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IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

TECHNOLOGY & CONSTRUCTION COURT (QBD)

No. HT-2019-000441

[2020] EWHC 970 (TCC)

Rolls Building
Fetter Lane
London, EC4A 1NL

Friday, 13 March 2020

Before:

MRS JUSTICE COCKERILL

B E T W E E N :

BEC CONSTRUCTION LIMITED

Claimant/Respondent

- and -

MELT HYTHE LIMITED

Defendant/Applicant

MR P. CLARKE (instructed by Direct Access) appeared on behalf of the Claimant/Respondent.

MISS S. JABBARI (instructed by Birketts LLP) appeared on behalf of the Defendant/Applicant.

J U D G M E N T

MRS JUSTICE COCKERILL:

- 1 This hearing concerns the Defendant's application to set aside judgment in default which was entered upon the defendant's failure to acknowledge service of the Claim Form and Particulars of Claim in accordance with the Order of Fraser J dated 9 December 2019. The Order giving judgment in default was also an order of Fraser J, which was made on 16 December and sealed on 17 December 2019.
- 2 The Defendant is a company registered in England and Wales and carrying on business as a property developer. Its registered office is at an address known as Sunnyside, 40 Elwick Road, Ashford, Kent TN23 1NN.
- 3 The Defendant had engaged the services of the Claimant, who carries on business as a building contractor. In or around 15 July 2019, the Claimant terminated the contract and a dispute ensued as to the Claimant's entitlement to be paid the balance of the moneys under the contract following the termination.
- 4 On or around 9 October 2019, pursuant to the terms of the agreement, the Claimant served a Notice of Adjudication on the Defendant, and the matter was referred to the Royal Institution of Chartered Surveyors who appointed a Mr R. Juniper to act as the Adjudicator. Mr Juniper gave his decision in favour of the Claimant on 12 November 2019, and following that decision the Claimant issued these proceedings on 4 December 2019.
- 5 There then followed the Order of 9 December 2019, by which Fraser J gave orders for the future case management of the hearing which included an order that the Claimant should, as soon as reasonably practical, serve the Claim Form, Response Pack and Order upon the Defendant, and abridged time for service of the Acknowledgement of Service to four days.
- 6 On 9 December the Claimant then took the documents in question to the address, Sunnyside. That address is an address which the Claimant understood to be the principal place of business of the Defendant, that being the address used in the Contract between the parties, and that being the Defendant's registered address. Sunnyside is also, however, the address of a dental practice of which, the evidence before me suggests, a director of the Defendant is also a director. Obviously, however, a dental practice is somewhat distinct from the Defendant's normal business.
- 7 The Claimant left the documents at Sunnyside in the custody of an individual, Miss Charlotte Mowberry. Miss Mowberry worked for PJS Dental Practice, the dental practice operating from that same address. Mr Barlow, the person who took charge of serving the documents entered the premises, went to the reception desk and gave the name of the Defendant. Miss Mowberry said something, which appears to have been somewhat inconclusive. The evidence before me suggests that he then put the documents on the reception desk. He offered Miss Mowberry a document to sign which she did. The Claimant says that this was good service. The validity of this service is disputed, and the dispute forms the basis of the Defendant's application.
- 8 The rest of the timeline goes thus: PJS Dental Practice provided the documents to the Defendant on 11 December 2019, upon which the Defendant referred the matter to its

solicitors, who then set about filing an Acknowledgement of Service. However, they missed the date of 13 December by which the Acknowledgement of Service was due, so the Claimant filed an application for default judgment on 16 December and, on the same day, Fraser J looked at the application and granted default judgment, with the order being drawn up the next day. The Acknowledgement of Service was lodged just at the time, effectively, that the default judgment was granted.

- 9 By an application notice dated 23 December 2019, the Defendant applied to set aside the judgment in default on grounds that the Claimant's service of the proceedings was invalid. There is no application on grounds that the Court should set aside judgment in default on any other basis, such as that the Defendant has a real prospect of success. The application has been solely in relation to the question of validity of service.
- 10 The two grounds which were originally advanced were, first, the Claimant had wrongly effected personal service on the receptionist at Sunnyside rather than delivering to or leaving at a permitted place; and, secondly, on the grounds that the Claimant was not entitled to serve the proceedings on the Defendant and should, instead, have served the Defendant's solicitors.
- 11 In oral argument before me this morning, Miss Jabbari, for the Defendant, has sensibly not pursued that second ground, on which there was very clear authority that it was bound to fail, and has instead pursued a somewhat nuanced version of ground 1.
- 12 The first point which the Defendant takes is that the Claim Form was not “*left at a permitted place*”, but was handed directly to Miss Mowberry, the employee of the dental practice and, as such, it was personally served on somebody other than the person connected with the company and was not validly served in accordance with CPR 6.5(3)(b). I am not persuaded by this submission.
- 13 Service of the claim form within the jurisdiction is covered by CPR 7.5, which provides:

“7.5-(1) Where the claim form is served within the jurisdiction, the claimant must complete the step required by the following table in relation to the particular method of service chosen, before 12.00 midnight on the calendar day four months after the date of issue of the claim form .”

<i>Method of Service</i>	<i>Step required</i>
<i>First class post, document exchange or other service which provides for delivery on the next business day</i>	<i>Posting, leaving with, delivering to or collection by the relevant service provider</i>
<i><u>Delivery of the document to or leaving it at the relevant place</u></i>	<i><u>Delivering to or leaving the document at the relevant place</u></i>
<i>Personal service under rule 6.5</i>	<i>Completing the relevant step required by rule 6.5(3)</i>
<i>Fax</i>	<i>Completing the transmission of the fax</i>
<i>Other electronic method</i>	<i>Sending the e-mail or other electronic transmission</i>

So the method of service is then said to be “*delivery of the document to or leaving it at the relevant place.*”

- 14 The “relevant place” is then explained in CPR Part 6, which concerns service of documents. CPR 6.3(1) provides for methods of service of the Claim Form, including “*leaving it at a place specified in rule 6.7, 6.8, 6.9 or 6.10*”. CPR 6.9 concerns service of a Claim Form and applies where a Claimant does not wish to effect personal service, and where Rule 6.7, service on the solicitor, does not apply. CPR 6.9(2) provides that the Claim Form must be served on the Defendant at a place shown in a table which is then set out beneath that, and that table provides for:

“A Company registered in England and Wales: Principal office of the company; or any place of business of the company within the jurisdiction which has a real connection with the claim.”

- 15 The issue about the handling of documents is, in essence, based on one fact which I can determine on the documents. The real basis of this side of the application was that the Claimant had handed the document to Miss Mowberry.
- 16 I conclude that, on the evidence, the Defendant is wrong on this point. The evidence establishes on the balance of probabilities that the proceedings were placed on the reception counter and not handed to Miss Mowberry. That is set out in the witness statement of Mr Barlow and is not traversed by Miss Mowberry, who states in her statement that Mr Barlow “*presented her with an envelope*”.
- 17 Nor, however, do I consider that the result would be different if the proceedings had been handed to Miss Mowberry. In effect, what is required for this mode of service can be as little as leaving at the address. In effect, good service could have been obtained by putting the documents just inside the door, or leaving them unattended on the counter.
- 18 It was entirely accepted by Miss Jabbari that, assuming for the moment, the correct address were found, the Claimant could simply have entered that correct address and dropped the documents on the floor and that would have amounted to good service. It seems to me that it cannot be the case that by taking steps to better alert the Defendant the Claimant should be prejudiced - and that is effectively what was done here out of an abundance of caution. Rather than just going to the door and dropping the documents on the floor, Mr Barlow took the prudent step of trying to identify a human person into whose at least extended custody the documents could be placed to ensure that they were not mislaid, and the person he chose was the receptionist. As the Claimant submits, it is a common and normal function of receptionists to accept delivery. The fact that there was more than one business being run out of Sunnyside is effectively a matter of the way the Defendant manages its business. So, *per se*, the employer of the receptionist should not be a material consideration, in these circumstances.
- 19 I also consider that the point in relation to the Certificate of Service does not affect matters, that the Certificate of Service said: ‘How did you serve the documents?’ and says clearly that the service was effected by delivery to a permitted place. There was no attempt to say that there was a personal service in any way. The receptionist’s signature on the Certificate of Service is, as I have already noted, effectively, a confirmation, so that if there was any question as to whether the documents had arrived at the address there was some form of

confirmation available. It was what one might call a 'belt and braces' job; it does not change the method of service as a matter of fact or as a matter recorded on the certificate.

- 20 The further point which Miss Jabbari sought to argue, which had not been so much as indicated in the skeleton argument or in the application, was one which might, in certain circumstances, have some teeth, which was that where one is saying: 'Leaving at the appropriate place' it means that the document had to be taken to the right address.
- 21 As a broad point that is obviously right, the relevant place must be the right address. The question which arises then is: what is the right address when you have multiple businesses operating out of the same address? Miss Jabbari's submission was that in those circumstances the document must be taken to the right reception, at the right address, and that by going to the reception of the dental practice what had been done was going to the wrong address.
- 22 As I have said, it may be that in certain circumstances this argument might have teeth. Miss Jabbari gave an interesting analogy of: suppose there were a number of companies operating out of the same building, one of them is Starbucks on the ground floor, and then there are other businesses on floors one, two, three, four and five. It would not be proper service to drop the documents inside the door of Starbucks if you were trying to serve somebody on the fifth floor. It is possible that that is right, so one would expect, in those circumstances, the address would have a floor designation. In this case, of course, you have a company whose address simply gives as the designation for the address: "Sunnyside". So, in this case, I would doubt that that point would have teeth in any event.
- 23 But, even if it might otherwise have teeth, the point, which was ingenious and well argued by Miss Jabbari, was basically hamstrung by the absence of any evidence in any way showing that there was a distinction within that address between the wrong place and the right place. So the absence of any evidence, and the absence of an ability on her part to make a positive case as to where the appropriate place for service on the part of the defendant would have been, is fatal; and so the analogy with Starbucks on the ground floor is a false one on this basis. Had this point sought to have been run properly it would have been necessary for the Defendant to do what it notably did not do in this case, which was to adduce evidence as to how the premises operated and why simply taking to the address, (which was not only the place of business given in the contracts between the parties, but was also the registered address) and leaving there in some manner, and in the manner which was done, was not appropriate.
- 24 For those reasons it seems to me that the arguments advanced by Miss Jabbari on behalf of the Defendant must fail. Another point was taken in the skeleton argument in relation to CPR 6.9(3), as to whether it should be seen as an address at which the Defendant no longer resides, effectively another way of taking the point that service should be made on the solicitor, again rightly that point was not pursued. The only points pursued were those I have already dealt with. In those circumstances the application to set aside default judgment fails.
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CERTIFICATE

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