Neutral Citation Number: [2022] EWHC 544 (Comm)

Case No: CL-2021-000207

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
COMMERCIAL COURT (QBD)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14/03/2022

Before:

Peter MacDonald Eggers QC
(sitting as a Deputy Judge of the High Court)

- -

Between:

AELF MSN 242, LLC **(a Puerto Rico limited liability company)**	**Claimant**
- and -	
DE SURINAAMSE LUCHTVAART MAATSCHAPPIJ N.V. D.B.A. SURINAM AIRWAYS	**Defendant**

- -

Hannah Brown QC (instructed by **W Legal Limited**) for the **Claimant**
Tom Stewart Coats (instructed by **Bird & Bird LLP**) for the **Defendant**

Hearing date: 22nd February 2022

- -

Approved Judgement

.....

PETER MACDONALD EGGERS QC
SITTING AS A DEPUTY JUDGE OF THE HIGH COURT

Introduction

1. The Claimant ("AELF") is an aircraft leasing company and the Defendant ("SLM") is the national flag carrier of Suriname.

2. The Claim Form in this action was issued by AELF in support of its claims against SLM by reason of SLM's alleged breach of a Settlement Agreement and Termination Deed ("the Settlement Agreement") concluded between them on 26th June 2020, by which the parties agreed to settle AELF's claim for more than US$23 million against SLM arising under the terms of an aircraft lease agreement by SLM agreeing to pay the total sum of US$4,150,000 by way of monthly instalments of US$100,000 commencing on 1st December 2020. The Settlement Agreement contained an exclusive English jurisdiction clause.

3. On 21st December 2021, I handed down judgment in this action disposing of applications made by SLM for an extension of time in which to file an acknowledgment of service and challenging the Court's jurisdiction by reason of the alleged defective service of the Claim Form on SLM. In that judgment, I decided to grant the application for an extension of time and dismissed the application challenging the Court's jurisdiction.

4. This judgment concerns the latter application. SLM had issued the application challenging the Court's jurisdiction pursuant to CPR rule 11(1). This application was based on the premise that SLM was entitled to be, but was not in fact, served with the Claim Form in accordance with the procedure set out in section 12(1) of the State Immunity Act 1978 which requires a Claim Form in proceedings against a State to have been served by being transmitted through the Foreign, Commonwealth and Development Office to the Ministry of Foreign Affairs of that State. SLM's case is that although it is not a "*State*", it is a "*separate entity*" for the purposes of section 14 of the 1978 Act and so was entitled to be served with the Claim Form in accordance with the procedure set out in section 12(1); therefore, the Claim Form should have been served by being transmitted to the Ministry of Foreign Affairs of Suriname, but was not.

5. In contesting SLM's application, AELF advanced a number of arguments, including that SLM was not entitled to be served in accordance with section 12(1), because (a) it was not a "*State*", (b) in any event SLM had agreed that service should be effected upon

it by the Bailiff, and Mr John Vrede (SLM's Manager of Legal Affairs) agreed by email on 2nd June 2021 and made the appointment to accept service, and so service was valid in accordance with section 12(6) of the State Immunity Act 1978, and (c) SLM had submitted to the jurisdiction.

6. On 3rd November 2021, Henshaw, J directed that there be a short oral hearing of SLM's jurisdiction application but that the oral hearing should be limited to the last-mentioned issue, namely whether SLM had submitted to the jurisdiction, and that if necessary the remaining issues be disposed of at a later hearing. This direction was made for good reason on case management grounds.

7. In dismissing SLM's application challenging jurisdiction, I held that SLM had submitted to the jurisdiction by way of a common law waiver, rather than a statutory form of submission. In dealing with this application, it occurred to me that there was an issue as to whether a common law waiver was sufficient for the purposes of section 12(3) of the State Immunity Act 1978, which provided that "*A State which appears in proceedings cannot thereafter object that subsection (1) above has not been complied with in the case of those proceedings*". As a result, although the issue had not been addressed during the oral hearing of the application, I invited the parties to address this issue by written submission, which they did. Upon considering the parties' written submissions, I concluded that a common law waiver constituted an appearance within the meaning of section 12(3).

8. After I gave judgment on 21st December 2021, but before the order dismissing the application had been sealed, SLM made an application for permission to appeal against the dismissal of the jurisdiction application on the sole ground that section 12(3) does not encompass a common law waiver or submission and that conduct which would amount to common law waiver or submission cannot prevent reliance on section 12(1) of the State Immunity Act 1978 in cases where the defendant does not also "*appear in proceedings*" for the purposes of section 12(3).

9. In response to this application for permission to appeal, AELF submitted that SLM in pursuing an appeal would be abusing the Court's process in an action in which it has no defence and has applied to challenge jurisdiction in which it has no prospects of

success and that the Court should be astute to ensure that there is no further unreasonable delay by permitting an appeal to take place.

10. I indicated to the parties that I was inclined to grant permission to appeal on this ground relating to section 12(3), but I also saw the force of AELF's submission in that an appeal might take a considerable time in which to be heard and that time and costs might potentially be wasted on an appeal if it were ultimately held, after any appeal, that SLM were not entitled to rely on section 12(1) in any event. I therefore proposed to deal with the remaining issues arising from SLM's jurisdiction application before deciding whether to grant permission to appeal. However, I was concerned that there might be a procedural objection to my taking this course given that I had already dismissed the jurisdiction application by my judgment dated 21st December 2021.

11. In the event, the parties were agreed that it would make sense for me to dispose of the remaining issues arising from the jurisdiction application and pointed out that this was a permissible course since the order dismissing the application had not yet been perfected or sealed. SLM also submitted that I might withdraw my judgment handed down on 21st December 2021. I did not consider that that was an appropriate course because there was no prospect that I would change my decision as to the construction of section 12(3) by reference to the common law waiver which I had found to be established.

12. In agreeing to adopt this course, SLM's counsel, Mr Tom Stewart Coats, referred me to the decision of the Court of Appeal in *AIC Ltd v Federal Airports Authority of Nigeria* [2020] EWCA Civ 1585; [2021] 1 WLR 1506. I understand that an appeal from that decision to the Supreme Court has been heard and is awaiting judgment. In that case, Coulson, LJ held at para. 50-60 that:

    (1) The finality of an order is an important principle in the administration of justice.

    (2) An order takes effect from the time it is made and not when the order is perfected by sealing.

    (3) Nevertheless, there is a particular jurisdiction - which must be carefully patrolled - which permits a judge to change his or her order between the handing down of the judgment and the subsequent sealing of the order.

(4) This jurisdiction is founded on the overriding objective in CPR rule 1.1.

(5) The power to reconsider an order is an exercise of judicial discretion.

(6) It is a jurisdiction which could be exercised on the judge's own initiative or on the application of one or both of the parties.

(7) In exercising this jurisdiction, there are two distinct questions which the Court must ask itself if it is asked by one of the parties to reconsider an order which has been pronounced but not yet been sealed: (a) whether the application to reconsider should be entertained in principle and whether there is a reasonably arguable basis for the application; and, if so, (b) whether or not the order should be changed in the exercise of the judicial discretion in accordance with the overriding objective.

(8) The Court's undoubted jurisdiction to reconsider its earlier order cannot be permitted to become a gateway for a second round of wide-ranging debate.

13. The present case is not a case where I am reconsidering the order I decided to make in my judgment handed down on 21st December 2021. Instead, I am considering whether there are further grounds for justifying the order. The reason for doing so is to decide whether or not there should be permission to appeal. The competing scenarios facing the parties and the Court are as follows:

(1) If I did not consider the other grounds of SLM's jurisdiction application and I granted permission to appeal from my decision on the meaning and application of section 12(3) of the 1978 Act, the appeal might be allowed or dismissed. If dismissed, the substantive claim in the action would proceed. If allowed, the remaining grounds of the jurisdiction application would have to be determined. If the remaining grounds were determined in favour of SLM or AELF, there might be a further application for permission to appeal. In that event, the substantive claim would not be progressed after a long period of delay, a delay which is difficult to justify.

(2) If I considered and determined the other grounds of SLM's jurisdiction before deciding whether to grant permission to appeal on the section 12(3) issue, there

might well be a further application for permission to appeal, whether by SLM or AELF, but in that event there would be only one appeal (if permission were granted). Of course, there might be no application for permission to appeal or it might be dismissed, in which case there would be no substantial delay in the pursuit of the substantive claim or at least any delay would be kept to a minimum.

14. In these circumstances, in my judgment, the overriding objective demands that I take the course which results in less delay, lower cost and a minimum of any draw on the Court's resources. It seems to me that this course is permissible because (a) if - before the order is sealed - there is a jurisdiction to reconsider an order, there must be a jurisdiction to decide if the order might be further justified on additional grounds, and (b) the overriding objective which is the fount of this jurisdiction militates in favour of the exercise of this jurisdiction. It would be unfortunate if the Court could not take what is the sensible course of action in these circumstances. In any event, the parties seeing the obvious benefits of this course of action agreed that it should be adopted.

15. Against this background, I now proceed to consider the remaining issues relating to SLM's application contesting jurisdiction. There are two additional issues which I have to determine, namely:

(1) Is SLM entitled to rely on section 12(1) of the State Immunity Act 1978?

(2) If so, has service of the Claim Form been effected in a manner which was agreed in accordance with section 12(6) of the 1978 Act?

Section 12(1) of the State Immunity Act 1978

16. Section 12(1) of the State Immunity Act 1978 provides that:

> "*Any writ or other document required to be served for instituting proceedings against a State shall be served by being transmitted through the Foreign, Commonwealth and Development Office to the Ministry of Foreign Affairs of the State and service shall be deemed to have been effected when the writ or document is received at the Ministry.*

17. Mr Stewart Coats on behalf of SLM submitted that SLM was entitled to be served in accordance with section 12(1), not because SLM was a "*State*", but because it was a "*separate entity*" as defined in section 14(1) of the 1978 Act.

18. Section 14(1) provides that:

> "*The immunities and privileges conferred by this Part of this Act apply to any foreign or commonwealth State other than the United Kingdom; and references to a State include references to -*
>
> *(a) the sovereign or other head of that State in his public capacity;*
>
> *(b) the government of that State; and*
>
> *(c) any department of that government,*
>
> *but not to any entity (hereafter referred to as a "separate entity") which is distinct from the executive organs of the government of the State and capable of suing or being sued*."

19. Therefore, SLM's submission is that as a State-owned airline - the national flag carrier of Suriname - SLM is a "*separate entity*" and that the claim against SLM relates to an act done in the exercise of the Republic of Suriname's sovereign authority, with the result that it is entitled to rely on section 12(1).

20. Mr Stewart Coats developed this submission as follows:

    (1) The law of State immunity depends on whether the conduct of the State is *jure imperii* (acts performed in the exercise of sovereign authority) or *jure gestionis* (acts performed in a private, *i.e.* non-sovereign, capacity). See *Benkharbouche v Embassy of the Republic of Sudan* [2017] UKSC 62; [2019] AC 777, para. 8-10.

    (2) The availability of State immunity reflects a functional, rather than status-based, conception of a State.

    (3) Given that the focus of the law of State immunity is on function rather than status or title, the term "*State*" in section 12(1) should be construed by reference to function rather than status or title and should include entities where the relevant conduct that gives rise to the proceedings is nominally performed by the entity but is in reality an exercise of governmental authority.

(4) The language of the definition of "*State*" in section 14(1) suggests a flexible and context-dependent meaning. The examples set out in section 14(1)(a)-(c) are not exhaustive.

(5) Although sections 14(3) to 14(6) support a narrower interpretation of "*State*" as excluding a "*separate entity*", these sections merely address some of the problems that arise if one excludes an entity exercising governmental functions from the definition of "*State*" and that they do not preclude a definition of "*State*" for the purposes of section 12(1) which includes a separate entity.

(6) There are sensible policy reasons for interpreting "*State*" in section 12(1) as including a "*separate entity*" where the proceedings relate to a sovereign act of the State in question: (a) without any provision for the separate entity exercising a State's sovereign authority to be served in accordance with section 12(1), there is no mechanism for the State to be given notice that its sovereign actions are the subject of foreign proceedings; (b) since the proceedings relate to a sovereign act, the separate entity should be entitled to the same procedural safeguards in the form of service under section 12(1) to ensure that the matter is properly drawn to the attention of the relevant decision-makers within the state's governmental apparatus; (c) service in accordance with section 12(1) allows the State to decide whether and how it wishes to engage with the proceedings; and (d) if there is no requirement to serve process in accordance with section 12(1), the decision whether to waive any immunity should be a matter for the State, not the separate entity.

(7) SLM's preferred interpretation would also be more consistent with the definition of "*State*" in Article 2(1)(b) of the UN Convention on Jurisdictional Immunities of States and their Property, which includes "*agencies or instrumentalities of the State or other entities, to the extent that they are entitled to perform and are actually performing acts in the exercise of sovereign authority of the State*".

(8) SLM accepts that it was the view of Butcher, J in *Dynasty Co for Oil and Gas Trading Ltd v Kurdistan Regional Government of Iraq* [2021] EWHC 952 (Comm), at para. 130, that "*Entities, servants or agents distinct from the state*

as defined in section 14(1) are not, by that subsection, accorded the privilege in section 12" and that there "*is no good reason for reading the SIA so as to afford them that privilege*". However, this was *obiter* and in any event this decision should not be followed.

(9) In this case, the relevant act which was carried out in the exercise of sovereign authority was SLM's entry into the Settlement Agreement. According to the first witness statement of Mr Vrede, SLM is wholly-owned by the Republic of Suriname, SLM acts through a combination of its Directorate, its Supervisory Board and its shareholders in General Meeting; the Directorate and the Supervisory Board consist primarily of members of Suriname's governing political parties; SLM is an important part of the state-owned economy as both the flag carrier of Suriname and the only domestic airline that is permitted to operate routes to the European Union and the United States of America; the period prior to the Settlement Agreement was an extremely difficult time for both SLM and the Republic of Suriname as a result of the Covid-19 pandemic and the accompanying economic uncertainty for the travel and aviation sectors; the tourism sector, particularly tourists from The Netherlands, declined significantly as a result of the pandemic and the need to implement significant spending to deal with the pandemic affected the Government's ability to fund other parts of the economy, including SLM and its operations; the Settlement Agreement was executed pursuant to the approval of the Supervisory Board which is appointed and controlled by the Government.

21. Ms Hannah Brown QC on behalf of AELF submitted that:

(1) SLM's assertion that section 12(1) applies to it as a separate entity is misconceived because section 12(1) applies only to States and SLM is not a State, it is a separate entity, as provided for in the SIA at section 14(1).

(2) SLM is a commercial airline which is distinct from the executive organs of the government of Suriname and is capable of suing and being sued. By its Articles of Incorporation, the purpose of SLM is to conduct aviation business.

(3) The proceedings do not relate to an act done by SLM in the exercise of Suriname's sovereign authority. The proceedings concern SLM's failure to pay

sums due under the Settlement Agreement which settled a dispute concerning sums alleged to be due to AELF under an aircraft lease agreement. The proceedings therefore concern commercial acts which are not an exercise of Suriname's sovereign authority. See *Kuwait Airlines Corp v Iraqi Airways Co* [1995] 1 WLR 1147, 1156, 1160-1164, where the House of Lords held that the removal of the aircraft from Kuwait to Iraq during the invasion of Kuwait was a governmental act but that the subsequent retention and use of the aircraft as part of its commercial fleet was not a governmental or sovereign act.

(4) Section 12(1) is concerned only with the procedural step of service of the proceedings. It is not concerned with the substantive immunity of a State from the jurisdiction of the English Courts which is provided for under section 1 of the 1978 Act. Section 14(2) extends state immunity to separate entities; it has nothing to do with the procedural step of service of the proceedings.

(5) By contrast, section 14(3) extends to a separate entity (other than a State's central bank or other monetary authority) which has submitted to the jurisdiction certain procedural privileges under sections 13(1)-(4) which apply "*as if references to a State were references to that entity*". There is an equivalent provision in section 14(4) in respect of a State's central bank or other monetary authority. There is no similar extension of the service provision under section 12(1) to separate entities.

(6) Further, section 14(5) provides that section 12 "*applies to proceedings against the constituent territories of a federal State* …". There is no provision that section 12 applies to separate entities.

(7) Sections 14(3)-(5) demonstrate that express provision would be required in the 1978 Act in order to extend the scope of section 12(1) to separate entities and there is no such provision.

(8) None of those considerations which justify the special provisions made for the service of originating process on States in sections 12(1)-(2) apply to a commercial corporate entity such as SLM.

22. In my judgment, SLM as a "*separate entity*" is not entitled to be served with proceedings in accordance with section 12(1) of the State Immunity Act 1978.

23. This conclusion is supported by the simple act of interpreting the State Immunity Act 1978, whose structure, language and effect are readily discernible.

    (1) Section 1 provides that a State is immune from the jurisdiction of the courts of the United Kingdom, subject to specified exceptions. Section 1 appears under the heading "*General immunity from jurisdiction*".

    (2) Sections 2-11 appear under the heading "*Exceptions from immunity*". These are the exceptions referred to in section 1.

    (3) Section 12, together with section 13, appears under the heading "*Procedure*".

    (4) The remaining provisions of Part I of the Act, including sections 13 and 14, appear under the heading "*Supplementary provisions*".

24. Section 12(1) provides expressly that it applies to proceedings against a "*State*". No reference is made in section 12(1) to a "*separate entity*".

25. Section 14(1) identifies what is included within the meaning of a "*State*", namely the sovereign or other head of that State in his or her public capacity, the government of that State, and any department of that government.

26. Section 14(1) further provides that references to a State do not include any entity which is distinct from the executive organs of the government of the State and capable of suing or being sued. Such an entity is designated a "*separate entity*". SLM is such a separate entity, as SLM itself acknowledges.

27. Therefore, by this straightforward exercise in statutory interpretation, section 12(1) is applicable to proceedings against a State, but not against a separate entity such as SLM.

28. Moreover, section 14(1) identifies what is and is not included within the meaning of a "*State*", because the definition is intended to explain the scope of the provision in section 14(1) that "*immunities and privileges*" conferred by Part I of the 1978 Act extend to foreign or commonwealth States.

29. Section 14(2) by contrast provides that a separate entity is immune from the jurisdiction of the courts of the United Kingdom if and only if the proceedings relate to anything done by it in the exercise of sovereign authority and the circumstances are such that a State would have been so immune.

30. It is thus apparent that while there is provision in section 14(2) for separate entities, such as SLM, benefiting from immunity from jurisdiction, the reference to "*privileges*" in section 14(1) must be referring to something other than immunity from jurisdiction. Such privileges would include the right to be served in the manner specified in section 12(1). That right is not an "*immunity*", because it is not described as such and because it presupposes - at least in some circumstances - that the proceedings are properly commenced against the State so that the defendant State might have no immunity from jurisdiction.

31. The effect of SLM's submission is that SLM might be entitled to immunity from jurisdiction (assuming that the Settlement Agreement was concluded in the exercise of sovereign authority), but by reason of my finding in my judgment handed down on 21st December 2021 that SLM had submitted to the jurisdiction, section 2(1) of the 1978 Act, when read together with section 14(2), provides that SLM enjoys no immunity with regard to these current proceedings.

32. In addition, I consider that Ms Brown QC is correct in her submission that if the legislative intention had been to extend the privileges granted by section 12(1) to a separate entity, there would have been express provision to that effect, in the same way that sections 14(3)-(6) make particular provision to extend certain privileges arising under section 13 to separate entities. Indeed, section 14(5) expressly extends the privileges of section 12 to "*the constituent territories of a federal State*"; there is no equivalent provision applicable to separate entities.

33. A consistent conclusion was reached by Butcher, J in connection with agents and servants of a State in *Dynasty Co for Oil and Gas Trading Ltd v Kurdistan Regional Government of Iraq* [2021] EWHC 952 (Comm); [2021] 3 WLR 1095, as Mr Stewart Coats acknowledged. At para. 130, Butcher, J said that:

> "*Entities, servants or agents distinct from the state as defined in section 14(1) are not, by that subsection, accorded the privilege in section 12. There is no good*

> *reason for reading the SIA so as to afford them that privilege. In this regard, there is no question here of the circumvention of an immunity which the Act confers. The fact that individuals may be served otherwise than through the section 12 procedure does not prevent a claim for immunity if they were acting in their capacity as servants or agents of a state acting in the exercise of sovereign authority*."

34. I do not consider that Mr Stewart Coats's submissions concerning extraneous definitions of a "*State*" and/or the policy reasons for an expansive interpretation can meet the unambiguous wording and intention of sections 12 and 14 of the 1978 Act. Accordingly, I do not accept those submissions.

35. This conclusion means that any decision as to the character of SLM's act in concluding the Settlement Agreement is not relevant. However, in case it might become relevant, I am not convinced that the Settlement Agreement is an act in the exercise of Suriname's sovereign authority, given the commercial nature of the Settlement Agreement and its compromise of claims made in respect of the aircraft lease agreement between the parties. This is so even if there were benefits for the Republic of Suriname by SLM concluding the Settlement Agreement, thereby reducing the financial burden of the aircraft lease agreement, and even if the Settlement Agreement were concluded with the authority of or at the behest of the Suriname government. As Lord Goff said in *Kuwait Airways Corporation v Iraqi Airways Co* [1995] 1 WLR 1147, at page 1160:

> "*It is apparent from Lord Wilberforce's statement of principle that the ultimate test of what constitutes an act jure imperii is whether the act in question is of its own character a governmental act, as opposed to an act which any private citizen can perform. It follows that, in the case of acts done by a separate entity, it is not enough that the entity should have acted on the directions of the state, because such an act need not possess the character of a governmental act. To attract immunity under section 14(2), therefore, what is done by the separate entity must be something which possesses that character. An example of such an act performed by a separate entity is to be found in Arango v. Guzman Travel Advisors Corporation (1980) 621 F.2d 1371 in which Dominicana (the national airline of the Dominican Republic), faced with a claim by a passenger in respect of inconvenience suffered in "involuntary rerouting," was held entitled to plead sovereign immunity under the United States Foreign Sovereign Immunities Act 1976, on the ground that it was impressed into service, by Dominican immigration officials acting pursuant to the country's laws, to perform the functions which led to the rerouting of the plaintiff. Reavley J., delivering the judgment of the court, said, at p. 1379:*
>
> > *"Dominicana acted merely as an arm or agent of the Dominican government in carrying out this assigned role, and, as such, is entitled to*

> *the same immunity from any liability arising from that governmental function as would inure to the government, itself." (Emphasis supplied.)*
>
> *But where an act done by a separate entity of the state on the directions of the state does not possess the character of a governmental act, the entity will not be entitled to state immunity, though it may be able to invoke a substantive defence such as force majeure despite the fact that it is an entity of the state: see, e.g., C. Czarnikow Ltd. v. Centrala Handlu Zagranicznego Rolimpex [1979] A.C. 351. Likewise, in the absence of such character, the mere fact that the purpose or motive of the act was to serve the purposes of the state will not be sufficient to enable the separate entity to claim immunity under section 14(2) of the Act.*

36. In my judgment, therefore, SLM is not entitled to be served in accordance with the procedure set out in section 12(1) of the State Immunity Act 1978. This means that even had there been no appearance by SLM within the meaning of section 12(3), the basis of SLM's application contesting the Court's jurisdiction on the grounds that it was not served in accordance with section 12(1) is not maintainable.

Section 12(6) of the State Immunity Act 1978

37. If, contrary to my finding above, section 12(1) is applicable to SLM as a separate entity, AELF contends that the service of the Claim Form in these proceedings was carried out in accordance with SLM's agreement pursuant to section 12(6) of the 1978 Act, with the result that service was valid and effective and so SLM's jurisdiction application should be dismissed on this ground.

38. Section 12(6) of the State Immunity Act 1978 provides that:

> *Subsection (1) above does not prevent the service of a writ or other document in any manner to which the State has agreed and subsections (2) and (4) above do not apply where service is effected in any such manner*."

39. Ms Hannah Brown QC submitted in support of AELF's contention that:

(1) The evidence relating to the agreement to accept service by the Bailiff upon Mr Vrede by appointment is in Ms Mónica Millán's first witness statement dated 29th July 2021, at paragraphs 9-11, and the email exchange between Ms Millán (on behalf of AELF) and Mr Vrede (on behalf of SLM) on 2nd June 2021.

(2) Mr Vrede's own evidence does not take issue with the fact that he had arranged an appointment with the Bailiff to enable the proceedings to be served. In his

second witness statement dated 3rd February 2022, at paragraphs 11-12, Mr Vrede stated that he did not intend and was not authorised to agree to an alternative method of service to that provided for SLM under the 1978 Act. This assertion is not relevant given that Suriname is not a party to these proceedings.

40. Mr Stewart Coats submitted on behalf of SLM that:

(1) Mr Vrede only agreed to meet the Bailiff to receive the documents in an effort to be helpful in the difficult circumstances of the early pandemic (Mr Vrede's second witness statement, paragraph 8).

(2) By agreeing to meet the Bailiff at her home and to collect the documents from her, Mr Vrede did not intend to and was not authorised to agree to an alternative method of service to that required under the applicable rules or to waive any rights SLM had to be served in a particular manner (paragraphs 11-12 of his second witness statement).

(3) Furthermore, applying either party's definition of "*State*" for the purposes of section 12 of the 1978 Act, Mr Vrede's agreement to collect documents from the Bailiff cannot amount to a manner which the "*State*" has agreed since:

(a) Applying SLM's preferred interpretation of "*State*", neither party has adduced evidence to the effect that SLM was acting in the exercise of sovereign authority when Mr Vrede agreed to accept documents from the bailiff.

(b) Applying AELF's preferred interpretation of "*State*", SLM cannot be a State because it is a "*separate entity*".

41. In my judgment, there was an agreement between SLM and AELF which allowed service to be effected by the Bailiff upon Mr Vrede which involved Mr Vrede collecting the Claim Form from the Bailiff at her home. If section 12(1) applies to SLM as a separate entity, it should follow that section 12(6) might be applied if that separate entity - being the defendant to the proceedings - agreed to an alternative form of service. I do not consider that section 12(6) applies only if the agreement to an alternative form of service was reached in the exercise of a State's sovereign authority, because there is

no provision to that effect. I also do not accept that the Republic of Suriname, rather than SLM, must have agreed to an alternative method of service to engage section 12(6). It follows whether or not Mr Vrede were authorised by the government of Suriname is not relevant for the purposes of section 12(6). Nor is Mr Vrede's subjective intention relevant in this respect; all that matters is whether there was objectively an agreement by SLM to be served in the manner it was in fact served and I have concluded that there was such an agreement.

42. If therefore SLM was entitled (contrary to my decision above) to be served in accordance with the procedure in section 12(1), by reason of Mr Vrede having agreed on behalf of SLM to accept service of the Claim Form by collecting the same from the Bailiff at her home, there was an agreement within the meaning of section 12(6) which dispensed with the need for service to be undertaken in accordance with the procedure in section 12(1).

Conclusion

43. For the reasons explained above, in my judgment,

(1) SLM was not entitled to be served with the Claim Form in accordance with section 12(1) of the State Immunity Act 1978, because SLM was a "*separate entity*" and a separate entity is not entitled to the privilege granted by section 12(1).

(2) If this conclusion is wrong, SLM nonetheless agreed to be served in the way it was served and so such service was effective in accordance with section 12(6).

(3) It follows that SLM's application contesting jurisdiction must be dismissed on these grounds in addition to its submission to jurisdiction and appearance within the meaning of section 12(3).

44. I remain grateful to both counsel for their efficient and helpful submissions.