case threshold is met by the plausible evidential basis even if it is contested**. In this respect, where evidence is provided at an interlocutory hearing in the form of witness statements, such evidence generally should not be disbelieved unless it is incontrovertibly or manifestly wrong (*Kireeva v Bedzhamov* [2022] EWCA Civ 35; [2022] 3 WLR 1253, para. 34). Where, therefore, there is conflicting evidence provided by different witnesses, either that evidence is to be reconciled or, if it cannot be reconciled, **the claimant's evidence is to be accepted for the purposes of the determination to be made at the interlocutory hearing, assuming it is plausible**."

(emphasis added)

E. SUBMISSIONS

48. In terms of steps for service, the Claimants submit that the only reason given by Mr Fridman in the Jurisdiction Challenge Application Notice to support the declaration sought (i.e. that the Claim Form was not validly served on him) is the assertion that he is not resident at Athlone House. In any event, they submit that the steps taken to effect service (and deemed service) at Athlone House in March and June 2024 complied with CPR 7.5. This included, on at least four occasions:

    (1) 20 March 2024, by first class post with a covering letter, certificate of service, evidence of service in Berg 1 at [13] and Berg 3 at [6];

    (2) 28 March 2024, delivery with a covering letter, certificate of service and the evidence of Mr Berg in Berg 1 at [14] to [15], Kingston-Lee at [5] and Berg 3 at [6];

    (3) 6 June 2024, first class post with covering letter, certificate of service and evidence of service, Berg 3 at [7]; and

    (4) 7 June 2024, method: delivery, certificate of service and the evidence of Mr Berg in Berg 3 at [7].

49. Turning to "usual residence", the Claimants submit the only reason given by Mr Fridman in the Jurisdiction Challenge Application to support the declaration sought (i.e. that the Claim Form was not validly served on him) is the assertion that he is not resident at Athlone House. In any event, they submit that the steps taken to effect service (and deem service) at Athlone House in March and June 2024 complied with CPR 7.5.

50. The Claimants also submit that principle (ii) identified by Barling J in *Shulman v Kolomoisky*, namely that "… for residence to cease there should be a distinct break in the sense of an alteration in the pattern of the individual's life in the UK", is not an insuperable hurdle for the Claimants seeking to show, in this case, a good arguable case that Athlone House remained one of Mr Fridman's usual residences. The Claimants accept that there was such a distinct break in Mr Fridman's life in the UK once he left the UK in September 2023, in circumstances where sanctions (for the time being – so long as they lasted) prevented him from returning. However:

    (1) The "distinctive break" principle is not, of itself, necessarily determinative of the residence issue in a multifactorial inquiry. At its lowest, even if it might be argued that there cannot be a cessation of residence unless there has been a distinct break, the reverse does not follow. In other words, even if there has been a distinct break, it does not necessarily follow (on a multifactorial inquiry) that residence has ceased, although that might (depending on the facts) be the correct conclusion.

    (2) The "distinct break" principle implies a permanent (not temporary) break. Barling J's judgment at [23] shows that the principle drew on Lord Wilson's judgment in *R (Davies) v Revenue & Customs Commissioners* [2011] UKSC 47, which was a tax case and concerned whether a taxpayer had become non-resident in the UK, with tax consequences. If a distinct break was only temporary, not permanent, it would, at the lowest, be open to a court to conclude that the UK had remained that individual's usual residence during that period, at least if the period was not too long.

    (3) Here, Mr Fridman's absence from the UK was held out by Mr Fridman himself as being <u>temporary</u> not permanent. As set out above, Mr Fridman informed Saini J that

he intended to return to the UK – a statement that was made in the context of his existing challenge to his designation, which might be determined favourably and soon. In the meantime, Mr Fridman was continuing to maintain his residence and staff in the UK in the same way as formerly, including staff for personal services (as opposed to property maintenance and property security). Finally, by the time of the March 2024 service, only about six months had elapsed since Mr Fridman's departure from the UK, so the intervening period had not been long by then.

51. I have also been referred to what was said by Saini J at [1] of his judgment, and also the judgment of the General Court (Grand Chamber) (hereinafter, the "Grand Chamber Judgment"), 11 September 2024, which stated that Mr Fridman was residing in London (UK) in those proceedings. Mr Fridman was represented by lawyers. The hearing was on 11 January 2024 but the Grand Chamber Judgment was given on 11 September 2024. It is therefore submitted that even in circumstances where Mr Fridman had left the UK, one would have expected those representing Mr Fridman before the General Court of the Grand Chamber to inform the court if, in fact, he was no longer residing in London, United Kingdom, but they clearly did not do so given the express statement as to him residing in the UK. That is relied upon strongly by the Claimants in the context of this Court having jurisdiction for him to be served in England and also in support of the submission that that was his usual residence for the purposes of service under the CPR.

52. Turning to the question of "last known residence", the Claimants submitted that even if the Court were to find that Mr Fridman no longer maintains Athlone House as one of his usual residences, service on Mr Fridman at Athlone House would still be valid by reason of Athlone House being Mr Fridman's "last known address" for the purposes of CPR 6.9. The Claimants provided the following reasons in support its submissions:

(1) There appears to be no dispute that Athlone House was Mr Fridman's last known residence as at the date of service. Gherson 1 disclosed no later known residence or contains any evidence rebutting the proposition (or reasonable assumption) that Athlone House was Mr Fridman's last known address.

(2) Even now there is no evidence before the court of any open source information as to Mr Fridman's residence anywhere other than Athlone House.

(3) Long after service at Athlone House, on 1 November 2024, Mr Fridman's solicitors revealed to the Claimants' solicitors <u>for the first time</u> an address of an apartment in Israel for Mr Fridman. But that was not open-source information, nor was it information available to or reasonably discoverable by the Claimants' solicitors (or known to them) at the time of service in March or June 2024. The Claimants' solicitors had no means of finding out from Mr Fridman his current address because Mr Fridman had failed to respond in any way to the 16 August 2023 Letter Before Action delivered to Athlone House before he left the UK. Such information as was available to the Claimants' solicitors, whilst indicating clear continuing ties to Athlone House, was unclear as to whether Mr Fridman was in fact in Russia or Israel, let alone what his residence might be in either country. In this regard, and as to whether or not they could have asked Mr Gherson and the firm for which he acts, it is pointed out by Mr McLaren KC that the letter from the solicitors acting for Mr Fridman on the Default Judgment Application made clear that they were not instructed in relation to the proceedings generally and had no authority to accept proceedings within the jurisdiction. Mr McLaren submits (with some force) that, in those circumstances, even if they had asked Mr Gherson's firm what Mr Fridman's address was, such address would not be forthcoming in circumstances where the

approach in that letter was not a cooperative one. In that regard, Mr Craig KC himself candidly made the submission during the course of his oral submissions that a defendant is under no obligation to identify what his address was. It was submitted therefore that it is inherently unlikely that solicitors would volunteer such information, not least in circumstances where Mr Fridman himself had not even responded to the Letter Before Action and there was no incentive for him to identify where he was residing, still less provide an address for service.

(4) It is said that Berg 1 and Berg 4 provided compelling reasons as to why the plaintiffs reasonably and justifiably believed Athlone House to be Mr Fridman's last known residence as at the dates of service.

53. In contrast, Mr Fridman submitted the court should decline jurisdiction over the claim. He refers firstly to *SSL International v TTK LIG Limited* and the principles identified by Stanley Burnton LJ in that case in relation to the common law and the CPR. In relation to both such matters, in essence, he submits that, applying the principles in *Shulman* at [28], Mr Fridman ceased to be resident in the UK on 27 September 2023. After his departure from the UK, and as a result of the temporary Travel Ban, he ceased to be within the jurisdiction and there was a distinct break in the pattern of his life. His residence in the UK, it is said, ceased. In such circumstances, it was submitted that the Claimants cannot establish that Mr Fridman was present in the jurisdiction at the time of service, or that Athlone House was either his "usual residence" or his "last known residence".

54. In particular, in relation to "usual residence", Mr Fridman submitted that whatever might have been the position prior to 27 September 2023, Athlone House was no longer his home from this date: he ceased entirely to use and occupy it as such. It was not, therefore, his residence (let alone "usual residence") when the Claimants purported to serve the Claim Form. Further, the Claimants cannot establish a good arguable case that Athlone House is (or was at the time when the Claim Form was purportedly served) Mr Fridman's "usual residence".

55. Mr Fridman submitted that it was apparent from the evidence filed in support of the Claimant's Default Judgment Application that, at the time that they sought to serve the Claim Form, they (and their solicitors) were aware that:

(1) Mr Fridman was sanctioned and subject to a Travel Ban (see Berg 1);

(2) having left the UK, it was impossible for Mr Fridman to return as a consequence of the Travel Ban;

(3) Mr Fridman had "moved to Israel" (as recorded in a post by Bloomberg News dated 9 October 2023, found by the Claimants' solicitors when conducting internet searches as to his whereabouts: see Berg 1).

56. In addition, Mr Fridman argued that the fact that he had left the UK and moved to Israel would have been apparent from a straightforward Google search: "Where is Mikhail Fridman now?" Mr Fridman submitted that as a result of this, the Claimants cannot have been in any doubt that Mr Fridman no longer resides at Athlone House and it was incumbent upon them, pursuant to CPR 6.9(3), to take reasonable steps to ascertain Mr Fridman's current address. Had they done so, it is said, they would have discovered that Mr Fridman's current address is at 53 Hayarkon Street, Apartment 56, 6343207, Tel Aviv, Israel, as they were told on 1 November 2024, following the first request for details of such. It is said that, on any view, they were aware by reason of their awareness of the

matters I have already identified that Athlone House was not Mr Fridman's "last known residence".

57. Of course, the time at which Mr Fridman's solicitors informed the Claimants of Mr Fridman's current address was on 1 November, which is long after the purported services had taken place and the battle lines had already been drawn in terms of both service and the jurisdictional challenge.

58. In response, and in addition to that point, the Claimants accepted that, at the time of service they had reason to believe that Mr Fridman was no longer in the UK because of the impact of sanctions on him, and they recognised that (unless Athlone House remained Mr Fridman's usual residence, or one of them) they are obliged under CPR 6.9(3)-(5) to take reasonable steps to ascertain the address of Mr Fridman's current residence and submitted that that is precisely what they had done, as set out in Mr Berg's evidence before me.

F. DISCUSSION

59. In my judgment, it is convenient to deal with the issues between the parties in the following order. Firstly, I will deal with the question of service in relation to common law and under the CPR. This will involve considering whether Athlone House was Mr Fridman's (i) "usual residence" at the time of service; or (ii) his "last known residence" and, if so, whether reasonable steps were taken to ascertain his residence, leading to a consideration of whether service at Athlone House was validly effected by a step prescribed under CPR 7.5. Following this, I will address the jurisdictional challenge, which is the corollary to such matters relating to service. Finally, I will deal with relief from sanctions, if necessary, although, as I say, by the end of the hearing that point was not a matter of contention.

Service

60. The first point that arises is in relation to the common law position about the court exercising jurisdiction against those who are within the jurisdiction. It is clear from *SSL International v TTK LIG Limited supra* at [57]: "that temporary absence … does not result in a person not being subject to the jurisdiction." In this regard, it is quite clear that Mr Fridman's stance has always been that he intends to return to the jurisdiction. Indeed, the position is recorded at [6] of Saini J's judgment which provides as follows:

> "The designation of Mr Fridman under the Russia Regulations (as well as his designation by the EU on 28 February 2022 under Regulation (EU) 269/2014, as amended) is the subject of legal challenges brought by Mr Fridman. The present claim is not concerned with those challenges and I must proceed on the basis that he has been lawfully designated for the reasons given by the Secretary of State. I should however record that Mr Fridman has publicly expressed his opposition to the Russian invasion of Ukraine and condemned the war as a 'terrible tragedy'."

61. It is also clear, as I have already quoted, that Mr Fridman's position in front of Saini J was that he intended to return to the UK. It is also clear that Mr Fridman was representing himself as still residing in London, United Kingdom, not only at the hearing on 11 January 2024, but he had not disabused the General Court of the Grand Chamber, as at 11 September 2024 that that remained his position. He represented, as is recorded at the

beginning of the Grand Chamber Judgment that he was: "**Mikhail Fridman, residing in London (United Kingdom)**".

62. Immediately below that, it is stated that he was represented by a Mr T Marembert and Mr A Bass, lawyers, and, towards the bottom of that page and immediately before the judgment starts, it is recognised that the judgment that follows is further to the hearing on 11 January 2024, such judgment being given on 11 September 2024 (which, of course, completely straddles (and covers) the time period during which service was effected at Athlone House).

63. I do not consider that there is any substance in what was effectively Mr Fridman's preliminary point in relation to the common law position. It is well established that where there is a temporary absence, that does not result in a person not being subject to the jurisdiction of this court (see *SSL International plc & Anor v TTK LIG Ltd & Ors* at [57]). It was at all material times the intention that Mr Fridman would return to this jurisdiction and, indeed, the evidence suggests that he was even representing that he was residing in London at all stages throughout, including the period of time at which service was effected.

64. The suggestion that Mr Fridman was no longer resident in the jurisdiction that is now sought to be advanced on his behalf is notably not supported by any witness statement from him (accompanied by a Statement of Truth) and it is difficult to see how such evidence could credibly, and appropriately, have been led by him given his stance before both Saini J and the Grand Chamber, and the bright light that such evidence shed's on Mr Fridman's own intentions and belief. The absence of any such evidence from Mr Fridman is telling.

65. Further, applying the principles in *Shulman v Kolomoisky*, and having regard to the matters set out below in relation to Mr Fridman's "usual residence" and "last known residence", I am satisfied that, at the material time, Mr Fridman did not cease to be a resident for jurisdiction purposes. In this regard, in *Varsani v Relfo*, the Court of Appeal held that on the facts of that case, a defendant was a resident in England for the purposes of jurisdiction because of the settled pattern of the defendant's life in relation to his use and occupation of the house (at [33]). The defendant's family lived permanently at the house owned by the defendant and his wife in Edgware, the defendant visited it every year to see his family, staying for considerable periods of time, and he had described it as his home in court proceedings in Singapore. I note that these facts bear some considerable similarity to the facts of the present case, most obviously in relation to Mr Fridman's life style and expressed intentions. In this regard see also [27] and [29]-[32] of *Varsani v Relfo* (as also discussed, and addressed in *Bestalov v Povarenkin*, supra at [39] to [44]).

66. I am therefore satisfied that the Court had jurisdiction at common law to exercise jurisdiction over Mr Fridman.

Was Athlone House Mr Fridman's "usual residence" at the time of service?

67. Turning then to the issue which was at the very heart of today's application and in relation to which the vast majority of the time was spent, namely whether Athlone House was Mr Fridman's "usual residence" at the time of service. Mr Fridman is a sanctioned individual which makes it impossible (at this moment in time) to return to the UK (following his medical treatment). Whilst the Claimants realistically accepted that that this represents a distinct break in Mr Fridman's life in the UK, on the authorities (and as already addressed) a distinct break is not determinative of the "usual residence" issue. The

inquiry required in order to determine the issue at the heart of this application is a multi-factorial and fact-dependent evaluation in which all relevant circumstances are considered in order to see what light they throw on the quality of the individual's absence (if such it be) from the UK (see *Shulman v Kolomoisky supra* at [28]).

68. I do not consider that *Shulman v Kolomoisky* assists Mr Fridman on the facts of the present case. In *Shulman*, the court found that, on the material before it, there was a good arguable case that the second defendant had effected a distinct break in his life in the UK. By the end of the year, he "had succeeded in substantially loosening (if not cutting) his social and family ties with this jurisdiction and had moved his residence to Geneva" (at [78]).

69. While Mr Fridman has not been in a position to use Athlone House since leaving the UK on medical grounds in September 2023, it remains the family residence, and I consider that there is (very much than) a good arguable case his residence has not ceased (albeit that is all that is required). There are a number of (cumulative) reasons why this is so, applying the multifactorial and fact-dependent evaluation that must be undertaken:

(1) First, it is not disputed that Mr Fridman was, and remains, the owner of Athlone House.

(2) Second, and linked to the above, Mr Fridman has asserted that Athlone House is his family residence, and it his intention to return to the UK (his statement of such intent being expressly recorded in the Sanctions Judgment) and Mr Fridman has not disputed that that is the case (still less asserted the contrary).

(3) Third, it is clear that Mr Fridman sees his absence in the UK as temporary and not permanent, as I have already foreshadowed and addressed. In this regard, Saini J recorded in the Sanctions Judgment at [1] that Mr Fridman had "informed the Court through his Solicitors, that he intends to return to this country". I have already referred to the even more recent decision of the Grand Chamber, in the Grand Chamber Judgment, in the context of Mr Fridman's latest challenge of his designation which states that, as recently as 11 September 2024, Mr Fridman was (per Mr Fridman's own characterisation) "residing in London (United Kingdom)".

(4) Fourth, against the background of the ongoing challenge to his designation, Mr Fridman's intention to return to the UK (and thus Athlone House), if and when his designation has been lifted, is, I consider, clear evidence that Mr Fridman at the time of service (and indeed at all times thereafter) continued (and continues) to consider, and treat, Athlone House as his usual residence within the jurisdiction, and that his intention is to continue his life at Athlone House as soon as he is able to do so it remaining his usual residence. At the time of his departure it could not, of course, be known that the events in Ukraine, which led to the designation, would continue to apply, or for a significant period of time, or indeed that his designation would continue for a significant period of time. Certainly his conduct shows an active intention throughout, and from the moment of designation, to have such designation lifted, and to return to what has, throughout, been his usual residence.

(5) Fifth, Athlone House remains actively managed, and managed for Mr Fridman and his family. As the Sanctions Judgment reveals, the thrust of Mr Fridman's application was that Athlone House was a "family residence" being actively maintained by AHL for Mr Fridman and for the continuing use by him and is family.

This included Mr Fridman making an application and seeking permission to release funds and make payments as part of the maintenance of the house.

(6) Sixth, Mr Fridman has chosen to receive correspondence at Athlone House, which he beneficially owns, and which is the family home, and he has consciously chosen that such correspondence should await his return. In this regard paragraph 10 of Gherson 1 makes clear that: "Post that is addressed to Mr Fridman is stored **and not forwarded to him**" (my emphasis). I consider that this is a point of some considerable significance that sheds further light as to what was (and is) Mr Fridman's usual residence. Mr Fridman clearly regards it as his usual residence to which he will return, and so temporary is the absence (in his eyes) that the post should await his return, just as it would whenever he was away from home for whatever reason. It is an obvious point, but if Mr Fridman considered his absence to be anything other than temporary, then he would have arranged for such correspondence to be forwarded on.

70. Accordingly, and on the evidence before me, I am satisfied that the Claimants have at least a good arguable case, which is all that is required, that Mr Fridman's "usual residence" has not ceased to be at Athlone House in the period between September 2023 and March 2024 and/or June 2024.

Was Athlone House Mr Fridman's "last known residence" at the time of service?

71. This consideration arises if, contrary to the conclusion I have reached, the Claimants have not established a good arguable case that Mr Fridman's usual residence had not ceased to be Athlone House at the time of service, and the Claimants had reason to believe that Athlone House was an address at which Mr Fridman no longer resides, in which case the Claimants would then be obliged to take reasonable steps to ascertain the address of Mr Fridman's current residence (see CPR 6.9(3)).

72. I consider that the Claimants had in fact taken very much more than reasonable steps to ascertain the address of Mr Fridman's current residence. These included:

(1) Undertaking open-source searches of press articles, Land Registry searches and Companies House records, all of which indicated that Mr Fridman owned Athlone House and was likely to be ordinarily resident at Athlone House.

(2) Reviewing the contents of Saini J's Sanctions Judgment.

(3) Considering hiring an investigation agent to find out such information (but, in the event, the Claimants' solicitors were able to obtain the same themselves). It was submitted in the course of oral submissions by Mr Craig KC that the Claimants should actually have instructed an investigation agent, either in Russia or in Israel. However, the only information that would (legally) be available to an investigation agent is open-source information. There was no evidence before me that if an investigation agent had been hired, any information would have been forthcoming from open sources. As is well-known, and well-established (and as any solicitor would be very conscious of), it is only open sources that an investigation agent can legally use and that a solicitor of the Supreme Court can legally instruct an agent to use. There is no evidence before me that there is any publicly available information in Israel which would have identified the address of Mr Fridman at the flat at which it is said he now is (per Mr Fridman's solicitors long after the event). Indeed, there is

no evidence before me that he was, in fact, resident at that flat as at the date of purported service in the period in question.

73. The Claimants' enquiries yielded no results for alternative addresses for service permissible under CPR 6.9 (see Berg 1 at [19]). The Claimants' investigations did, however, identify alternative addresses within the UK at which they tried to serve the Claim Form. As Mr Gherson conceded, at least one of those alternative addresses was effective in bringing the Claim Form to the attention of Mr Fridman and his advisors (see Mr Gherson's Witness Statements*)*.

74. Mr Berg's evidence is that from open-source searches that he made, these indicated that Mr Fridman might be somewhere in Russia or possibly Israel, but it was unclear where he in fact was. I accept such evidence of Mr Berg.

75. Mr Fridman's skeleton argument attempted to paint the picture that the post in question by Bloomberg News dated 9 October 2023 found by Mr Berg stated that "Mr Fridman had 'moved to Israel'", which made it incumbent, it was submitted, on the Claimants to take reasonable steps to ascertain the address of Mr Fridman's current residence in Israel. In fact, the article read, "A week ago, I moved to Israel … Now I've flown to Moscow because of the current situation" (i.e. the current situation in Israel following the Hamas incursion). It is difficult to see why, in such circumstances, enquiries in Israel would have been relevant (or revealed useful information if Mr Fridman was no longer in Israel and in fact in Moscow).

76. It was suggested that the Claimants could have asked Mr Gherson what Mr Fridman's address was, but as already addressed above, I see no reason to believe that this would have borne any fruit in circumstances in which Mr Gherson's firm were not instructed in the proceedings. They were positively making a point about that and the fact that they were not instructed to accept proceedings and, of course, a defendant is not obliged to give details as to where he resides and, in the present case, there had been a complete lack of any response from Mr Fridman to the Letter Before Action. The evidence strongly leads to the conclusion that Mr Fridman had no desire to take part in any proceedings. In such circumstances, I consider that it is an unrealistic suggestion that the Claimants either ought to have asked such a question or that, if asked, such a question would have borne any fruit.

77. I am satisfied that the Claimants did not know about Mr Fridman's current address or place of residence, despite having taken what amounted to very much more than reasonable steps in that regard, not least in the context of the fact that there was no address of Mr Fridman in Russia or Israel available from publicly available sources. Accordingly, I am also satisfied that, to the extent that, contrary to my previous finding, Athlone House was no longer Mr Fridman's "usual residence", it was his "last known residence" at the time of service and reasonable steps had been taken to ascertain his address.

<u>Was service at Athlone House validly effected by a step prescribed under CPR 7.5?</u>

78. Mr Fridman relied on the assertion that he is not resident at Athlone House in support of his Jurisdiction Challenge Application , but made no submissions on whether service was validly effected. I am satisfied that service was effected at Athlone House on no less than four occasions:

(1) by post on 20 March 2024 (without a response pack – although nothing ultimately turned on this);

(2) by being hand delivered there on 28 March 2024;

(3) by post on 6 June 2024; and

(4) by being hand delivered there on 7 June 2024.

79. I am satisfied that service was accordingly validly effected by a step prescribed under CPR 7.5 and I declare that Mr Fridman was validly served by each of the aforesaid methods, the first of which was on 20 March 2024.

G. CONCLUSION ON THE SERVICE APPLICATION

80. In conclusion, I am satisfied that Mr Fridman was within the jurisdiction in the sense that his absence was only temporary, always intending to return to this jurisdiction at the earliest opportunity that he could, for the reasons that I have already identified. Equally, I am satisfied that Athlone House was Mr Fridman's "usual address" and, indeed, if that was not the case, that it was "his last known residence" within CPR 6.9(2) and that, in the latter context, all reasonable steps were taken to ascertain the address of his current residence, but that such steps were not successful.

81. I am satisfied, therefore, that the Claimants have validly served the Claim Form on Mr Fridman and the Service Application accordingly succeeds.

82. Accordingly, I make a declaration that Mr Fridman has been validly served, firstly by post on 20 March 2024, and thereafter, had the same been necessary, on 28 March 2024, by post on 6 June and by hand delivery on 7 June 2024. The consequence is that the Claim Form has been validly served upon Mr Fridman.

H. THE JURISDICTION CHALLENGE APPLICATION

83. I can deal with the Jurisdiction Challenge Application briefly. That challenge was solely predicated on the basis that the Defendant was not resident in the jurisdiction and that his usual residence was not at Athlone House. In this regard, Mr Fridman's Jurisdiction Challenge Application and its supporting evidence disclosed no grounds on which the Court should decline to exercise jurisdiction over the claim beyond those that I have already addressed. If Mr Fridman had wished to rely upon any other matters beyond those already addressed then the Jurisdiction Challenge Application would have had to be amended, but no such application had been made, and it would now be too late to advance the same.

84. Further, applying the principles in *Dr Markus Boettcher v Xio*, at [132], Mr Fridman has not applied for a stay of proceedings, nor advanced any forum non conveniens contention that the Court should not exercise its jurisdiction in the Jurisdiction Challenge Application; nor has he served any evidence in support of any such an argument. This is unsurprising in circumstances where the Claimants' case is that the tortious claims against Mr Fridman are closely related to the contractual claims against the First and Second Defendants, and accordingly, Mr Fridman would be a necessary and proper party to the contractual claims which have an English jurisdiction clause, and which will proceed in England.

85. In any event, the only challenge to jurisdiction that has been made by Mr Fridman turns on the validity of service and, as I have found, there was valid service on Mr Fridman. It follows that the Jurisdiction Challenge Application stands to be dismissed and I dismiss the same.

I. RELIEF FROM SANCTIONS

86. That being the position, the next application for consideration would have been Mr Fridman's application for relief from sanctions; alternatively, for an extension of time. However, as I have already foreshadowed, in the course of the oral submissions before me, Mr McLaren KC, on behalf of the Claimants, confirmed that if the conclusion I reached, was that there was valid service (as I have), he was not objecting to there either being an extension of time for Acknowledgement of Service or for relief from sanctions. That seems to me a realistic approach in the context of which the action is proceeding against a number of parties and in circumstances in which, as soon as solicitors were instructed, there was an Acknowledgement of Service filed. Accordingly, I am prepared to, and do, extend the time for Acknowledgment of Service to the date and time on which the Acknowledgment of Service was lodged. That will logically mean that the Default Judgment Application will not be pursued with because, on that basis, albeit retrospectively, Mr Fridman was not in default in failing to serve an Acknowledgment of Service in time.

J. EXTENSION OF PERIOD OF VALIDITY OF THE CLAIM FORM

87. As foreshadowed at the outset of this judgment, I have also been asked to order that the period for service of the Claim Form be extended pursuant to CPR 7.6 to enable the Claimants to effect service in due course by other means (for example service out of the jurisdiction with permission pursuant to CPR 6.36). As a result of raising the matter during the course of the hearing, there was no objection taken by either party (whatever the outcome of the applications) to the period of validity of the Claim Form being extended. I have considered the position in relation to each of the Defendants, and accordingly order that the time for service of the Claim Form and any necessary accompanying documentation on each of the Defendants is extended until 4pm on 24 July 2025.

K. COSTS

88. The next matter that arises is in relation to costs. It is submitted, I am satisfied correctly, that the Claimants are the successful party, and as much was acknowledged by Mr Craig KC on behalf of Mr Fridman. Therefore, the ordinary order is that costs follow the event.

89. Mr Craig KC makes a discrete point, however, that there was an aspect of the application notice (relating to service of the Claim Form by alternative means) which was not proceeded with because it was acknowledged in the Claimants' Skeleton Argument that, in fact, the making of the same would be dependent upon an application for permission to serve the claim form out of the jurisdiction, and such an application has not yet been made. Mr Craig KC submits that the reality is, therefore, that had the same been proceeded with, they would (at least so far as the present hearing is concerned) have been unsuccessful.

90. I consider that Mr Craig KC is right that, in so far as there have been costs incurred in relation to such matters, one possibility would have been that Mr Fridman was entitled to the costs in relation to that, but as is encouraged in the authorities, and indeed the approach advocated on Mr Fridman's behalf, it is suggested that there should simply be a percentage reduction in the costs awardable to the Claimants, before then summarily assessing the amount of such costs.

91. It is suggested on behalf of Mr Fridman, that a reduction of 20% would be appropriate. It was acknowledged that, on any view, any reduction would have to be a broadbrush reduction in circumstances in which neither party knows exactly how much costs were incurred in relation to each individual matter.

92. I consider that it is appropriate to make a percentage reduction to reflect the costs relating to the application that would not have been successful today (as it was premature pending any application to serve out), but I consider that the reduction should be a modest one having regard to the likely amount of costs attributable to that application, and accordingly I reduce the costs by 10%, i.e. the Claimants are entitled to 90% of their costs of and occasioned by their application, and I therefore so order. This brings down the costs figure to £86,284.66 before summary assessment.

93. Summary assessment is by its very nature a broadbrush exercise as to what is reasonable and proportionate. I bear in mind, as has been pointed out to me, that the entirety of costs claimed are not usually recovered on a detailed assessment on the standard basis. Having given careful regard to the composition of the statement of costs, and the submissions made in relation to particular elements of those costs, I summarily assess the Claimants' costs at £72,000.