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Please Shut the Gate: High Court Decision on Important Jurisdictional Gateway

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The English Civil Procedure Rules specify a number of “jurisdictional gateways” by which a foreign defendant may be brought within the jurisdiction of the English courts under the so-called common law rules.¹ Amongst these is the “necessary or proper party” gateway. This requires all of the following:

- A claim against a defendant (the so-called “anchor defendant”) on whom the claim form has been or will be served — otherwise than in reliance on this gateway (this requires underlying proceedings to which the foreign defendant is to be added)
- A real issue between the claimant and the defendant that is reasonable for the court to try
- That the claimant wishes to serve the claim form on another person who is a necessary or proper party to that claim

The overarching principle underpinning the jurisdictional gateways rules is to find the forum in which a case can be suitably tried for the interests of all the parties and for the ends of justice. The necessary or proper party gateway, in the same way as the other gateways, is long-established, and has been the subject of case law for many years. The gateway was available to parties under the rules of Civil Procedure pre-dating the Civil Procedure Rules. Indeed the Civil Procedure Rules, within their guidance notes, note that “[a]lthough the wording of the [new rules] differs from that of the [new rules], the principles remain the same”.

However, unlike the other gateways, the necessary or proper party gateway requires no territorial link between the claim, the subject-matter of the action and the jurisdiction of the English courts, though it does require that an underlying claim has been, or will be, served against a defendant in England. The English courts have continually used this gateway to be used to bring foreign defendants within the jurisdiction. The aim behind the gateway is to minimise the risk of conflicting judgments arising from multiple proceedings in different jurisdictions by having one set of proceedings on foot that can fairly dispose of the issues.

The recent decision of the High Court in *Standard Bank plc and others v Just Group LLC and others* [2014] EWHC 2687 adopts a narrow approach to the necessary or proper party gateway. Whilst the decision leaves the established test unchanged (that of whether both parties would have been proper parties to the action had they been within the jurisdiction), it may reduce the scope for arguing that a foreign defendant is a necessary or proper party.

The decision concerned a Mongolian defendant's application to set aside the service of English proceedings upon it. The defendant claimed that the necessary or proper party gateway — the only gateway upon which the claimants had relied when permission to serve had been granted — was not satisfied. The court granted the application and set service aside, in doing so:

- The court held that where an application is made to set aside service, the claimant, in arguing that permission was properly granted, is normally only entitled to rely upon the gateway that it relied upon when the permission was sought (even if other gateways could have been argued). However, the court does have discretion to allow the claimant to rely on other, additional, gateways.
- The court opined that a defendant cannot act as an anchor defendant for service on a foreign defendant if the necessary or proper party gateway was relied upon to serve that anchor defendant — even if other gateways were also relied upon. This adopts a literal (and restrictive) interpretation of (i) above.
- Although the court cited the established test (see above), and clarified that the test does not require that the claims against the anchor defendant and the foreign defendant result from one transaction, nor that the foreign defendant is needed in order to make the underlying proceedings viable, the court adopted a narrow interpretation of that test on the facts.
- The court confirmed that the test of whether a defendant is a proper party requires that the claims against the anchor defendant and the foreign defendant involve “one investigation”, are “closely bound up” or contain a “common thread”. The court held that, despite arguably sensible submissions that the parties made to the contrary, this test was not satisfied on the facts.

Conclusion

The necessary or proper party gateway remains a powerful tool for bringing foreign defendants within the jurisdiction of the English courts. However, this case sounds a note of caution in demonstrating the importance of: (i) relying upon the gateway from the very beginning (when seeking permission to serve); (ii) ensuring that a proper anchor defendant is identified; and (iii) ensuring that a clear and common link is established between the anchor defendant and the foreign defendant that you are seeking to serve. Failure to develop strong arguments on these points may result in service being set aside.

¹ See in particular the Civil Procedure Rules at Practice Direction 6B para 3.1.