

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE
(CIVIL DIVISION)

CLAIM NO. ANUHCv2026/0041

BETWEEN:

GLOBAL BANK OF COMMERCE LIMITED
(IN OFFICIAL ADMINISTRATION)

Claimant

and

- [1] RAWCOURT LIMITED
[2] DEBBIE LIALATHUL KHAN (EXECUTRIX AND PERSONAL
REPRESENTATIVE OF THE ESTATE OF KADIM KHAN,
DECEASED)
[3] SHABIR KHAN

Defendants

Appearances:

Dr. David Dorsett, Counsel for the Claimant
Mr. Sylvester Carrott, Mr. Cosbert Cumberbatch and Mr. Anthony Greer,
Counsel for the Defendants

2026: June 22nd;
September 30th.

DECISION

- [1] **MICHEL, M.:** This is an application by the Defendants seeking various orders in relation to service of the Claimant's claim on them out of the jurisdiction in the United Kingdom.

Introduction

- [2] The Claimant is an international bank doing business in Antigua and Barbuda and licenced under the **International Banking Act 2016**,¹ as amended. On 10th November, 2025 the Financial Services Regulatory Commission ordered that the Claimant be placed in official administration and appointed an Administrator in accordance with the provisions of the **International Banking Act 2016**.
- [3] By claim form and statement of claim filed on 30th January, 2026 the Claimant commenced these proceedings against the Defendants for the payment of

¹ Act No. 6 of 2016.

monies allegedly due to it by the Defendants on account of lending and credit facilities extended to the 1st Defendant and allegedly personally guaranteed by the 2nd and 3rd Defendants.

- [4] In its statement of claim, the Claimant pleaded that the 1st Defendant is a private limited company incorporated in England, the 2nd Defendant the widow and executrix of the Estate of the late Kadim Khan, a former director and shareholder of the 1st Defendant, and the 3rd Defendant, the Secretary of the 1st Defendant.
- [5] The Claimant's claim was filed with a certificate for service out of the jurisdiction pursuant to rule 7.6 of the Civil Procedure Rules (Revised Edition) 2023 ("**CPR 2023**"). The claim was purportedly served on the Defendants out of the jurisdiction in England on 23rd February, 2026.

The Defendants' Application

- [6] The Defendants filed an acknowledgement of service on 13th March, 2026 and on 28th April, 2026 filed the present application for the following orders:-
- (i) an order setting aside service on the Defendants out of the jurisdiction;
 - (ii) an order staying proceedings unless and until the Claimant obtains leave to serve the claim out of the jurisdiction in strict compliance with Part 7 of the Civil Procedure Rules (Revised Edition) 2023;
 - (iii) further or alternatively, an order that the Court decline to exercise jurisdiction and/or stay the proceedings on the ground that Antigua and Barbuda is not the appropriate forum;
 - (iv) further or in the alternative, an order that the Claimant provide security for the Defendants' costs, in default of which, that the claim stands dismissed without further order;
 - (v) further or in the alternative, if jurisdiction and service are upheld, an order granting the Defendants an extension of time within which to file and serve acknowledgements of service and any defence.
 - (vi) Costs of and occasion by the application
- [7] The grounds of the Defendants' application are as follows:-
- (1) All Defendants are resident and/or incorporated in England, outside the territorial jurisdiction of this Honourable Court.
 - (2) The Claimant did not apply for or obtain leave under rule 7.4 to serve the claim form and statement of claim out of the jurisdiction.
 - (3) No valid gateway under rule 7.3 authorising service out of the jurisdiction was properly identified or relied upon.

- (4) The certificate filed pursuant to rule 7.6 does not and cannot be substituted for leave under rule 7.4, nor does it of itself confer jurisdiction.
- (5) The purported service was therefore invalid and ineffective, and the Court has not acquired personal jurisdiction over any Defendant.
- (6) The Claimant is in official administration, giving rise to a real and substantial risk that any adverse costs order will be unenforceable absent security.
- (7) The Defendants face substantial prescribed-cost exposure under CPR Part 65, including the costs of the jurisdiction challenge and the action as a whole
- (8) The Defendants have maintained jurisdictional objections at all times and have not waived, nor submitted to, the jurisdiction of the Court.

[8] Having carefully considered the Defendants' application together with the affidavit in support and the Parties written and oral submissions, to my mind, four broad issues arise on the Defendants' application for the Court's consideration:-

- (1) Whether service out of the jurisdiction should be set aside on the basis that the Claimant did not identify the jurisdictional gateway that it relied on for service out and whether service out should be set aside in any event on the basis that the claim does not fall under any of the jurisdictional gateways.
- (2) Whether the Claimant effected proper service on the Defendants in England.
- (3) If the Court is satisfied it has jurisdiction over the Defendants, whether the Court should decline its jurisdiction to hear the claim on the basis that there is a foreign competent jurisdiction more appropriate than Antigua and Barbuda to try the claim;
- (4) If the court retains its jurisdiction to try the claim, whether the Court should make an order for security for the Defendants' costs.

Issue 1: Whether Service out of the Jurisdiction should be Set Aside on the basis that the Claimant did not identify the Jurisdictional Gateway that it relied on for Service out and whether Service Out of the Jurisdiction should be Set Aside in any event on the basis that the Claim does not fall into any of the Jurisdictional Gateways

[9] The Claimant purported to serve the Defendants out of the jurisdiction without the permission of the Court pursuant to CPR 7.2. It is therefore important at this

uncture to set out the relevant rules as it relates to service out of the jurisdiction without the permission of the Court.

[10] CPR 7.2 provides:-

“General rule as to service of court process out of jurisdiction

7.2 (1) Court process may be served out of the jurisdiction without the permission of the court provided that –

(a) service is effected in compliance with rule 7.9 or pursuant to rule 7.17;

(b) the court process is listed in rule 7.3; and

(c) the claimant complies with rule 7.6.

(2) If service is not to be effected in compliance with rule 7.9 or pursuant to rule 7.17, the court’s permission is required to serve by alternative procedure under rule 7.10.”

[11] CPR 7.3 provides that the Court may set aside service of a court process if the proceedings are not listed under the rule. The rule lists a number of what are often described as “jurisdictional gateways” for service out of the jurisdiction.

[12] CPR 7.6 provides:-

“Certificate for service out of jurisdiction

7.6 Where court process is to be served out of the jurisdiction the claimant must, at the same time as filing that court process, file and serve a certificate signed by the claimant or the claimant’s legal practitioner stating -

(a) that, in the belief of the person signing the certificate, the claimant has a good cause of action;

(b) the case or cases listed in rule 7.3 on which the claimant relies;

(c) that, in the belief of the person signing the certificate, the court is the appropriate forum for the trial; and

(d) that, in the belief of the person signing the certificate, the proposed method of service does not infringe the law of that foreign state.”

[13] CPR 7.9 provides:-

Mode of service of court process– general provisions

7.9 (1) Subject to the following paragraphs of this rule, and rule 7.10, if a court process is to be served out of the jurisdiction, it may be served –

- (a) by a method provided for by –
 - (i) rule 7.12 (service through foreign governments, etc.); or
 - (ii) rule 7.14 (service on a State);
- (b) in accordance with the law of the country in which it is to be served; or
- (c) personally by the claimant or the claimant's agent.

(2) Nothing in this Part or in any court order may authorise or require any person to do anything in the country where the court process is to be served which is against the law of that country.

- [14] As can be seen from the above, CPR 7.2 sets out the requirements a Claimant must comply with to effect service of the Court process on a Defendant out of the jurisdiction without the Court's permission. One such requirement is that the court process is listed under one of the jurisdictional gateways under CPR 7.3 through which service out of the jurisdiction may properly be effected.
- [15] A further requirement for service out of the jurisdiction without the permission of the Court is the procedural requirement under CPR 7.6 that a claimant must at the same time as filing that court processes, file a certificate for service out of the jurisdiction, signed by the claimant or the claimant's legal practitioner, stating, *inter alia*, the case or cases listed in CPR 7.3 on which it relies.
- [16] As I understand it, the Defendants' application to set aside service out of the jurisdiction is two-fold. The Defendants argue that the certificate of service which was filed together with the Claimant's claim and which was served on the Defendants with the court process out of the jurisdiction was defective in that it did not specify the precise jurisdictional gateway under CPR 7.5 on which the Claimant relied. Further, the Defendants appear to be seeking to set aside the service on the Defendants out of the jurisdiction on the basis that the Claimant's claim does not fall under any of the jurisdictional gateways in CPR 7.6.
- [17] CPR 7.8 empowers the Court to set aside service out of the jurisdiction without the permission of the court under CPR 7.2. The rule provides:-

Application to set aside service under rule 7.2

7.8 (1) Any person on whom court process has been served out of the jurisdiction under rule 7.2 may apply to set aside service of the court process.

- (2) The court may set aside service under this rule if –
 - (a) the claimant does not have a good cause of action;
 - (b) the proceedings are not listed in rule 7.3; or
 - (c) the court is not the appropriate forum for the trial.

(3) This rule does not limit the court's power to make an order under rule 9.7 (procedure for disputing the court's jurisdiction).

Certificate for Service Out of Jurisdiction

[18] The certificate for service out of the jurisdiction accompanying the claim stated:-

"I, DAVID DORSETT, PH.D., of Watt, Dorsett, Hewlett Law, Kingsgate Chambers, 55A Newgate Street, St. John's, Antigua, on behalf of the Claimant, GLOBAL BANK OF COMMERCE LIMITED (IN OFFICIAL ADMINISTRATION), certify that: (a) The Claimant has a good cause of action; (b) The instant case is a case covered by CPR 7.3(3)(b); (c) The Claimant believes that the Eastern Caribbean Supreme Court, Antigua and Barbuda circuit, is the appropriate forum for the trial of instant matter; and (d) The Claimant believes that the proposed method of service, which is by personal service or registered mail, does not contravene the law of England."

[19] The Defendants' central argument is that the Claimant's certificate for service out of the jurisdiction did not identify the jurisdictional gateway relied upon by the Claimant.

[20] The Claimant's position as set out in its notice of opposition is that in its certificate for service out of jurisdiction pursuant to CPR 7.6, it identified CPR 7.3(3)(b) as its gateway.

[21] CPR 7.3(3) states:-

"Claims about contracts

(3) Court process may be served out of the jurisdiction if –

(a) a claim is made in respect of a breach of contract committed within the jurisdiction;

(b) a claim is made in respect of a contract where the contract –

(i) contains a term to the effect that the court shall have jurisdiction to determine any claim in respect of the contract;

(ii) is by its terms or by implication governed by the law of any Member State or Territory;

(iii) was made by or through an agent trading or residing within the jurisdiction; or

(iv) was made within the jurisdiction; or

(c) the claim is for a declaration that no contract exists, where, if the contract did exist, it would fulfil one or more of the conditions in subparagraph (b)."

- [22] It is noted that the Claimant's certificate pursuant to CPR 7.6 did not identify which gateway under CPR 7.3(3)(b) the Claimant relied on.

The Defendants' Submissions

- [23] Learned Counsel for the Defendants in his written submissions argued that no valid gateway is made out on the facts of this claim. Learned Counsel for the Defendants submitted that the Claimant impliedly relies in its submissions on a contractual jurisdictional gateway but this is not particularised in the certificate for service out of jurisdiction. He further submitted that in any event, the documents do not contain any clear or binding jurisdiction clause. Learned Counsel for the Defendants submitted that a claimant must show a good arguable case that a binding jurisdiction clause exists and applies to the Defendants and that the Claimant cannot do so here.
- [24] Learned Counsel for the Defendants further submitted that the governing law provisions do not confer jurisdiction, and a clause in the guarantee is vague, non-exclusive, and expressly allows proceedings to be brought in any jurisdiction. He argued that this is not a submission to this Court's jurisdiction; but it demonstrates the absence of one. He further submitted that the position is compounded by the defective CPR 7.6 certificate as the certificate does not properly identify or particularise any gateway, nor does it provide a proper
- [25] Learned Counsel for the Defendants further submitted that in any event, the Court must look behind the certificate and determine whether the gateway is in fact established. He submitted that on any proper analysis, it is not and because no gateway exists and the certificate is defective, CPR 7.2 is not engaged. Learned Counsel for the Defendants submitted that CPR 7.4 (service out of the jurisdiction with leave of the Court) therefore applied and the Claimant did not seek or obtain leave. In the circumstances, the purported service on the Defendants is unauthorised and a nullity.

The Claimant's Submissions

- [26] In the written submissions filed on behalf of the Claimant, learned Counsel for the Claimant submitted that the proceedings are covered by CPR 7.3(3)(b). Learned Counsel for the Claimant submitted that the Claimant is a bank incorporated and doing business in Antigua. The contracts were made by and through the Claimant's agents (its officers) who were trading and residing within Antigua. The contractual documents indicate that the contracts were governed by the laws of Antigua and Barbuda. Accordingly, a valid CPR 7.3 gateway is properly identified, established, and certified.

Discussion

[27] In my view, the mere fact that the Claimant' certificate for service out of the jurisdiction did not specify the exact gateway under CPR7.3(3)(b) it relied on to serve the claim out of the jurisdiction does not in and of itself mean that service of the claim should be set aside, however, pursuant to CPR 7.3 and 7.8, if the Claimant' claim does not fall under any of the jurisdictional gateways, it is liable to be set aside.

[28] The conditions to be considered on an application to set aside service out of the jurisdiction pursuant to CPR 7.8 are similar to those provisions under rule 7.7 of the Civil Procedure Rules 2000 ("**CPR 2000**"). When considering applications to set aside under rule 7.7 of CPR 2000, our courts looked to the judgment of the Judicial Committee of the Privy Council in **Nilon Limited and another v Royal Westminster Investments S.A. and others**² for guidance. The principles in **Nilon** were recently applied in the judgment of the Court of Appeal in **Lam Wo Ping et al v Chen Jian Yun et al**.³

[29] In **Lam Wo Ping**, Ward JA, citing with approval the reasoning of the Board in **Nilon**, stated:-

[52] The applicable principles relating to service out are well known and apply irrespective of the gateway accessed. They were articulated with much lucidity by the Board in **Nilon**:

"On an application for service out of the jurisdiction, three requirements have to be satisfied. First, the claimant must satisfy the court that in relation to the foreign defendant there is a serious issue to be tried on the merits, i.e. a substantial question of fact or law, or both. Second, the claimant must satisfy the court that there is a good arguable case that the claim falls within one or more classes of case in which permission to serve out may be given. In this context "good arguable case" connotes that one side has a much better argument than the other. Third, the claimant must satisfy the court that in all the circumstances the forum which is being seised (here the BVI) is clearly or distinctly the appropriate forum for the trial of the dispute, and that in all the circumstances the court ought to exercise its discretion to permit service of the proceedings out of the jurisdiction."

² [2015] UKPC 2.

³ BVIHCMAP2023/0006 (delivered 20th August 2024, unreported).

- [30] The Claimant's application seeking to set aside service was not on the grounds that the Claimant does not have a good cause of action, nor on the basis that the court is not the appropriate forum for the trial of the claim. The central basis of the Claimant's set aside application was that the proceedings are not listed under CPR 7.3. The issue of forum only arose on the Defendants' alternative application which I will address later.

Whether the Claimant has a Good Arguable Case that the Proceedings Fall within One of the Jurisdictional Gateways

- [31] To determine whether a claim falls under a certain jurisdictional gateway, the court is required to identify and assess the substance of the real dispute underlying the claim.
- [32] The Claimant alleged in their claim that by letter dated 17th February, 2017 a revolving stand-by-line credit was extended by the Claimant to the 1st Defendant on certain terms ("**the February 2017 facility**"). Security in support of the February 2017 facility included a guarantee from the 1st Defendant, a personal guarantee from Kadim Khan, a promissory note dated 17th February, 2017 given by the 1st and 3rd Defendants, and a registered charge over real estate property located in London, United Kingdom.
- [33] The Claimant alleges that by letter dated 26th July, 2024 a demand was made for a repayment of the February 2017 facility and that notwithstanding the demand, the February 2017 facility remains unpaid.
- [34] The Claimant further alleges in its statement of claim that by letter dated 21st June, 2017 a term loan was extended by the Claimant to the 1st Defendant on certain terms ("**the June 2017 facility**"). The maturity date for the loan was 31st July, 2022. The loan was advanced to the 1st Defendant and the loan matured, but no payment towards satisfaction of the loan had been made by the 1st Defendant. The Claimant further alleged that security in support of the June 2017 facility included a guarantee from the 1st Defendant, a personal guarantee from Kadim Khan and a registered charge over certain real estate property in London, United Kingdom. By letter dated 26th July, 2024 a demand was made for a repayment of the June 2017 facility and notwithstanding the demand, the June 2017 facility remains unpaid.
- [35] The Claimant avers that in the premises it has suffered loss and damage.
- [36] Both the February 2017 and the June 2017 facility letters contained collateral provisions. Both facility letters also provided that the agreements are construed to be governed by the laws of Antigua and Barbuda and the United Kingdom.

- [37] In my view, having considered the Claimant's claim and the facility letters attached, the Claimant's claim is in respect of contracts, the terms of which are set out in the February 2017 and June 2017 facility letters. The facility letters explicitly provide that the agreements are to be construed to be governed by the Laws of Antigua and Barbuda and the United Kingdom. The Defendants refer to other documents, which are not before the Court which they say do not confer exclusive jurisdiction on Antigua and Barbuda. However, in my view, this does not displace the fact that the agreements underpinning the Claimant's claim against the Defendants make provision for the agreements to be construed to be governed by the Laws of Antigua and Barbuda, and additionally the United Kingdom.
- [38] Accordingly, on the face of the agreements, I am of the view that the Claimant has a good arguable case that its claim is in respect of a contract where the contracts terms are governed by the law of Antigua and Barbuda. The claim would accordingly fall under CPR 7.3(3)(b)(ii).
- [39] As previously stated, having properly considered the Defendant's application, the basis upon which they sought to set aside service out of the jurisdiction was that the Claimant's service out certificate did not detail the jurisdictional gateway the Claimant relied upon for service out of the jurisdiction and that in any event, that the Claimant's claim does not fall under any of the jurisdictional gateways for service out. The Defendants also contend that there was no proper service of the claim on them in accordance with Part 7 of CPR 2023. The grounds of the Defendants' set aside application did not seek to set aside service on the Defendants on the basis that the court is not the appropriate forum for the trial of the claim.
- [40] The issue of forum was raised by the Defendant in the alternative. The fourth order the Defendants sought on their application was a further or alternative order that the Court decline to exercise jurisdiction and/or stay the proceedings on the ground that Antigua and Barbuda is not the appropriate forum. The distinction is important as it determines where the burden of proof lies, which shall be discussed later in this decision.
- [41] If I am wrong on this point, and the issue of forum arises on the Defendants' set aside application, even with the burden on the Claimant to show that Antigua is clearly and distinctly the appropriate forum, considering and balancing the connecting factors identified later in this decision, I am of the view that the burden would be met by the Claimant.
- [42] In light of the foregoing, I refuse to set aside service of the claim out of the jurisdiction.

Issue 2: Whether the Claimant effected Proper Service on the Defendants in England

[43] The Defendants argue that there was no valid service of the claim on them. It was a bit unclear as to the basis upon which this argument was being made.

[44] In the affidavit of Ms. Stashana Douglas filed in support of the Defendants' application, she appears to allude to the lack of personal service on the Defendant. Ms. Douglas stated in her affidavit:-

"I am not aware of, and have not been provided with, any affidavit or proof of service demonstrating that the Claim Form was personally served on any Defendant, whether within Antigua and Barbuda or elsewhere. In fact their Instructions are too *[sic]* the contrary. The Defendants report finding the Claim Form and Statement of Claim at their respective premises."

[45] The Defendants' notice of application and submissions appear to ground the issue of invalid service on the Defendants on the basis of their contention that the Claimant's certificate for service out of the jurisdiction did not identify the jurisdictional gateway relied upon for service out of the jurisdiction. Further, that the claim did not fall under any of the gateways. In those circumstances, the Claimant did not satisfy CPR 7.2 for service out of the jurisdiction without the permission of the Court. The Defendants further argued that the Claimant did not obtain the Court's leave to serve the claim out of the jurisdiction. These contentions were evidenced by Ms. Douglas who stated the following in her affidavit in support of the Defendants' application:-

"7. I am advised and verily believe that the Claimant has not effected valid service of the Claim Form and Statement of Claim upon any of the Defendants in accordance with the Eastern Caribbean Supreme Court Civil Procedure Rules. None of the Defendants is resident, domiciled, or incorporated within Antigua and Barbuda. Each Defendant is resident in, or incorporated under the laws of, England, and is therefore outside the territorial jurisdiction of this Honourable Court.

10. I am further not aware of any application by the Claimant for leave to serve the proceedings out of the jurisdiction, nor of any order of this Honourable Court granting permission for such service, nor of any identification of a jurisdictional gateway relied upon by the Claimant.

11. In the absence of leave to serve out of the jurisdiction, and in the absence of valid personal service in England effected pursuant to an

order of the Court and in accordance with the applicable rules, the purported service of the Claim Form is irregular, ineffective, and null.”

- [46] I have already determined that the Claimant has a good arguable case that its claim falls under the jurisdictional gateway at CPR 7.3(3)(b)(ii), that is, the claim is in respect of a contract where the contract is by its terms or implication governed by the law of Antigua and Barbuda. I am of the view that the Defendants complied with CPR 7.2 for service out of the jurisdiction without the permission of the Court. In those circumstances, the Claimant would not have been required to obtain the leave of the Court to serve the claim out of the jurisdiction, therefore, service on the Defendants on this basis cannot be said to be invalid.
- [47] The issue of lack of personal service can be addressed upon consideration of the affidavit of service filed by the Claimant.
- [48] CPR 7.9 provides for the mode for service of the Court process out of the jurisdiction. It provides, amongst other methods, that if a court process is to be served out of the jurisdiction it may be served in accordance with the law of the country in which it is to be served.
- [49] In the affidavit of service of Frederick Milton Chatfield filed by the Claimant on 18th June, 2026 he stated how the claim, the E-Litigation Portal authorisation code for each Defendant, the supporting claim documents and the certificate for service out of the jurisdiction pursuant to CPR 7.6 were served on each Defendant in England on 23rd February, 2026.
- [50] In relation to the 1st Defendant, he stated that he served the 1st Defendant by leaving the documents on the reception desk at the registered office of the 1st Defendant, having failed to find an officer or employee authorized to accept service of the documents on their behalf.
- [51] In relation to the 2nd Defendant, Mr. Chatfield stated that service was effected by inserting the documents in a sealed, properly addressed envelope, and leaving it on the reception desk at the registered correspondence address of the 2nd Defendant and by inserting the documents in a sealed properly addressed envelope and leaving it on the reception desk at the last known residential address of the 2nd Defendant.
- [52] In relation to the 3rd Defendant, Mr. Chatfield stated that service was effected by inserting the documents in a sealed properly addressed envelope and leaving it on the reception desk at the registered correspondence address of the 2nd Defendant and by inserting the documents in a sealed, properly addressed

envelope and leaving it on the reception desk at the last known residential address of the 2nd Defendant.

[53] Mr. Chatfield further stated that service was effected on the Defendants in accordance with rule 6.3c and 6.9 of the Civil Procedure Rules of England and Wales.

[54] Rule 6.3 of the English Civil Procedure Rules provides:-

“Methods of service
6.3

(1) A claim form may be served by any of the following methods –

(a) personal service in accordance with rule 6.5;

(b) first class post, document exchange or other service which provides for delivery on the next business day, in accordance with Practice Direction 6A;

(c) leaving it at a place specified in rule 6.7, 6.8, 6.9 or 6.10;

(d) fax or other means of electronic communication in accordance with Practice Direction 6A; or

(e) any method authorised by the court under rule 6.15.

(2) A company may be served –

(a) by any method permitted under this Part; or

(b) by any of the methods of service permitted under the Companies Act 2006.

(3) A limited liability partnership may be served –

(a) by any method permitted under this Part; or

(b) by any of the methods of service permitted under the Companies Act 2006 as applied with modification by regulations made under the Limited Liability Partnerships Act 2000.

[55] Rule 6.9 of the English CPR states:-

“6.9

(1) This rule applies where –

(a) rule 6.5(1) (personal service);

(b) rule 6.7 (service of claim form on solicitor); and

(c) rule 6.8 (defendant gives address at which the defendant may be served), do not apply and the claimant does not wish to effect personal service under rule 6.5(2).

(2) Subject to paragraphs (3) to (6), the claim form must be served on the defendant at the place shown in the following table.

(For service out of the jurisdiction see rules 6.40 to 6.47.)

Nature of defendant to be served	Place of service
1. Individual	Usual or last known residence.
2. Individual being sued in the name of a business	Usual or last known residence of the individual; or principal or last known place of business.
3. Individual being sued in the business name of a partnership	Usual or last known residence of the individual; or principal or last known place of business of the partnership.
4. Limited liability partnership	Principal office of the partnership; or any place of business of the partnership within the jurisdiction which has a real connection with the claim.
5. Corporation (other than a company) incorporated in England and Wales	Principal office of the corporation; or any place within the jurisdiction where the corporation carries on its activities and which has a real connection with the claim.
6. 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.
7. Any other company or corporation	Any place within the jurisdiction where the corporation carries on its activities; or any place of business of the company within the jurisdiction.

(3) Where a claimant has reason to believe that the address of the defendant referred to in entries 1, 2 or 3 in the table in paragraph (2) is an address at which the defendant no longer resides or carries on business, the claimant must take reasonable steps to ascertain the address of the defendant's current residence or place of business ('current address').

(4) Where, having taken the reasonable steps required by paragraph (3), the claimant –

(a) ascertains the defendant's current address, the claim form must be served at that address; or

- (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.
- (5) If, under paragraph (4)(b), there is such a place where or a method by which service may be effected, the claimant must make an application under rule 6.15.
- (6) Where paragraph (3) applies, the claimant may serve on the defendant's usual or last known address in accordance with the table in paragraph (2) where the claimant –
 - (a) cannot ascertain the defendant's current residence or place of business; and
 - (b) cannot ascertain an alternative place or an alternative method under paragraph (4)(b).

[56] Having considered the affidavit of service filed by the Claimant and having considered the provisions of the English Civil Procedure Rules on service, it appears that the Claimant effected service on the Defendant in accordance with the provisions of the English Civil Procedure Rules.

[57] The Defendants did not explain how the mode of service employed by the Claimant was defective. Rather, it seems to me that they were conflating the issue of defective personal service on the Defendants with their assertion that the Court's process was served on the Defendants without complying with the provisions of CPR 2023 for service without the permission of the Court and without having applied for leave from the Court. However, having concluded that service out was proper, and there being no argument before me that service was not effected in accordance with the Laws of England, I see no basis to conclude that service on the Defendants was defective, void, or otherwise irregular.

[58] I now turn to the issue of forum.

Issue 3: Whether the Court should Decline its Jurisdiction to hear the Claim on the Basis that there is a Foreign Competent Jurisdiction more appropriate than Antigua and Barbuda to try the Claim

[59] Further, or as an alternative to setting aside service of the Claimant's claim on them out of the jurisdiction, the Defendants sought an order that the Court decline to exercise jurisdiction and/or stay the proceedings on the ground that Antigua and Barbuda is not the appropriate forum, that is on the basis of *forum non conveniens*.

[60] In **Lam Wo Ping**, Ward JA, delivering the judgment of the Court of Appeal explained the issue of forum as follows:-

“[98] The *forum conveniens* rule requires a court to be satisfied that the local jurisdiction is clearly or distinctly the most appropriate forum for the trial of the claim. The court must consider whether there is another available foreign [*sic*] with competent jurisdiction more appropriate than the local court to try the claim. In this context, appropriate means more suitable for the interest of all the parties and the ends of justice: *Spiliada Maritime Corp v Cansulex Ltd*.¹⁷ [[1987] AC 460.]

[99] The task of determining which is the more appropriate forum requires the court to assess which forum has the most real and natural connection with the action. This entails engaging in a balancing exercise of a number of factors, sometimes referred to in the case literature as “connecting factors”. A non-exhaustive list of such factors include the place of commission of the acts giving rise to the action, the availability of witnesses, the likely languages they speak, the place where the parties reside and carry on business, the law governing the transaction: **IPOC International Growth Fund Ltd v LV Financial Group Ltd et al**.¹⁸ [BVIHCVAP2003/0020 and BVIHCVAP2004/0001 (delivered 22nd November 2004, unreported)]. It has been held that the location of the witnesses is a core factor: **Nilon**.

[61] The issue of forum generally arises in two instances: (1) on a service out application by a Claimant; and (2) on an application by a Defendant for a stay of proceedings on grounds of *forum non conveniens*. The onus of proof on the appropriate forum will depend on which type of application is being considered by the Court. This was explained by the Court of Appeal in **Lam Wo Ping**:-

“The cases recognise a difference in the onus of proof in an application for service out, where the burden is on the claimant to establish that the local jurisdiction is clearly or distinctly the most appropriate forum for the trial of the claim; as opposed to an application to stay proceedings on grounds of *forum non conveniens*, where the burden is on the defendant to show that there is an available foreign jurisdiction with competent jurisdiction more appropriate than the local court to try the claim.

[62] I already stated above that I am of the view that the Defendants’ set aside application was grounded on the issue of whether the Claimant’s claim fell within

any of the jurisdictional gateways under CPR 7.3 and this was the basis upon which the Claimant responded to the Defendants application and how the application was argued. The issue of forum arose separately on the Defendants' alternative application for an order that the court decline to exercise jurisdiction and or stay the proceedings on the ground that Antigua and Barbuda is not the appropriate forum. Thus, on the Defendants' alternative application, the burden is on them to show that there is an available foreign Court with competent jurisdiction more appropriate than the local court to try the claim.

- [63] To determine which is the more appropriate forum to try this claim, the Court is required to assess which forum has the most real and natural connection with the action. In carrying out this assessment, the Court must engage in a balancing exercise of the "connecting factors".
- [64] Based on the affidavit evidence filed in support of their application, and the submissions filed on their behalf, the Defendants' position is that England is the more appropriate forum to try this claim.
- [65] The issues related to forum were addressed in the affidavit Ms. Douglas filed in support of the Defendants' application. In her affidavit, Ms. Douglas stated:-

"To the best of my knowledge, all Defendants are resident in, or incorporated in England and none carries on business or holds assets in Antigua and Barbuda. The alleged facilities, guarantees and security concern UK based parties, UK situated real estate and documents allegedly executed in the United Kingdom. The only connection with Antigua and Barbuda is the Claimant's regulatory domicile and subsequent administration which is insufficient to render this forum the appropriate forum.

6. I am advised by Cumberbatch and Associates and verily believe to be true that from a review of the documentation provided with the Claim Form and those subsequently made available for inspection that the transaction documents relied upon by the Claimant do not contain a single, clear, and consistent governing law clause applicable across the alleged facilities, guarantees, and related instruments. Certain documents appear to make reference to Antigua and Barbuda law, while others refer to, or are drafted by reference to, English law requirements, including execution formalities and property-related concepts. No document has been identified to my knowledge which clearly and expressly binds all Defendants, including the alleged guarantors and the estate of the late Kadim Khan, to the law of Antigua and Barbuda. As a result, the governing law applicable to the alleged obligations is unclear from the face of the documents disclosed.

[66] In the written submissions filed on behalf of the Defendants, learned Counsel for the Defendants submitted that Antigua and Barbuda is not the appropriate forum. Learned Counsel for the Defendants submitted that applying the principles in **Spiliada Maritime Corp v Cansulex Ltd**,⁴ the Court must identify the forum with the most real and substantial connection to the dispute. He submitted that all relevant connecting factors point overwhelmingly to England: the Defendants are resident and/or incorporated there, the transactions were negotiated, executed, and performed there, the documents, witnesses, and assets are located there, and any enforcement would take place there. Learned Counsel for the Defendants further submitted that by contrast, Antigua's only connection is the presence of the Claimant which is insufficient and that England is plainly the more appropriate forum.

[67] Based on the Claimant's notice of opposition and written submissions, it was clear that the Claimant's position was that Antigua and Barbuda is the appropriate forum for the trial of the claim. In his written submissions, learned Counsel for the Claimant stated the following:-

“[17] In the instant case, the monies were advanced by a bank incorporated within the court's jurisdiction of Antigua and Barbuda. The Claimant and its witness are resident in the court's jurisdiction. All of the relevant documents are within the jurisdiction. The contract is governed by the law of the jurisdiction. The fact that the Defendants and their witnesses are presently out of the jurisdiction is hardly a factor that suggests that the court is not the appropriate forum for the trial. Surely it must be right that if a party borrows money from an Antiguan bank it is right and proper that the borrower answer in an Antiguan court why it is that the monies borrowed ought not to be repaid. In the circumstances it is respectfully submitted that “the court is the appropriate forum for the trial” and that CPR 7.8(4)(c) has been satisfied.”

[68] Having considered the submissions of the Parties, it seems to me there are several connecting factors to be considered in relation to the present claim, including:-

- (i) the governing law;
- (ii) the location of the parties
- (iii) the location of witnesses
- (iv) where documents were executed;
- (v) the location of the alleged security.

⁴ [1987] AC 460.

- [69] I have already stated that the facility letters relied upon by the Claimant as setting out the terms of the Parties' agreement provide that the agreements are construed to be governed by the Laws of Antigua and Barbuda and the United Kingdom. The Defendants refer to other documents which they have not provided which they say do not contain a single clear and consistent governing law clause applicable across the alleged facilities and instrument which they say some make reference to Antigua and Barbuda while others are with reference to English law requirements. These other documents were not placed before the Court. However, considering the material before the Court, governing law is not a significant or decisive connecting factor to the English courts as the agreements are also governed by the laws of Antigua and Barbuda.
- [70] The Defendants argue that all the Defendants are resident in or incorporated in England and none carries business or has assets in Antigua. They contend that the only connection with Antigua and Barbuda is the Claimant's regulatory domicile and subsequent administration. This again, in my view, is not a strong connecting factor to England as being the appropriate forum because whilst the Defendants may be based on England, the Claimant is based in Antigua and Barbuda and carries on business in Antigua and Barbuda.
- [71] The Defendants also argue that all of their witnesses are in the United Kingdom which is a core factor for consideration. Apart from the Defendants themselves, it is not clear who these witnesses would be. It is also noted that the Claimant's position is that its witnesses are in Antigua and Barbuda. Thus, this is not at all a case where all the witnesses or the majority of the witnesses are located in England. Thus, the location of witnesses is not a decisive connecting factor to England as being the more appropriate forum.
- [72] The Defendants also argue that the alleged facilities, guarantees and security concern United Kingdom based parties, United Kingdom situated real estate and documents allegedly executed in the United Kingdom. The Defendants did not provide any support for their assertion about the location of the execution of documents related to this claim and merely state that documents were allegedly executed in the United Kingdom. Thus, there is uncertainty as to where documents were executed and to what extent it would be a connecting factor to the English courts.
- [73] As it relates to the location of assets and enforcement, whilst this may be a factor for consideration pointing to England as the appropriate forum, I do not consider it to be a core factor for the trial of the claim.
- [74] In my view, weighing all the factors in the balance, the Defendants have not demonstrated that England is more appropriate than Antigua and Barbuda to try

the claim. I am therefore not satisfied that the trial of the claim in England is more suitable for the interest of all the Parties and the ends of justice.

[75] In light of the foregoing, I refuse to decline the Court's jurisdiction to try this claim and stay these proceedings.

Issue 4: Whether the Court should Order the Claimant to give Security for the Defendants' Costs

[76] In the further alternative, the Defendants sought an order that the Claimant provide security for the Defendants' costs. This can be dealt with in short.

[77] The Court is empowered by CPR 24.2 and 24.3 to make an order requiring a claimant to give security for a defendants' costs of proceedings. The rules provide:-

"Application for order for security for costs

24.2 (1) A defendant in any proceedings may apply for an order requiring the claimant to give security for the defendant's costs of the proceedings.

(2) Where practicable such an application must be made at a case management conference or pre-trial review.

(3) An application for security for costs must be supported by evidence on affidavit.

(4) The amount and nature of the security shall be such as the court thinks fit.

Conditions to be satisfied

24.3 The court may make an order for security for costs under rule 24.2 against a claimant only if it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order, and that –

(a) some person other than the claimant has contributed or agreed to contribute to the claimant's costs in return for a share of any money or property which the claimant may recover;

(b) the claimant –

(i) failed to give his or her address in the claim form;

(ii) gave an incorrect address in the claim form; or

- (iii) changed his or her address since the claim was commenced, with a view to evading the consequences of the litigation;
- (c) the claimant has taken steps with a view to placing the claimant's assets beyond the jurisdiction of the court;
- (d) the claimant is acting as a nominal claimant, other than as a representative claimant under Part 21, and there is reason to believe that the claimant will be unable to pay the defendant's costs if ordered to do so;
- (e) the claimant is an assignee of the right to claim and the assignment has been made with a view to avoiding the possibility of a costs order against the assignor;
- (f) the claimant is an external company; or
- (g) the claimant is ordinarily resident out of the jurisdiction."

[78] A defendant must satisfy at least one of conditions under CPR 24.3 before the Court's jurisdiction to order security for costs can be engaged. However, satisfying a condition alone does not mean that an order for security for costs will be made. In **Dr. Martin Didier et al v Royal Caribbean Cruises Ltd.**,⁵ Webster JA [Ag.], delivering the judgment of the Court of Appeal stated:-

"the authorities from England and the Eastern Caribbean establish that this is only a starting point that, in effect, gives the court the jurisdiction to make the order. Invariably, the court will go on to consider the overarching condition of whether it is just to make the order, having regards to all the circumstances of the case.

[79] The Defendants' position is that CPR 24.3 confers a broad discretion to order security where it is just to do so. Considering the Defendants' application, it appears that the Defendants seek an order for security for costs on the basis that the Claimant is in official administration, which they allege gives rise to a real risk that any costs order will not be satisfied promptly or effectively. The Defendants argue that enforcement is subject to restriction and requires further steps, increasing delay and uncertainty. Learned Counsel for the Defendants also argue that the Defendants are foreign Parties exposed to substantial costs in a jurisdiction with which they have no meaningful connection and in those circumstances, the risk is clear and the justice of ordering security is compelling

⁵ SLUHCVP2017/0051 (delivered 18th September 2018, unreported).

- [80] Learned Counsel for the Claimant submit that the Defendants' application must fail on the basis that the Defendants have not identified or satisfied any condition under CPR 24.3 for the Court to go on to exercise its discretion to order security for costs.

Discussion

- [81] Although the Defendants argue that CPR 24.3 confers a broad discretion to order security for costs, it is plain that any discretion of the Court can only be exercised where a condition has been satisfied to trigger the Court's jurisdiction to make an order. That jurisdiction arises where a Defendant satisfies the Court that one of the conditions under CPR 24.3 is applicable to the case. I agree with learned Counsel for the Claimant that the Defendants have not pointed to any condition under CPR 24.3 which is applicable to the circumstances of the present case.
- [82] The Defendants argued that the Claimant's entering into official administration, can be considered as the Claimant taking steps with a view to placing its assets beyond the jurisdiction of the Court. In my view, without more, this is insufficient to bring the circumstances of this case within the ambit of that condition under CPR 24.3. Beyond stating that they have been placed in administration, the Defendants have not shown any actions or intentions of the Claimant that would result in such a finding. In my view, while entering administration involves legal protections that may limit a creditor's immediate access to a claimant's assets, this does not inherently demonstrate an intention to place assets beyond the jurisdiction of the Court. The Defendants would have had to place evidence before the Court to demonstrate that the actions and the intentions of the Claimant were to that end, however, they have not done so on this application.

Extension of Time to File Defence

- [83] As a final alternative if the Court refused to set aside service and decline jurisdiction, the Defendants sought an order granting an extension of time to file an acknowledgement of service and defence. The Defendants already filed an acknowledgement of service within the time limited by the rules on 13th March, 2026 thus no extension of time to file an acknowledgement of service is required. However, I am satisfied that the Defendants should be granted an extension of time to file their defence to the Claimant's claim.

Costs

- [84] The general rule is that the unsuccessful party pays the successful Parties' costs. The Claimant has successfully resisted the Defendants' application and I see no reason to depart from the general rule. I would therefore order that the Defendants pay the Claimant's costs of this application such costs to be

summarily assessed at the first management conference, unless costs are sooner agreed by the Parties.

Disposition

[85] In light of the foregoing, I make the following orders:-

1. The Defendants' application filed on 28th April, 2026 is dismissed in its entirety save and except that the Defendants are granted an extension of time to 16th November, 2026 to file and serve their defences to the Claimant's claim.
2. The Claimant is at liberty to file a reply to any defence filed within 14 days of service of the defence.
3. The Court Office shall list this matter for first case management in accordance with rule 27.3 of the Civil Procedure Rules (Revised Edition) 2026.
4. The Defendants shall pay the Claimant's costs on this application such costs to be summarily assessed at the first case management conference unless the Parties sooner agree costs.

[86] I wish to thank learned Counsel on both sides for their helpful oral and written submissions.

Carlos Cameron Michel
High Court Master

By the Court

Registrar