

Neutral Citation Number: [2022] EWHC 2887 (Comm)

Case No: CL-2022-000219

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 11 November 2022

Before :

Mr Justice Picken

Between:

(1) MOTOROLA SOLUTIONS, INC.	<u>Claimant</u>
(2) MOTOROLA SOLUTIONS MALAYSIA SDN. BHD	
- and -	
(1) HYTERA COMMUNICATIONS CORPORATION LTD.	<u>Defendant</u>
(2) HYTERA AMERICA, INC.	
(3) HYTERA COMMUNICATIONS AMERICA (WEST), INC.	

**Tom Sprange KC and Gayatri Sarathy (instructed by King & Spalding LLP) for the
Claimants**
**Stephen Rubin KC and Alexander Milner KC (instructed by Steptoe & Johnson UK LLP)
for the Defendants**

Hearing dates: **11th November 2022**

JUDGMENT

Mr Justice Picken
(12:01 pm)

Friday, 11 November 2022

Judgment by **MR JUSTICE PICKEN**

1. This matter comes before me as an application by the Claimants, namely Motorola Solutions Inc and Motorola Solutions Malaysia SDN BHD (together ‘Motorola’) against the Defendants in action CL-2022-000219, namely Hytera Communications Corporation Limited, Hytera America Inc and Hytera Communications America (West) Inc (together ‘Hytera’), which seeks a declaration:

"That the Claim Form for these proceedings dated 28 April 2022 and attendant documents (the ‘Claim Form’) were, pursuant to CPR 6.7(1)(b) validly and effectively served on the first defendant, Hytera Communications Corporation Limited, (‘HCC’) at the offices of Steptoe & Johnson UK LLP at 5 Aldermanbury Square, London EC2V 7HR."
2. In the alternative, the application notice, which is dated 14 June 2022, seeks an order that the Claimants have permission to serve the claim form on HCC out of the jurisdiction and an order that service be effected at an alternative place, namely the offices of Steptoe & Johnson in London and, furthermore, lastly, that the steps already taken to bring the Claim Form to the attention of HCC at those offices constitute good service.
3. Before me today Motorola have been represented by Mr Thomas Sprange KC and Ms Gayatri Sarathy whilst the Defendants, Hytera, have been represented by Mr Stephen Rubin KC and Mr Alexander Milner KC. Mr Sprange and Ms Sarathy had been instructed by King & Spalding; Mr Rubin and Mr Milner have been instructed by Steptoe & Johnson. The relevance of my pointing out the representation at solicitor level will become apparent since, in due course, I will have to consider certain correspondence between those two firms. First, I should say something further by way of background.
4. The Claim Form in action CL-2022-000219 seeks the enforcement of a judgment of the US District Court for the Northern District of Illinois Eastern Division (the ‘Illinois Court’) dated 5 March 2020 against the Defendants and in favour of Motorola (the ‘Illinois Judgment’) and, as I shall describe them, the ‘Enforcement Proceedings’. Pursuant to the Illinois Judgment, the Defendants were found to be jointly and severally liable to Motorola for some US\$600 million or so. That judgment remains, as I understand it, unsatisfied. Hence, Mr Sprange explains, the commencement of the Enforcement Proceedings earlier this year.
5. The Enforcement Proceedings are not, however, the first proceedings to have been brought in this jurisdiction between Motorola and Hytera since the Hytera companies, all three of them, were named as the First, Second and Third Defendants in certain other proceedings commenced in 2020. Those other proceedings also named as further defendants two other companies, namely Project Shortway Limited, the Fourth Defendant, and Sepura Limited, the Fifth Defendant. Those other proceedings were proceedings brought under section 25 of the CJA and were proceedings which sought freezing order relief against those Defendants (the ‘Freezing Order Application’).
6. I should just mention, in passing and for completeness, that the Illinois Judgment is subject to an ongoing appeal which I am informed is unlikely to conclude until at least early 2024.

7. As to the Freezing Order Application, the matter came before Mr Justice Jacobs on 9 April 2020, who granted the relief sought. Subsequently, however, on 11 January 2021, the order granting that relief was set aside by the Court of Appeal. The Court of Appeal also ordered Motorola to repay to HCC and the other Defendants (or, in that context, Appellants) some £132,000 or so which HCC had paid Motorola pursuant to Mr Justice Jacobs' order, together with interest. The order went on to require Motorola to pay £125,000 on account of Hytera's costs of the appeal, together with a further £250,000 on account of Hytera's costs before Mr Justice Jacobs. The order, finally, required Motorola to pay the balance of Hytera's costs of the proceedings subject to detailed assessment.
8. The Court of Appeal stayed those various costs orders until determination of Motorola's application for permission to appeal to the Supreme Court. On 23 February 2022 the Supreme Court refused permission, meaning that the Court of Appeal's orders, those costs orders, took effect from that date. It is, in those circumstances, Hytera's position, as explained by Mr Rubin before me today, that Motorola owes HCC some £507,000 plus interest and, as Mr Rubin explains and is not in dispute, those monies have not yet been paid.
9. The application for permission to appeal to the Supreme Court having been turned down, on 29 April this year the Enforcement Proceedings to which I have referred, namely the proceedings before me (CL-2022-000219) were commenced. It is those proceedings which Motorola maintains were served on Hytera by service on Steptoe & Johnson, Hytera's solicitors, on 12 May 2022. It is Motorola's position, disputed by Hytera, that Steptoe & Johnson had previously, in 2020, as will become apparent by reference to the correspondence which I will consider, agreed to accept service of proceedings, including, as it turns out, the Enforcement Proceedings commenced just over two years later.
10. It is that aspect which forms the basis of the primary relief sought from the court today, namely, the declaration in the terms which I have set out. It is only in the alternative, if that declaration were not to be made by the Court, that Motorola seek in the alternative the further relief which I have described. As will become apparent, I need not, in the circumstances, address the application for the alternative relief since I have concluded that this is a case in which Steptoe & Johnson did indeed agree to accept service of proceedings as a result of correspondence exchanged in March 2020, that agreement extending to the Enforcement Proceedings which were commenced in 2022.
11. That issue is one to which I will return. First, however, I need to address an issue which arose in the course of the witness evidence which was served in response to the application notice which is before me.
12. In a witness statement, namely the second witness statement of Ivan Gordienko, the partner at Steptoe & Johnson who has conduct of this matter on behalf of the First Defendant, dated 16 September 2022 a number of matters were raised. First, at paragraph 5 Mr Gordienko drew the Court's attention to the fact that, as he put it:

"... HCC has brought its own application in these proceedings dated 8 June 2022 by which it argues that the court has no jurisdiction to hear these proceedings as they have not been validly served on HCC."

He went on to explain as follows:

"Although HCC had argued for both applications to be listed in parallel, they have ultimately been listed separately with HCC's application currently listed for a hearing in May 2023."

Mr Gordienko went on to summarise HCC's position in paragraphs 10 and 11 in the following way:

"10. HCC's primary position is that it has not been validly served with these proceedings, such that Motorola is required to seek and obtain permission to serve the proceedings on HCC out of the jurisdiction in order for them to continue. The court should not permit such service for the reasons set out below.

11. Should the court hold that (contrary to HCC's primary position) the claim form has been validly served on HCC, HCC submits in the alternative that these proceedings should be stayed until Motorola complies with the costs orders made against it. If those costs are not paid within a reason (sic) period of time, these proceedings should be struck out."

Mr Gordienko then went on in the next section of his witness statement, starting at paragraph 12 and ending at paragraph 17, to make reference to the order made by the Court of Appeal earlier this year concerning the payment of costs. His observation at paragraph 12 was that:

"Motorola is in deliberate breach of an order of the Court of Appeal made in the freezing order proceedings and is thus in contempt of court."

He concluded this section of his witness statement by stating at paragraph 17 as follows:

"Accordingly, HCC considers that, irrespective of whether or not these proceedings have been validly served on it, Motorola should not be permitted to move forward with these proceedings until it has complied fully with the Court of Appeal order."

He then went on in the next section of his witness statement to deal with the correspondence, to which I will return, in March 2020 concerning the alleged agreement to accept service of proceedings.

13. As Mr Gordienko foreshadowed, it is Hytera's position that the non-payment of the costs orders made by the Court of Appeal earlier this year is a factor that should be taken into account on the current application. Quite how this is to be taken into account has been the subject of a certain amount of discussion during the course of today's hearing. This is because, consistent with how the point was put by Mr Gordienko in paragraphs 10 and 11 of his witness statement, the position adopted by Mr Rubin and Mr Milner in their skeleton argument for today's purposes, specifically in paragraph 13, is as follows:

"The first question the court will need to decide is whether, as a matter of principle, Motorola should be allowed to proceed with its claim while continuing to ignore the order of the Court of Appeal. If the court agrees with HCC that Motorola should not be allowed to do so, then HCC will submit that:

(1) If (as HCC contends) the claim form has not yet been validly served then the court should only grant permission to serving it out of the jurisdiction subject to an 'unless' condition requiring the costs order and the costs of this hearing to be paid forthwith, and should stay the proceedings until the condition has been complied with.

(2) On the other hand, if the claim form has been validly served, the proceedings should again be stayed for a short period to give Motorola a final opportunity to pay the costs order, and if they are not paid, the claim should be struck out."

14. It will be obvious that the first proposed course of action, consistent with what Mr Gordienko also proposed, assumes in Hytera's favour that the Court concludes on the present application that there was no agreement to accept service of the Enforcement Proceedings. As for the second suggestion, this assumes the opposite, namely that the Court concludes that there was an agreement to accept service and so that the proceedings have been validly served.
15. The difficulty in both respects is that there is before the Court no application for a stay. I am informed that the jurisdictional challenge which is listed to be heard by this Court in May next year contains within it (although I have not seen it myself) an alternative application for a stay of proceedings. It is less than clear, however, whether that alternative application for a stay has as its premise the non-payment of the costs order as opposed to anything else. I am informed by Mr Rubin, and I have no reason to doubt it, that the costs order non-payment is indeed in that context relied upon, but it is important to appreciate that it is in the context of a jurisdiction challenge rather than an application for a stay in a freestanding sense arising in the event that the Court were to determine that there was an agreement to accept service of proceedings made in solicitors' correspondence in March 2020.
16. When this matter was explored by me with Mr Rubin this morning, he fairly, as one who expect, acknowledged that the position was not entirely straightforward. His ultimate stance was that the Court should, if otherwise minded to grant the declaration sought, make it conditional on payment of the costs. The difficulty with that, however, as I see it, is that the application for a declaration is freestanding. Either the Court should make it, in which case the declaration will be made, or it should not, because it considers that there was no agreement to accept service. What is far from clear to me is how, if otherwise persuaded that there was an agreement to accept service, the declaration can be posited in conditional terms. The conditionality, as demonstrated by Mr Gordienko's paragraphs 10 and 11 and the skeleton argument at paragraphs 13(1) and 13(2) is as to what Motorola should be allowed to do thereafter, having received the declaration as a result of non-payment of the costs order. It is, in my assessment, impossible to see how the declaration itself can, in effect, be held in suspense through the type of mechanism which Mr Rubin, somewhat on-the-hoof, proposed during the course of argument.
17. I propose, in those circumstances, to grapple with the substance of the application for a declaration and so resolve the issue which arises in that context based on the correspondence in March 2020. I will return, therefore, to whether or not, having granted the declaration as I have indicated I will, I should be considering the proposal that there, nonetheless, be a stay notwithstanding the absence of any application for such a stay.
18. I, therefore, turn to the correspondence. In doing so, I bear in mind that I am required in essence to construe solicitors' correspondence. In doing so, I have been reminded by the parties, first, that CPR 6.7(1)(b) is in the following terms:

"Subject to rule 6.51 where ... (b) a solicitor acting for the defendant has notified the claimant in writing that the solicitor is instructed by the defendant to accept service of the claim form on

behalf of the defendant at a business address within the jurisdiction, the claim form must be served at the business address of that solicitor."

19. Secondly, I have been reminded that, in construing the relevant correspondence between the solicitors, I must adopt the usual objective approach as though I were construing a commercial or, indeed, any contract. I need not, in the circumstances, take up time making reference to the now very well known authorities, in particular and perhaps most recently at the Supreme Court level, the case of *Wood v Capita Insurance Services Limited* [2017] AC 1173. The parties may take it that I have very much in mind the relevant principles.

20. So, I turn to the relevant correspondence. This starts with a letter from King & Spalding on behalf of Motorola dated 16 March 2020. That is headed:

"Case No 1:17-cv-Motorola v Hytera."

As such, this is a reference to the Illinois Proceedings. The letter then starts by pointing out that King & Spalding were instructed on behalf of Motorola, and continues as follows in the second paragraph:

"We are writing to you with respect to the above-captioned proceedings before the United States District Court for the Northern District of Illinois Eastern Division ... between your clients, Hytera Communications Corporations Limited, Hytera America Inc and Hytera Communications America (West) ... and Motorola ... We would be grateful if you could please confirm by return that the London office of your firm is instructed to deal with any related matters in England and Wales, including accepting service of English court proceedings on behalf of Hytera. If your firm is not so instructed, please provide the details of Hytera's appointed English counsel by return."

21. I interject to point out that Mr Sprange highlights the request there for confirmation by return that the London office of Steptoe & Johnson is instructed to deal with "any" related matters in England and Wales "including accepting service of English court proceedings on behalf of Hytera". Mr Sprange, unsurprisingly, submits, in the circumstances, that the request there is in wide terms. Mr Rubin nonetheless draws to my attention the fact that this letter is concerned with the Illinois Proceedings, hence the reference at the top and paragraph 2's express reference to those proceedings. In those circumstances, Mr Rubin submits that the request for confirmation that Steptoe & Johnson is instructed to deal with matters in England and Wales is more limited than Mr Sprange would have it.

22. The letter goes on under the subheading "Jury verdict against Hytera" to refer to the Illinois Proceedings. I need not, in the circumstances, set out the detail.

23. The next section is headed "Undertakings", and is in the following terms:

"In light of the above and the recent jury verdict and judgment, our client now invites each individual Hytera defendant in the Illinois proceedings immediately to provide a separate, formal and unequivocal written undertaking that ...

3. Hytera will not in any way dispose of, deal with or diminish the value of any assets or interests in assets whether they are in or outside England and Wales up to the value of US\$345,761,156, until such time as the judgment is paid to Motorola in full ..."

There were other undertakings sought, but that one seems the most critical.

24. The section then goes on to state as follows:

"This matter is urgent. Please provide the undertakings and confirmations in the terms set out above by midnight GMT Wednesday 18 March 2020."

The letter then ends under a further subheading "English proceedings against Hytera" with the following:

"If the undertakings and confirmations sought are not received by midnight GMT Wednesday 18 March 2020, Motorola reserves the right to issue proceedings against Hytera in the High Court of England and Wales without further notice."

25. The response to that letter came two days later on 18 March 2020 and was similarly headed in a way which was consistent with the Illinois Proceedings. In the second paragraph Steptoe & Johnson said as follows:

"We confirm that we are instructed by Hytera in England and Wales. We set out Hytera's response to your letter below."

Then, under the heading "Your clients' demands." Steptoe & Johnson referred to the request that certain undertakings be given and stated as follows:

"For the reasons set out below, our client maintains that Motorola is entitled neither to the undertakings it seeks nor a worldwide freezing order from the English court. As much, Hytera is not prepared to provide the undertakings that Motorola has requested."

Then Hytera's position was set out, including under the heading "Status of the judgment" reference was made to the intention on the part of Hytera to appeal against the judgment obtained in Illinois.

26. The next section, headed "Risk of dissipation," refuted the suggestion that there was any such risk.

27. Then, after dealing with delay, the letter had a section headed "Jurisdiction" which stated as follows:

"On this point, we note that your client's claim was heard in the United States and that none of the parties to your client's claim in the United States are English companies. As such, we see no clear jurisdictional basis for the bringing of a Freezing Order Application in England and note that your letter does not offer one.

Therefore, please set out by return the basis on which your client maintains that the English court will have jurisdiction to make a worldwide freezing order over Hytera."

28. Lastly, with a subheading of "Service." This was stated:

"We note your client's request for our confirmation that we are instructed to accept service on behalf of Hytera in England and Wales. Given the short timeframe provided for a response in

your letter, you will appreciate that we are yet to finalise Hytera's instructions on this point. We will do so in due course."

29. Two days after that, on 20 March 2020, King & Spalding wrote again, this time with a different heading to the letter. The heading instead referred to the two Motorola companies as Claimants and named the Hytera companies as the First, Second and Third Defendants, but with the addition as the Fourth and Fifth Defendants respectively of Project Shortway Limited and Sepura Limited. This Mr Sprange relies upon as demonstrating that the context of this particular letter was a section 25 action based on the Illinois Judgment, rather than a letter concerned with the Illinois Proceedings per se.

30. The letter began by saying as follows:

"We write further to your letter of 18 March 2020. As you are aware, we instructed by ... Motorola. We note that you are instructed by Hytera Communications Corporation Limited, Hytera America Inc and Hytera Communications America (West) Inc.

Please also confirm by return that you are also instructed on behalf of Project Shortway Limited and Sepura Limited, entities related to your clients, including with regard to accepting service on their behalf.

Please now find enclosed, by way of service, Motorola's application filed with the High Court today, 20 March 2020, for a domestic freezing injunction and worldwide disclosure order (the 'Injunction Application'). The Injunction Application comprises the following documents..."

The letter then listed, amongst other things, the claim form, certain affidavits, a draft freezing order and a skeleton argument, before going on, over the page, to state as follows:

"We also enclose, by way of service, Motorola's application issued today, 20 March 2020, with regard to service out/service by alternative means (the 'Service Application,' and together with the Injunction Application, the 'Applications'). This Service Application comprises the following documents..."

Then there was reference to an application notice, a witness statement, a draft order and a skeleton argument.

31. The next section of the letter, headed "Service," as Steptoe & Johnson's letter had also done, was in these terms:

"In our letter of 16 March 2020 we sought your confirmation (by return) that the London office of your firm is instructed to deal with any related matters in England and Wales, including accepting service of English court proceedings on behalf of Hytera. Your letter of 18 March 2020 indicated that you are instructed regarding matters in England and Wales, but did not provide the confirmation sought with regard to accepting service on behalf of Hytera. Given the passage of time and the urgency, may we now hear from you substantively.

As we have been obliged now to issue the Service Application, we take this opportunity to reserve all our rights, including with regard to costs."

32. Four days later, on 24 March 2020, Steptoe & Johnson, using the same heading as King & Spalding had in their letter of 20 March 2020, responded as follows:

"We note the deadline in your letter of noon yesterday for us to confirm our clients' position on the apparent urgency of the Applications and the availability of our clients' counsel. This deadline was unreasonable and unnecessary.

We set out below our clients' initial response to the Applications."

Then, again under the heading "Service," the letter went on as follows:

"We confirm that we are now instructed to accept service in England and Wales on behalf of the following entities:

1. Hytera Communications Corporation Limited;
2. Hytera America Inc;
3. Hytera communications America (West) Inc;
4. Project Shortway Limited; and.
5. Sepura Limited.

We explained in our letter of 18 March 2020 that we are in the process of finalising our clients' instructions as to our firm's authority to accept service on their behalf. We confirmed that we would do so in due course, and we have now done so just three working days later, despite the fact that our clients are based in China and the general disruption due to the coronavirus pandemic.

In the circumstances, the Service Application was premature and should not have been issued, and we invite your clients to withdraw it and confirm that they will bear the costs that have been unnecessarily incurred as a result of it."

33. It is Mr Rubin's submission before me that the correspondence, specifically the letter from King & Spalding on 16 March 2020 and the letter on 20 March 2020, was concerned (and only concerned) with the proposed Freezing Order Application that Motorola were telling, through King & Spalding, Steptoe & Johnson they were proposing to make. In this respect, Mr Rubin highlights how the letter from King & Spalding dated 20 March 2020, was specific in using defined terms, namely the "Injunction Application" and the "Service Application," when informing Steptoe & Johnson what it was that Motorola were doing. There was no mention of any underlying Enforcement Proceedings, whether actual or contemplated. In those circumstances, Mr Rubin submitted very simply but powerfully that Steptoe & Johnson's responsive letter on 24 March 2020 should be taken (and only taken) as agreement to accept service in England and Wales on behalf of the five companies listed at the top of King & Spalding letter dated 20 March 2020 in relation to the freezing order proceedings and not anything else. Mr Rubin submitted that there was nothing else that Hytera and Project Shortway Limited and Sepura Limited for that matter were being asked to deal with.

34. In this context, Mr Rubin has drawn my attention to a decision of Mr Justice Colman, namely *Firstdale Limited v Quinton* [2005] 1 All ER 639 specifically at paragraph 24 where Mr Justice Colman said, amongst other things, the following by reference to CPR 6.4 and 6.5:

"The words of rr 6.4 and 6.5 are not drafted by reference exclusively to a claim form or, indeed to a claim, but to a document. That document need not therefore be a claim form. It is, however, clearly intended that 'the document' the subject of the solicitor's notification under r 6.4(2) and the 'address for service' under r 6.5(2) must have been in some way defined in advance by reference to its essential characteristics. Thus, an indication by a potential defendant's solicitor that he is authorised to accept service of proceedings which have already been the subject of discussion or which raise a claim which has already been put forward cannot ordinarily be taken to have indicated his authority to accept service of a document relating to different proceedings or to a different claim. The solicitor who represents that he is authorised to accept service of a claim form in respect of claim X does not engage r 6.4 in relation to service of a claim form in respect of claim Y unless he is also indeed authorised to accept service of such a document. If, therefore, one approaches the question by asking whether it would necessarily follow that a solicitor originally authorised to accept service of a claim form would necessarily also be authorised to accept service of a claim form under which any assignee of the original claim was the claimant, the answer is bound to be No. There might be very good reason why the proposed defendant would not wish that particular solicitor to act for him against that particular assignee."

Mr Rubin submits that the same reasoning is applicable here in that the proceedings that had (in the language of Mr Justice Colman) "already been the subject of discussion" and "already been put forward" were (and were only) the freezing order proceedings and not any subsequent and separate Enforcement Proceedings which came, as it happened, to be issued some two years later.

35. I should also refer to paragraph 26 of the same judgment where Mr Justice Colman said as follows:

"Having regard to these considerations I have no doubt that the scope of solicitors' authority to accept service of the claim form must be defined not only by reference to the claim which has already been indicated by the potential claimant but also by reference to the identity and capacity of that claimant. An affirmative response to an inquiry whether a solicitor is authorised to accept service of a particular claim form for a debt by X is not ordinarily notification that he is also authorised to accept service of a claim brought by Y in relation to the same debt and certainly not if Y claims not as creditor but as assignee."

I should just observe, in passing perhaps, that Mr Sprange invites me to conclude that the ratio of this case is as set out in paragraph 26 rather than as expressed in paragraph 24. I do not agree with Mr Sprange about that. It seems to me, on the contrary, that Mr Rubin must be right and that the focus should, as Mr Justice Colman put it, be on the nature of the claim, whether that involves a different claimant or a different defendant, as well as the underlying claim.

36. That notwithstanding, it does not seem to me that this dictates a conclusion of the sort urged upon me by Mr Rubin in the present case. On the contrary, it seems to me clear that Steptoe & Johnson were agreeing in the correspondence to which I have referred to accept service of any proceedings and not merely or only the freezing order proceedings which were then on foot or

soon to be on foot. I emphasise in this context the nature of the original request as contained in King & Spalding's 16 March 2020 letter, namely the request for confirmation:

"...that the London office of your firm is instructed to deal with any related matters in England and Wales, including accepting service of English court proceedings on behalf of Hytera."

The use of the word "any" seems to me to make it abundantly clear that the request was not limited to any particular type of proceedings. The fact that the relevant sentence went on to refer to the acceptance of service of English court proceedings as being wrapped up in the request concerning "any related matters" underlines that conclusion. The request, putting it shortly, did not confine itself to any particular type of proceedings, but was far more general in form.

37. Indeed, the letter from Steptoe & Johnson dated 18 March 2020, in introducing a separate section headed "Service", seems in my assessment to underline the point to which I have just referred. There was no effort on the part of Steptoe & Johnson there to restrict the nature of the request that was being made by King & Spalding. On the contrary, the subheading rather confirms what must, in my assessment, have been obvious: that King & Spalding were seeking confirmation that there was agreement to accept service generally.
38. In this respect, it seems to me that there is considerable force in the submission made by Mr Sprange concerning the nature of section 25 proceedings. As he points out, such proceedings have as their reference foreign proceedings in which typically a judgment has been obtained. That was the case here with the Illinois Judgment. Implicit in their commencement, therefore, is the fact, and certainly the likelihood, that underlying enforcement proceedings would at some point be commenced. In those circumstances, to approach, as Mr Rubin was inclined to do, the correspondence and, in particular, the letter of 20 March 2020 which identifies the five defendants/respondents to proposed section 25 proceedings as being limited only to those proceedings seems to me to be artificial.
39. Putting the point even more shortly, Steptoe & Johnson must have appreciated that the Freezing Order Application would involve at some point the commencement of underlying enforcement proceedings. Given this, the submission now made (that the request for confirmation that there was agreement as to acceptance of service in the 16 March letter should be viewed restrictively) is unreal. There will always have been in the contemplation of Steptoe & Johnson that there would be enforcement proceedings commenced because they would need to be commenced in order for freezing order relief to be obtained.
40. I am also satisfied that Mr Sprange is right when he makes the observation that, in stating what they did in their letter of 24 March 2020, Steptoe & Johnson should be taken as understanding that they were agreeing to acceptance of service of proceedings in a non-restricted way. As Mr Sprange rightly observes, agreeing to accept service on behalf of a client is significant; it is not something that is likely to be done by a solicitor lightly. It is something which a solicitor will wish to take care about. In those circumstances, if Steptoe & Johnson really had intended to agree to accept service of proceedings referable only to the freezing order proceedings, then, one would have expected that to have been spelt out. That is not what the letter of 24 March 2020 did; on the contrary, it states very simply that:

"We are now instructed to accept service in England and Wales on behalf of the following entities ...".

It then lists the five defendants named in the letter of 20 March 2020. There is no hint there that the agreement was somehow limited to the Freezing Order Application and that cannot, in my assessment, have been an accident.

41. For those reasons, I am entirely satisfied that this is a case in which there has been agreement to accept service of proceedings generally and, therefore, that it is appropriate that the declaration sought by Motorola is granted.

42. I said that I would return to the issue of the non-payment of the Court of Appeal's costs orders. I do not consider it appropriate, for reasons really, already canvassed, to be refusing the declaratory relief sought by Motorola on the basis of there having been non-payment. As I have explained, on analysis, that is not even what Hytera is seeking; on the contrary, what is being sought is some sort of conditional declaration which it seems to me is not a creature that the Court could recognise.

43. This leaves the question of whether I should now, nonetheless, order a stay. In this respect, I am reminded that the Court has the power to debar a party from participating in proceedings as part of its inherent jurisdiction. Mr Rubin, in this context, referred me to CPR 3.1(1). He also referred me to CPR 3.1(3)(a) in which the Court is empowered to make an order subject to conditions. As to that latter provision, for reasons I have explained, I am not convinced that that is something I can do in relation to the declaratory relief sought. The question is whether I should now exercise the inherent power under CPR 3.1(1). In this respect Mr Rubin took me to a decision of Mr Justice Langley, namely *Days Healthcare UK Limited v Pihsiang Machinery Manufacturing Company Limited* [2006] EWHC 144 (QB), specifically paragraph 21 where Mr Justice Langley referred to what Lord Justice Clarke (as he then was) had to say in *Hammond Suddard Solicitors v Agrichem International Holdings Limited* [2001] EWCA Civ 2065 at paragraph 48, namely:

"We do, however, take the view that the new regime of the CPR, with its emphasis on the timely payment of costs, and the use of costs as a sanction, warrants a robust approach to appellants who fail to obey orders for the payment of a judgment debt and costs when they can afford to pay them ..."

Mr Justice Langley went on to say that it would:

"indeed be concerning if the Court was unable to impose appropriate sanctions on those who choose to ignore its orders and yet continue to seek its process for their own ends."

That was a case, it is worth bearing in mind, in which the relevant defendants had already been committed for contempt.

44. In addition, I was taken to a decision of Mr Justice Patten, as he then was, namely, *Crystal Decisions (UK) Limited v Vedatech* [2006] EWHC 3500 (Ch) in which the judge said this at paragraph 10:

"It is perfectly true, of course, that parties in the position of the Claimants would, in these circumstances, have other remedies available to them. Those might include proceedings for contempt, but equally they might involve a more routine enforcement of the judgment for costs by for example seeking an order for payment and a charging order against any known assets. In the present circumstances, however, where they are faced with Defendants who are not

resident within the jurisdiction and have no assets here, those remedies are likely to be of limited value."

Then at paragraph 11 Mr Justice Patten said this:

"Therefore, the only effective sanction, Mr Hildyard submits, is that I should deny the Defendants the right to contest these proceedings unless they comply with the orders that have been made against them."

The judge then went on at paragraph 16 to say this:

"In any event I take the view that the orders of the court, even in relation to interim costs, require to be complied with and that, unless there is some overwhelming consideration falling within Article 6 that compels the court to take a different view, the normal consequence of a failure to comply with such an order is that the court, in order to protect its own procedure, should make compliance with that order a condition of the party in question being able to continue with the litigation."

45. I take into account all of these various dicta, whilst noting that the facts of particular cases are particular to those cases. What I am not satisfied about in this case is that it would be appropriate to grant a stay, even allowing for the fact that I have an inherent jurisdiction to do so, without there being a formal application for a stay made in this case by Hytera.
46. I am informed by Mr Sprange that, had there been a formal application, then, he would have wished on behalf of Motorola to address the Court, including by reference to evidence which is not available. That evidence, Mr Sprange explained, would have involved an analysis of the Illinois Proceedings specifically the liabilities which Hytera has under the Illinois Judgment and arguments concerned with legal set-off and indeed equitable set-off.
47. Whilst I need to be cautious in expressing a view as to the merit of those arguments, given that I instinctively have some sympathy with the submission made by Mr Rubin that a costs order made by the Court of Appeal in this jurisdiction is an order which ought to be complied with regardless, nonetheless I am satisfied that it would not be appropriate for me to deal, almost on-the-hoof, with a stay application which has not even been made the subject of a formal application.
48. As I have explained previously, the point has arisen as a suggested reason why the relief sought ought not to be granted other than on a conditional basis. But that is a point which I have already addressed and explained and is one that I do not find compelling.
49. The upshot is this: in the light of my conclusion that the Claimants are entitled to the declaration sought, the jurisdictional challenge which, as I understand it, is due to be heard in May next year will fall away. What, as I discussed during the course of submissions, seems to me now logically to follow is that, if so advised, Hytera can issue a formal stay application based on the non-payment of the Court of Appeal costs orders which should take the place of the jurisdictional challenge currently in being.
50. I should indicate immediately, as I did during the course of argument, that the listing for next May should, therefore, now deal with that putative stay application rather than fall away, and I welcome Mr Sprange's express confirmation that Motorola would have no difficulty with that.

Should the Listing Office need to have this explained to them, then I would be more than happy to do so.