

Insights

BETTER TO ASK FOR FORGIVENESS THAN (COURT) PERMISSION? “SERVICE OUT” AND THE CPR 6.33(2B) GATEWAYS

HIGH COURT JUDGMENT: *WHITE ROCK CORP LTD V MIDDLE VOLGA SHIPPING CO* [2025]

Sep 02, 2025

EXECUTIVE SUMMARY

The UK High Court in *White Rock Corp Ltd v Middle Volga Shipping Co* [2025]^[1] has recently provided helpful clarification in relation to the “service out” jurisdictional gateway in CPR 6.33(2B) (c) in the context of the First Defendant’s jurisdictional challenge.

The Court analysed the scope and effect of the (relatively) new gateway in rule 6.33(2B)(c)^[2] of the Civil Procedure Rules (“CPR”), which allows a claimant to serve the claim form out of the jurisdiction without having to obtain permission from the Court, where the claim is “*in respect of*” a contract that contains a term to the effect that the court shall have jurisdiction to determine that claim.

The Court concluded that it had no jurisdiction to try the claims, allowing the First Defendant’s jurisdiction challenge. This was on the basis that the Claimant was unable to discharge the burden of establishing “a good arguable case” that the case fell within one or more of the relevant jurisdictional gateways in CPR 6.33(2B).

BACKGROUND

In March 2025, White Rock Corporation Ltd (the “**Claimant**” or “**Charterers**”) commenced proceedings against Middle Volga Shipping Company (the “**First Defendant**” or “**Middle Volga**”) and another party (the “**Second Defendant**”), claiming damages of c.US\$12.6 million for the Defendants’ repudiatory breach of a charterparty dated 25 March 2022 (the “**Charterparty**”).

The Charterers’ position was that the Second Defendant (i.e. the other party named in the Charterparty, together with the Charterer) was the agent of Middle Volga (i.e. the principal) and that the Charterers believed that they were chartering from Middle Volga and, in light of this, Middle

Volga was therefore a contracting party to the Charterparty. Middle Volga disputed this as part of its Jurisdiction Challenge (see details below), arguing that it was not actually a party to the Charterparty.

The Charterparty incorporated an English law and jurisdiction clause (clause 55) (the “**Jurisdiction Clause**”) which stated that:

“This Charter Party shall be construed and the relationship between the parties determined in accordance with the Laws of England. Any dispute arising out of or in connection with this Charter Party, involving amounts in excess of [...] \$200,000, shall be subject to the jurisdiction of the English High Court...”

The Charterers relied on the Jurisdiction Clause in commencing proceedings and their position was that “[p]ursuant to CPR r. 6.33(2B)(b) and (c) the Claimant is permitted to serve the Claim Form out of the jurisdiction without the need for permission of the Court **on the basis that the claim is in respect of a contract which contains a term to the effect that the Court shall have jurisdiction and/ or the claim is in respect of a contract falling within sub-paragraph (b).**” (emphasis added)

JURISDICTION CHALLENGE

Middle Volga issued an application challenging the English Court’s jurisdiction pursuant to CPR Part 11 (the “**Jurisdiction Challenge**”),^[3] which the Charterers contested.

The First Defendant argued, as part of its Jurisdiction Challenge, that the only ground on which the Charterers could establish jurisdiction was the English jurisdiction agreement in the Charterparty. Given that (in Middle Volga’s contention), Middle Volga was not actually a party to the Charterparty (or to the jurisdiction agreement therein), the English Court had no jurisdiction to hear the claims against it.

Consequently, Middle Volga sought an order, pursuant to CPR 11(1), declaring that the Court had no jurisdiction to try the claim against it and dismissing the same. In short, this was on the grounds that:

- there was “no good arguable case” that Middle Volga was party to the Charterparty upon which the claim was based; and
- the Charterers were therefore not entitled to rely upon CPR 6.33(2B) to serve the claim form out of the jurisdiction.

HIGH COURT DECISION

SCOPE OF CPR 6.33(2B)(C)

In order to clarify the scope of the gateway in CPR 6.33(2B)(c), the Court analysed the Minutes of the Civil Procedure Rule Committee (the “**CPR Committee**”) dated 13 May 2022 and the White Book commentary. Based on these, the Court observed that this gateway was:

“introduced to address a particular scenario where a defendant is asserting reliance on a contract, for example as an assignee or pursuant to a direct action statute and where the claimant disputes that there is a binding contract, but nevertheless wishes to hold the defendant to the jurisdiction agreement in the contract insofar as the defendant seeks to assert rights under that contract or to start proceedings in relation to the contract other than in accordance with the jurisdiction agreement (a so-called ‘quasi-contractual’ case...)”

As the CPR Committee noted, the intention behind this gateway was to address a “*potential lacuna*” that arises particularly where anti-suit injunctions are sought and the applicant does not contend that the defendant is party to the contract, but, if the defendant wishes to assert that it is, it must comply with the English jurisdiction clause in that contract (the so-called “*quasi-contractual*” anti-suit injunctions).

The Court therefore agreed with Middle Volga’s submissions as to scope and concluded that the grounds of jurisdiction allowed under CPR 6.33(2B)(b) and (c) are limited to cases where:

- i. There is a good arguable case that there is a contract which:
 - contains a term granting the English Court jurisdiction;
 - is binding on the defendant; and
 - can be relied on and asserted by the claimant as a matter of contract.
- ii. The defendant asserts that it is entitled to rely on a contract against the claimant, which the claimant disputes, but the defendant seeks to enforce its claim other than in accordance with the jurisdiction agreement contained in that contract and the claimant wishes to hold the defendant to the jurisdiction agreement in the contract.

The judge made it clear that these sub-rules “*could not be relied on by a claimant merely because the claim relates to or is ‘in respect of’ a contract in circumstances where there is no good arguable case that the defendant is a party and subject to the contract or where the defendant is itself not relying on the contract.*” (emphasis added)

The judge accordingly rejected a broad interpretation of CPR 6.33(2B)(c) which would allow service of a claim form on a defendant without the Court’s permission where the defendant had not contractually agreed to submit a dispute to the jurisdiction of the English Court or had not elected to rely on any rights that it may have under such a contract.

GOOD ARGUABLE CASE

The Court explained that, insofar as the Charterers were relying on the existence of a contract to secure jurisdiction, they had the burden of establishing a good arguable case that the claim fell within the scope of CPR 6.33(2B) (b) or (c). The Court analysed the relevant case law on the test for showing a “good arguable case” and adopted the three-fold test as summarised in *Clifford Chance LLP v Société Générale SA* [2023]^[4], namely that:

1. The party relying on the existence of the agreement must supply an evidential basis showing that it has the better argument (and not much the better argument).
2. If there is an issue of fact about it, or some other reason for doubting whether it applies, the court must take a view on the material available if it can reliably do so.
3. The nature of the issue and the limitations of the material available at the interlocutory stage may be such that no reliable assessment can be made, in which case there is a good arguable case for the existence of the agreement if there is a plausible (albeit contested) evidential basis for it (“**Limb 3**”).

The Charters relied primarily on Limb 3 but argued in the alternative that if Limb 3 did not apply, then they had the better of the argument in support of their case that Middle Volga was subject to the English Jurisdiction Clause.

The judge rejected the Charterers’ position. The Court stated that *“in circumstances where there is a question whether a party named in the contract is in fact the contracting party, the Court will usually consider the terms of the contract itself and if that is not sufficient to answer the question at hand, the Court will then consider the surrounding circumstances.”*

In this case, the Court considered that the contract at hand supported the fact that the Second Defendant (as opposed to Middle Volga) was the Charterers’ counterparty and that the surrounding circumstances *“ma[d]e the position even plainer.”*

The Court concluded that there was *“no convincing proof that [the Second Defendant] intended and was authorised to contract and was understood to be contracting as an agent for Middle Volga.”* The judge made it clear that it did not consider that this was *“a limb (iii) case”* and concluded that Middle Volga *“ha[d] the better of the argument on the material available.”* Therefore, the Charterers were unable to discharge the burden of establishing a good arguable case that they had contracted with Middle Volga (whether directly or through the Second Defendant as agent).

CONCLUSION

The High Court’s decision is highly relevant to all parties (potential claimants and defendants alike) involved in litigation with an international element or cross-border litigation, who either have to serve proceedings out of the jurisdiction or, are considering challenging the English Courts’ jurisdiction to hear such proceedings.

The judgment provides welcome clarification on the scope and effect of the jurisdictional gateways based on the existence of a contract^[5], as well as the meaning and application of the three-fold test to establish a “good arguable case” that the English Court has jurisdiction.

The case is also a useful reminder of the contractual interpretation principles which apply where there is doubt as to whether the correct contractual counterparty is the one actually named in the contract or whether that party is alleged to be simply an agent (or akin to an agent) for the true counterparty.

[1] EWHC 2089 (Comm).

[2] This gateway was introduced in October 2022.

[3] Note that the Second Defendant did not participate in the hearing.

[4] EWHC 2682 (Comm).

[5] In particular, CPR 6.33(2B)(b) and (c).

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