THE TERRITORY OF THE VIRGIN ISLANDS
BRITISH VIRGIN ISLANDS
(COMMERCIAL DIVISION)
Claim No: BVIHC (COM) 2013/0160

BETWEEN:

(1) RENOVA INDUSTRIES LTD
(2) WEDGWOOD MANAGEMENT LIMITED
(3) ZAPANCO LIMITED
(4) LAMESA HOLDINGS SA

Claimants

- and –

(1) EMMERSON INTERNATIONAL CORPORATION

Applicant/Defendant

~~**(2) TOMSA HOLDINGS LIMITED**~~
~~**(3) ALABASTER ASSOCIATES LIMITED**~~
~~**(4) GARDENDALE INVESTMENTS LIMITED**~~
(5) MIKHAIL ABYZOV
(6) ROMOS LIMITED
(7) FRESKO FINANCIAL LIMITED

Defendants

And by way of Counterclaim:

(1) EMMERSON INTERNATIONAL CORPORATION

Applicant/Claimant by way of Counterclaim

~~**(2) TOMSA HOLDINGS LIMITED**~~
~~**(3) ALABASTER ASSOCIATES LIMITED**~~
~~**(4) GARDENDALE INVESTMENTS LIMITED**~~
(5) ANDREY TITARENKO

Claimants by way of Counterclaim

-and-

(1) RENOVA INDUSTRIES LTD
(2) WEDGWOOD MANAGEMENT LIMITED
(3) ZAPANCO LIMITED
(4) LAMESA HOLDINGS SA
(5) VIKTOR VEKSELBERG
(6) INTEGRATED SYSTEMS LIMITED
(a company incorporated under the laws of Belize)
(7) ODVIN FINANCIAL INC
(8) GOTHELIA MANAGEMENT LIMITED
(9) RENOVA HOLDING LIMITED
(10) VLADIMIR KUZNETSOV

(11) ALEXEI MOSKOV
(12) ALEXANDER KOLYCHEV
(13) MIKHAIL SLOBODIN
(14) MAKSIM MAYORETS
(15) RENOVA MANAGEMENT AG

(16) PAO T PLUS
Respondent/Sixteenth Defendant by way of Counterclaim

(17) INTEGRATED ENERGY SYSTEMS LIMITED
(a company incorporated under the laws of Cyprus)
(18) CLERN HOLDINGS LIMITED
(19) STARLEX COMPANY LIMITED
(20) SUNGLET INTERNATIONAL INC.
(21) OOO RENOVA HOLDING RUS
Defendants by way of Counterclaim

And by way of Ancillary Claim

(1) MIKHAIL ABYZOV
(2) ROMOS LIMITED
(3) FRESKO FINANCIAL LIMITED
(4) ANDREY TITARENKO
(5) GOLDFORT LIMITED
(6) EMMERSON INTERNATIONAL CORPORATION
Claimants by way of Ancillary Claim
- and –
(1) RENOVA INDUSTRIES LIMITED
(2) WEDGWOOD MANAGEMENT LIMITED
(3) ZAPANCO LIMITED
(4) LAMESA HOLDINGS SA
(5) VIKTOR VEKSELBERG
(6) INTEGRATED ENERGY SYSTEMS LIMITED
(a company incorporated under the laws of Belize)
(7) ODVIN FINANCIAL INC
(8) FLOPSY OVERSEAS LIMITED
(9) VLADIMIR KUZNETSOV
(10) ALEXEI MOSKOV
(11) ALEXANDER KOLYCHEV
(12) MIKHAIL SLOBODIN
(13) RENOVA MANAGEMENT AG
(14) RENOVA HOLDING LIMITED
(15) PAO T PLUS
Respondent/Fifteenth Defendant by way of Ancillary Claim

(16) INTEGRATED ENERGY SYSTEMS
(a company incorporated under the laws of Cyprus)
(17) CLERN HOLDINGS LIMITED
(18) MAKSIM MAYORETS
Defendants by way of Ancillary Claim

And by way of Third Ancillary Claim:

(1) EMMERSON INTERNATIONAL CORPORATION
Applicant/Claimant by way of Third Ancillary Claim

(1) VIKTOR VEKSELBERG
(2) INTEGRATED ENERGY SYSTEMS LIMITED
(3) VLADMIR KUZNETSOV
(4) EVGENY OLKHOVIK
Defendants by way of Third Ancillary Claim

(5) ANDREY BURENIN
(6) YAKOV TESIS
Respondent/Sixth Defendant by way of Third Ancillary Claim

(7) ALEXEI MOSKOV
(8) IGOR CHEREMIKIN
(9) IRINA MATVEEVA
(10) PAVLINA TSIRIDES
(11) IRINA LOUTCHINA SKITTIDES
(12) PHOTINI PANAYIOTOU
(13) ARTEMIS ARISTEIDOU
(14) A.B.C. GRANDSERVUS LIMITED
(15) STARLEX COMPANY LIMITED
(16) RENOVA INDUSTRIES LIMITED
(17) SUNGLET INTERNATIONAL INC.
Defendants by way of Third Ancillary Claim

Appearances:

Philip Marshall QC of Serle Court, and with him Ajay Ratan of Blackstone Chambers, Iain Tucker and Colleen Farrington of Walkers

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2019: January 28
2019: February 21

JUDGMENT

Personal Service- service of BVI proceedings in Russia - Whether valid outside the Hague Service Convention Process

[1] **ADDERLEY J:** There are two applications (the "Applications") by Emmerson International Corporation (Emmerson) before the court. The first is brought against the sixth defendant by way of Third Ancillary Claim Yakov Tesis ("Mr Tesis"). The second is brought against the fifteenth defendant to the Ancillary Claim /sixteenth defendant to the Counterclaim PAO T PLUS ("T PLUS"). Emmerson seeks the following orders:

(1) Orders that they have been properly served with the proceedings, in accordance with CPR 7.8(1)(b) and /or 7.8(1) (c),

(2) A declaration that Mr Tesis is deemed to admit the Third Ancillary claim and he is bound by any judgment or decision in the main proceedings in so far as it is relevant to any matter arising in the ancillary claim pursuant to Rule 18.12(2) of the CPR since 24 July 2018.

(3) A declaration that T PLUS is deemed to admit the Ancillary claim and the Counterclaim and is bound by any judgment or decision in the main proceedings in so far as it is relevant to any matter arising in the ancillary claim pursuant to Rule 18.12(2) (a) of the CPR since 23 October 2018.

(4) Insofar as may still be necessary in the light of steps that Emmerson has taken to serve the applications, an order that, pursuant to Rules 7.8 B, 7.14, and or 26.1(2) (w) of the CPR service of the applications on the Respondents be dispensed with.

(5) Permission pursuant to rule 32.7 of the CPR that the applicant is granted permission to adduce and rely on the expert evidence given by Professor Rustem Miftakhutdinov in his affidavit dated 25 December 2018.

[2] The grounds for the Applications and the background to them were set out in the Fifth Affidavit of Konstatin Dodonov dated 19 December 2018, and his Eighth Affidavit and Ninth Affidavit both dated 25 January 2019 which the court has read.

[3] Provided there has been proper service the grounds for the orders are made out, except for (4). I see no basis for making that order and I exercise my discretion not to do so.

[4] As to whether there was proper service I thought it might be useful to give written reasons in relation to the service on T PLUS. The same reasoning applies to service on Mr Tesis.

[5] I have given a few recent decisions on service in Russia. In **JSC Eurochem et al v Livingston Properties Equities Inc et al**[1] ("**Eurochem**") the applicant was seeking a declaration that there had been deemed proper service on one of the defendants in Russia. This was after process under The Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents (concluded on 15 November 1965 ("the Hague Service Convention") had commenced in the British Virgin Islands ("the BVI"). I held that there had been such deemed service and therefore approved alternative service under CPR 7.8A.

[6] I likewise held in **JSC VTB Bank v Katunin and Taruta**[2]**,** the claimant having commenced the Hague Service process in the BVI and not having been able to serve the defendants thereunder, that there had been deemed service.

[7] In **Stichting Nems v Gitlin**[3] where the BVI judge had ordered that service could be undertaken by any form of service not unlawful in Russia and the defendants were served by Fedex, I found that there was no proper service. In so doing I rejected a Russian expert's opinion that there was proper service in Russia because service by post which is allowed under Article 10 of The Hague Service Convention is only operative in a Convention Country which has not objected to it. By way

[1] Claim No. BVIHC(COM) 0097 of 2015

[2] Claim No BVIHCM 2014/0062 and 2016/159

[3] Claim No BVIHC(COM) No 0001 of 2018

of reservation under the Treaty Russia is on record as having objected to service under Article 10 of the Hague Convention which would have allowed for personal service by post.

[8] Ilia Rachkov a Russian lawyer and lecturer in International Commercial law at the Moscow State Institute of international Relations gave an opinion that the personal service was good service in Russia.

[9] According to the Ninth Affidavit of Konstantin Dodonov on 23 August 2018 T Plus was served with the proceedings out of the jurisdiction, in Russia, at its principle office, in accordance with the rules of service provided by the laws of Russia.

[10] On 9 November 2018 T Plus was served with a certain letter from Emmerson together with its enclosure including *inter alia* the Claim Form and the 21 June Order, and T Plus has failed to engage in any way with the proceedings, and the time limit by the order to acknowledge service or to file a defence within the periods of 35 days and 56 days respectively have past.

[11] Mr Dodonov set out the method by which he served the respondents in his Second affidavit dated 24 October 2018.as follows:

(3) "On 17 August 2018, I was authorized and instructed by Emerson International Corporation (the First claimant by way of counterclaim and Claimant by way of Third Ancillary Claim) (Emmerson"), to serve on PAO T PLUS (the Sixteenth Defendant by way of Counterclaim and fifteenth Defendant by way of Ancillary Claim ("T PLUS") the documents listed at Annex A hereto in a bundle (the "Service Bundle") by way of personally forwarding the Service bundle to T PLUS in Russia at its principle office and producing a document confirming such delivery had been made.

(4) T PLUS is a Russian company, having its principle office at its main place of business and registered address at "Baltiya" Highway, Territory 26 km, Riga-land Business Centre, Building 3, Krasnogorsky district, Moscow Region, 143421, Russia (the "Address"). A map of this location can be found in T PLUS website (http://www.tplusgroup.ru/contacts/) and is exhibited at [1-2].

(5) On 22 August 2018, I made a telephone call to T PLUS on their main office telephone number +7(495) 980-59, which was provided on their website (http:/www.tplusgroup.ru/contacts/) and in a Google search as exhibited at [1-3]. When an employee of T PLUS answered the telephone, I asked where and how I could deliver documents to an authorized representative of T PLUS. I was told that the usual and most efficient way to deliver documents to T PLUS would be to hand them over to the dispatch office located in the main hall at the Address.

(6) On 23 August 2018, I served the Service bundles as follows:

(a) At 11:00 am, I approached building 3 at the Address and found that it had one entrance with a T PLUS logo and name on it. I entered the building with a box containing hard copies of the service bundle ("the "Box") and supplied with a hard copy printed index of the Service bundle documents [7-22] as a separate document placed on the top of the Box (the "Index"). I also had with me two unsigned copies of a delivery slip, one which was later signed by me and a secretary of T PLUS, exhibited with the certificate of accuracy at [4-6].

(b) A receptionist showed me the dispatch office, which was across from the main hall.

(c) I approached the dispatch office and asked an employee sitting there whether I could deliver the Box with the Index and the Service bundle for T PLUS on her. The employee confirmed that the Box with the Index and the Service Bundle for T PLUS should be left with her. She asked me to clarify to whose attention (which officers of T PLUS) the Box and the Service bundle was addressed to [sic]. I read to her from the delivery slip that the Box with the Service Bundle was addressed to the attention of the acting General Director, D.V. Pasler and Deputy General Director for Corporate Governance, K.I. Alexandrov.

(d) Thereafter, I handed over the Box, together with the Index and the Service Bundle contained therein to the employee and requested her to countersign the delivery slip as confirmation of receipt of the Box with the Service bundle.

(e) the employee filled in her name as "M.A. Baranova", her position as" secretary", and countersigned the delivery slip. This delivery slip provides a confirmation, as requested by Emerson, that forwarding of the Service bundle to T PLUS was made on 23 August 2018.

(f) I left her the other copy of the delivery slip signed by myself and left.

[12] Mr Rachkov confirmed that such service:

(1) Was made in accordance with the rules of service set out in Russian law,

(2) Does not constitute an administrative or criminal offence under and does not violate any Russian law, and

(3) Complies with the Hague Service Convention including reservations made by the Russian Federation as a Contracting party.

[13] His opinion was underpinned by an opinion from Professor Miftakhutdinov, doctoral candidate of law, a former Arbitration judge of the Supreme Commercial Court of the Russian Federation, and a member of the presidium of the Russian Arbitration Centre of the Russian Institute of Commercial Arbitration Court (ICAC) of the Russian Federation. He was a judge there from July 2012 to August 2014 (and years before that at the Arbitration Court of Tatarstan) when that court was dissolved and its powers assimilated into the Supreme Commercial Court. Mr Dodonov ranked him as a top level authority in respect of expertise in Russian civil law and procedure, rules and practice. I accede to the application and accept him as an expert.

[14] Professor Miftakhutdinov set out the fundamental question which he was asked to answer;

> "I consider that the following answers should be given to the questions that have been put to me regarding service of court documents in the Russian Federation under local rules by a legal entity registered in the Russian Federation to a legal entity registered in the Russian Federation"

[15] His conclusions went on to state the following:

> "4.1 The service of the court documents in question does not constitute an illegal act, including an administrative offense or criminal offense, in accordance with the laws of the Russian Federation,
>
> 4.2 The service of court documents in question is proper and effective in accordance with the laws of the Russian Federation.

4.3 The service of court documents in question complies with the "letter" and the "spirit" of the Hague Convention."

[16] In **Eurochem** a conclusion stated by the court based on the expert evidence was at [31]:

> "[31] Judicial documents originating in the BVI may be served in the territory of Russia only in accordance with the Hague convention. Russia has expressly objected to the use of alternative methods of service listed in Hague Convention Article 10 by making a declaration under Hague Convention Article 21."

[17] A draft of that decision was circulated to counsel prior to delivery, for corrections/ editorial changes and each party was represented by senior counsel. There were no suggested corrections to that paragraph 31.

[18] Russia objected to the service methods listed in Article 10 of the Hague Service convention which reads as follows:

> "[[Article 10] Provided the State of destination does not object, the present Convention shall not interfere with-
>
> a) The freedom to send judicial documents, by postal channels, directly to persons abroad,
>
> b) the freedom of judicial officers, officials or other competent persons of the State of origin to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination,
>
> c) the freedom of any person interested in a judicial proceeding to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination."

[19] The method by which service has been carried out by the applicant does not come under any of those set out in Article 10 namely:

(a) It did not send judicial documents, by postal channels, directly to persons abroad

(b) Judicial officers, officials and other competent persons of the BVI are not effecting service of judicial documents directly through the judicial officers, officials or other competent persons of, Russia, nor

(c) No person interested in a judicial proceeding is effecting service of judicial documents directly through the judicial officers, officials or other competent persons of Russia.

[20] Service was effected through a private agent of a person interested in the judicial proceedings, not through judicial officers, officials or other competent persons of the state of Russia. In my judgment, applying the *ejusdem generis* rule of interpretation the phrase under Article 10 (c) of the Convention "other competent persons of the State of Destination" would include persons similar to judicial officers or officials and not, as in this case, private persons acting as agent for the person interested in judicial proceedings.

[21] In placing the expert opinion up against the authorities which must act as persuasive authority for this court, there appeared to be conflicts which I needed to resolve, before I could consider accepting this opinion.

[22] Firstly, the opinion did not appear to be consistent with the English Court of Appeal authorities of **Knauf UK GMbH v British Gypsum Ltd**[4], or **Cecil v Bayat**[5] where service under the 'letter' of The Hague Convention is the default position and the service by alternative means only arises in exceptional cases. Otherwise it would render the Treaty which binds the Contracting Parties otiose. **Maughan v Wilmot (No 2)**[6] which was relied on by the applicant was itself a case involving service by alternative means. In **Maughan v Wilmot** reference was made with approval to Stanley LJ's quote in **Cecil v Bayat** which set what I would call the international public policy for complying namely:

> "Because service out of the jurisdiction without the consent of the state in which service is to be effected is an interference with the sovereignty of the state, service on a party to the

[4] [2002] 1 WLR 907
[5] [2011] 1 WLR 3086
[6] [2017] EWCA Civ 1668

Hague Convention by an alternative method under CPR 6.15 should be regarded as exceptional, to be permitted in special circumstances only."

[23] A closer examination of the rules is helpful before applying English authority. There are a few differences. Under the English CPR 6.40 which deals with service out of England, after providing for service under various heads including Agreements and Conventions, it provides at CPR 6.40 (3)(c) " *by any other method permitted by the law of the country in which it is to be served."* The English CPR 6.15 provides for alternative service "(*1) where it appears to the court that there is a good reason to authorise service by a method or at a place not otherwise permitted by this Part.."* However, under the CPR 7.8A of the BVI alternative service can only be used if service under CPR 7.8 is impracticable. That requires and application to the court supported by evidence.

CPR 7.9 under which provision is made in subs (3) to serve under the Hague Convention provides in sub para 2.

> "(2) the methods of service permitted by this rule are **in addition to** any method of service permitted under rule 7.8(1) (b) or (c)." (emphasis added)

[24] The "general provisions' for service outside the jurisdiction are found in CPR 7.8(1) which provides that subject to the following paragraphs and Rule 7.8A if a claim form is to be served outside the jurisdiction, it **may** be served-(emphasis added)

> "(a) by a method provided for by-
>
> (i) rule 7.9 (service through Foreign governments, etc.) or
>
> (ii) rule 7.11 (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 authorize or require any person to do anything in the country where the claim form is to be served which is against the law of that country."

[25] CPR 5.3 defines personal service as follows: "a claim form is served personally on an individual by handing it to or leaving it with the person to be served."

[26] Whereas the equivalent of CPR 7.8 in the English rules stop at CPR 7.9(1)(a) and (b), CPR 7.8 (1)(c) which provides for personal service has been added to the rules of the BVI.

[27] On identical wording (except for the differences indicated above) in the Family Procedure Rules ("FPR"), the English Court of Appeal held in **Maughan v Wilmot** that because of the use of the word "may" its Rules 6.43 and 6.45, use of the modes of service are permissive and not mandatory, and that the use of the word "in any court order", as used in the section equivalent to CPR 7.8(2), contemplated that an order might be made in respect of service which provides for an alternative method of service. The court also referred to **Cecil v Bayat** and **Abel's case** where it was said that an order was only required when service is sought to be effected by a method which is not permitted by the law of the country in which the documents are to be served, because if it is permitted, it is already authorized by the Rules.

[28] However, as pointed out in **Maughan v Wilmot**, a distinction must be drawn between a method that is not permitted and one that is "contrary to law". For example, it seems to me that service on an individual by post or service by any of the means set out in Article 10 of the Convention would be contrary to Russian Law because the treaty has been incorporated as a part of Russian Law. This is why service was held not to be valid in **Stichting Nems v Gitlin** where the defendant was served by FedEx which the court considered to be a form of post.

[29] In **Maughan v Wilmot** The court utilized the canon of construction which interpreted the use of the word "may" in the equivalent Rules to CPR 7.8, as permissive not mandatory. Therefore none of the methods were exclusive, and one form of service could be chosen in preference to any other provided that the provisions CPR 7.8(2) is complied with. I adopt this view.

[30] Nevertheless, it seems to me that the principle enunciated in **Cecil v Bayat** and approved by the Court of Appeal in **Maughan v Wilmot** still applies. As observed by Moylan LJ at [127]:

"The first step is always for the court to decide whether service needs to effected out of the jurisdiction. The Convention only applies if a document is to be transmitted abroad for service. If it does and if the convention applies, consistently with **Cecil v Bayat** …this should be seen as the primary route by which service should be effected…" (emphasis added)

[31] The conclusions of Professor Miftakhutdinov were based on court conclusions about the "inapplicability of the convention mechanism" (para 3.24) following the approval of Resolution No. 23 of the Plenum of the Russian Supreme Court which mandates under clause 36: *"On hearing by arbitration courts of economic disputes arising from relations, that are complicated by a foreign element" that absence of evidence of the receipt of court notices, sent in the manner prescribed by a relevant international treaty or federal law cannot by itself constitute a basis for unconditional cancellation of a court act…"*

[32] Clause 3.23 of the expert opinion reads as follows:

"3.23 After approval of Resolution No 23 [in 2017] of the Plenum of the Supreme Court, the "effective notice" standard began to be observed in an absolute manner in Russian court practice-courts everywhere began to recognize as sufficient the sending of notices by a private law method or on the basis of the foreign procedural law rules of the state where the court was located, without requiring notice to be sent through the established convention mechanism. The Kiev Agreement of 1992 on the procedure for resolving disputes related to economic activities, like the Hague Convention, describes a special convention mechanism for notifying the parties to a dispute through competent authorities by way of mutual assistance (Article 5 of the Agreement). However in cases A40)-110335/2017, A53-10519/2017, courts recognized the usual notice of court process as sufficient., making reference to Resolution No.23 of the Plenum of the Supreme Court.. So, it is reasonable to assert that the previous position of the Resolution of the Supreme Arbitration Court No. 3366/13, dated January 28, 2014, has been revised by the highest court instance and is not applicable, based on the principle of lex posteriori derogate legi priori."

[33] In footnote 10 he then gave over a dozen Russian court rulings to the same effect that the previous position have been related.

[34] If this is now the position in Russia it appears to represent a sea change from what I understood to be the former convention mechanism, and is a welcomed trend. As observed by Professor Miftakhutdinov the Preamble to the Hague Service Convention establishes the objectives of the treaty as "desiring to create appropriate means to ensure that judicial and extrajudicial documents to be served abroad shall be brought to the notice of the addressee in sufficient time", and "Desiring to improve the organisation of mutual judicial assistance for that purpose by simplifying and expediting the procedure". With these lofty goals it could not have been envisaged by Russia or any of the Contracting Parties that it would take 10-15 months, as currently the case in the BVI, to serve judicial documents from one Convention to another under the Hague service process.

[35] As mentioned above CPR 7.9 which includes the provision for service under the Hague Service Convention states:

> "The methods of service permitted by this rule are **in addition to** any method of service permitted under rule 7.8(1)(b) or (c)." (emphasis added)

[36] Under CPR 7.8 (1)(c) personal service is permitted by the claimant or the claimant's agent. In this case service was carried out by the claimant's agent on a company. There is expert evidence that the way in which it was carried out was not contrary to Russian law and so there was compliance with CPR 7.8(1)(b). It is also evident that the case does not come under Article 10 of the Hague Convention, so the Hague Service Convention Country process does not apply.

[37] Professor Miftakhutdinov concluded his opinion by stating that the Hague Service Convention is binding on High Contracting Parties and is not binding on individuals, so a claimant in court proceedings in the BVI can independently serve documents or notice in Russia on a party to those proceedings under the rules of notification, which are provided by procedural law of the Russian Federation. Such means of service will accord with the goals of the Hague Service Convention if they help to ensure that the court documents are delivered to the defendant in Russia in such a way that the defendant has sufficient time to prepare for the court proceedings in the court in the BVI, and the method simplifies and speeds up the procedure. I accept that opinion having regard

to the overriding objective of the Hague Service Convention, and the overriding objective of the Civil Procedure Rules of the BVI. I note that sufficient time has been given to the respondents to enter an appearance and defence in this case.

[38] For the above reasons I rule that there has been good service on T Plus. On the same reasoning having read the supporting evidence, I rule that there has been good service on Mr Tesis, also.

The Hon K. Neville Adderley

Commercial Court Judge (Ag)

By the Court

Registrar