

Service Out of the Jurisdiction: Tort Gateway

10 June 2021

In a recent judgment, *Manek v IIFL Wealth* [2021] EWCA Civ 264, the Court of Appeal has clarified the scope of the tort gateway to service out of the jurisdiction pursuant to paragraph 3.1(9) of Practice Direction 6B (“PD6B”).

Background. The case arose as an appeal from an earlier judgment by which an order for permission to serve two defendants domiciled in India was set aside by His Honour Judge Pelling QC.

The substantive dispute involved a claim in the tort of deceit relating to an alleged fraudulent scheme by which two minority shareholders in an entity, Hermes i-Tickets Private Limited (“Hermes”) were convinced to sell their shareholdings to an entity controlled by the Defendants, known as GIR, so that the total shareholding in Hermes could be sold to another entity, a company known as EMIF. EMIF had made an offer to purchase Hermes for a total of approximately \$40 million. The Claimants duly sold their minority shareholding to GIR, which proceeded with the sale of Hermes to EMIF. Immediately after the sale to EMIF, Hermes was sold to a third company, Wirecard AG, for approximately €250 million. The Claimants had not ascertained who controlled EMIF, but allege that the defendants benefitted from the on-sale of Hermes to EMIF. The Claimants allege that they were cheated out of the true value of their shares in Hermes as a result of the scheme arranged by the Defendants. Two of the Defendants are domiciled in India (the “Indian Defendants”), and accordingly the Claimants sought (and were granted) permission to serve the claim out of the jurisdiction on those Defendants.

The Indian Defendants then sought to have permission to serve out of the jurisdiction set aside, citing several grounds. The recent appeal concerned only one of them – the tort gateway in paragraph 3.1(9) of PD6B.

The Tort Gateway – Findings on Appeal. Paragraph 3.1(9) of PD6B relevantly provides that permission to serve out of the jurisdiction is required where:

(9) *A claim is made in tort where:*

...

- (b) *damage which has been or will be sustained results from an act committed, or likely to be committed, within the jurisdiction.*

The key question in *Manek* was what happens in circumstances where the alleged damage results from acts committed partly within, and partly outside of, the jurisdiction.

The Claimants relied on four alleged acts (including meetings during which misrepresentations were allegedly made by the Defendants to the Claimants) in support of its argument that acts had been committed within the jurisdiction. However, at first instance the Court had held that the four acts relied upon had not been sufficiently substantial and efficacious (relying on the test set out in *Metall und Rohstoff v Donaldson* [1990] 1 QB 437 E-G) to meet the requirements of 3.1(9)(b). HHJ Pelling QC held that the substantial and causative acts required to engage the tort gateway had in fact occurred abroad and that the acts and events which had taken place within the jurisdiction were insignificant.

The Court of Appeal disagreed with the first instance findings, focusing in particular on a meeting that occurred in London between the relevant parties. The Court of Appeal noted that the London meeting was important, as it was the first face-to-face meeting of the parties. The Court further found that various express representations that “went to the heart” of the alleged fraud were made or could be inferred from the background to the discussions during the meeting in London. Accordingly, on a fair reading of the evidence, it was clear that the meeting in London had resulted in substantial and efficacious acts being committed within the jurisdiction. The Claimants were entitled to rely on the tort gateway to serve the claim out of the jurisdiction.

Observations. It is clear that the judgment in *Manek* will have ramifications for claimants wanting to rely on the tort gateway to serve fraud proceedings out of the jurisdiction. The judgment clarifies that rather than embarking “on a geographical comparison exercise” in respect of the various acts relied upon to determine whether they are “substantial and efficacious”, courts will consider the entire chronology of events or acts relied upon to determine whether the threshold for engaging the tort gateway has been met. In cases with complex factual patterns comprising multiple different acts and locations, all of which contribute to an evolving fraud, this will lessen the burden on claimants.



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