

## Case summary

### Issue

The Supreme Court is asked to determine three issues concerning whether Lady Brownlie can serve her claim out of the jurisdiction on FS Cairo, an Egyptian company, with a view to the trial of her claim in the courts in England and Wales (with each claim governed by Egyptian law). The issues raised by the FS Cairo on appeal are:

1. Whether the Court of Appeal was wrong to hold that the jurisdictional gateway for claims in tort under CPR 6BPD 3.1(9)(a) was satisfied in this case, in which the accident which gave rise to the claims occurred in Egypt;
2. Whether the Court of Appeal was wrong to hold that the Claimant had discharged the burden of establishing that each of her claims, in a claim in which Egyptian law applies, has a reasonable prospect of success:
  - (a) By relying on the "default rule" or "presumption" that foreign law is the same as English law; and
  - (b) In the absence of any pleading of Egyptian law.

### Facts

On 3 January 2010, Lady Brownlie's husband was killed in a car accident in Egypt during an excursion booked through the Four Seasons Hotel Cairo, a hotel operated by FS Cairo. Lady Brownlie was injured in the same accident. The driver was convicted of involuntary manslaughter. In December 2012, Lady Brownlie brought claims in tort and contract in the High Court against Four Seasons Holdings Incorporated, a Canadian company, for damages for injury and losses suffered as a result of the accident.

In 2018 the Supreme Court held that the evidence showed that Four Seasons Holdings Incorporated was a non-trading holding company which neither owned nor operated the Hotel and that therefore the courts of England and Wales had no jurisdiction to try the claims against it. The Supreme Court remitted ancillary matters to the High Court and ordered that the Claimant had permission to apply to correct the name of the Defendant, to substitute or to add a party to the proceedings.

Lady Brownlie applied to the High Court to amend her claim so that it could be brought against FS Cairo instead. Permission to amend her claim was granted but, because FS Cairo is an Egyptian company, Lady Brownlie also requires permission to serve her claim out of the jurisdiction.

In order to serve her claim outside the jurisdiction, English law requires Lady Brownlie to show, in respect of each claim in contract and tort, that: (1) it falls within a 'jurisdictional gateway' under CPR Practice Direction 6B; (2) it is a claim that has a reasonable prospect of success; and (3) England and Wales is the proper place in which to bring the claim. The High Court and a majority of the Court of Appeal (Arnold LJ dissenting) decided that Lady Brownlie had met all three elements of this test in respect of her claims in tort and contract. Lady Brownlie was therefore granted permission to serve her claims on FS Cairo. FS Cairo appeals to the Supreme Court only against the decisions concerning the first two elements of the test.