



Neutral Citation Number: [2019] EWCA Civ 964

Case No: B2/2017/2787

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM FROM THE COUNTY COURT AT
MAYOR'S AND CITY OF LONDON
His Honour Judge Parfitt

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11/06/2019

Before:

THE PRESIDENT OF THE QUEEN'S BENCH DIVISION
(SIR BRIAN LEVESON)
LORD JUSTICE LEWISON
and
LORD JUSTICE FLOYD

Between:

ALEX KUZNETSOV **Appellant**
- and -
AMAZON SERVICES EUROPE SARL **Respondent**

Robert Machell (instructed by direct access) for the **Appellant**
Nicholas Broomfield (instructed by **Eversheds Sutherland (International) LLP**) for the
Respondent

Hearing date: 21 May 2019

Approved Judgment

Lord Justice Floyd:

1. The claimant and appellant, Mr Alex Kuznetsov, brought an action in the Central London County Court because his seller's account with Amazon, through which he conducted a small business, had, he said, wrongly been suspended and subsequently closed by them, causing him loss and damage. On 15 September 2015 District Judge Fine ("the district judge") granted the appellant judgment on his claim against the respondent, Amazon Services Europe SARL, but that judgment was subsequently set aside by an order of the district judge made some 15 months later on 21 December 2016. The district judge's order setting aside her earlier judgment was confirmed on appeal to the circuit judge, HHJ Parfitt ("the judge"), on 22 September 2017. The issue which arises on this second appeal is whether the district judge had jurisdiction to set aside her previous order.

The proceedings up to the hearing on 15 September 2015

2. The claim form was issued on 15 April 2015, and made a claim for the sum of £1,500 which was said to represent the loss suffered by the appellant between 10 and 12 February 2015 at an estimated rate of £500 a day. The defendant identified in the claim form was Amazon.co.uk ("AUK"), which, it is common ground, identifies a different corporate entity from the respondent. A defence was due to be filed by an extended deadline of 18 May 2015.
3. A defence dated 19 May 2015 was filed with the court under cover of an email dated 20 May from the respondent. In the heading the defendant is identified as AUK. Paragraph 1 of the defence alleges that AUK had been incorrectly sued. Paragraph 2 explained the roles of AUK, the respondent and another company in the same group, Amazon Payments Europe SCA ("Payments") in providing services to the appellant. It begins "The Defendant [i.e. AUK] is a company providing services to [the respondent]". In the defence, where it is intended to refer to the respondent, the abbreviation "ASE" is used, and Payments is referred to as "APE". It is safe to assume, therefore, that all references to the Defendant are to AUK. The defence explained further, in paragraph 3, that AUK had passed the claim form to the respondent and Payments, "who have provided the information set out below". Under the heading "The Claim", the defence went on to justify the suspension of the appellant's account by the respondent and Payments by reference to certain Agreements. Paragraph 13 pleads that "[the respondent and Payments] deny that either has any liability for the £1500 (or £500 a day) as alleged by the Claimant" and paragraph 14 says that "it is denied that [the respondent and Payments] have breached the Agreements respectively". The conclusion in paragraph 15 is that the respondent and Payments "deny all claims made by the Claimant and either's liability in any respect to the Claimant". The defence carries the signatures of an officer of each of the respondent and Payments, above which are the words "I believe the facts stated in the defence are true. I am authorised by the Defendant [i.e. AUK] to sign this defence". There is no doubt, therefore that this document was a defence filed on behalf of AUK, not a defence of the respondent or Payments.
4. On 19 May the appellant filed a request for judgment in default of defence. On 20 May the court issued a notice saying that the case was now a defended claim because the defendant had filed a defence. The notice also alerted the parties to the fact that the case was considered suitable for the small claims track. The parties were required

to complete and file the small claims directions questionnaire, which they both did on 2 June 2015. The respondent filed a directions questionnaire (“the Questionnaire”) signed on behalf of the respondent and Payments, stating, inaccurately, that they were “the defendant” in the claim. The Questionnaire said that the defendant would like the small claims hearing to be:

“... dealt with on paper without a hearing, in view of the size of the claim, in line with the overriding objective, the Defendant seeks to save costs and respectfully submits that it would be disproportionate to attend in person, given the distance to travel and the value of the claim.”

5. By an order made on 10 July 2015 the proceedings were transferred to the Mayor’s and City of London County Court. A directions order was made by District Judge Silverman on 16 July 2015. The hearing of the claim was to take place on 15 September 2015 with a time estimate of three hours. The parties were identified as AUK and the appellant. So far as the court was concerned, therefore, the case was proceeding as a defended claim, and AUK was the defendant.
6. Ms Barbara Scarafia, who described herself as the EU Legal Director at Amazon, made a witness statement dated 1 September 2015 in the present proceedings. The heading of her witness statement identified AUK as the defendant. She said at paragraph 2 “I respectfully ask the District Judge to accept this witness statement as evidence for the Defendant at the hearing on 15 September 2015 in the Defendant’s absence. I apologise to the Court for not attending the hearing.” She went on to explain that it was not proportionate for her to attend, given that the claim was for only £1,500, and she would have to travel from Luxembourg. Ms Scarafia also confirmed that Amazon sellers’ accounts were all run by the respondent.
7. Under the heading “The Defendant” Ms Scarafia’s witness statement repeated the assertion that the claim had been incorrectly brought against AUK, and that the claim form had been passed on to the respondent and Payments. She then went on to set out in broad terms the respondent’s and Payments’ case as to why the appellant’s account was suspended and referred to the relevant terms and conditions of the Agreements on which they relied.
8. The witness statement also explained that, by that date, the appellant had brought a series of further claims, all based on the same facts, although claiming differing amounts, asserting that this amounted to an abuse of process. It continued, under the heading “The Claimant’s application for judgment against the Defendant”, to explain the efforts made to serve the defence by 18 May. She submitted that the appellant had no grounds for succeeding against any Amazon entity and asked the Court not to grant his application for judgment. She concluded “[the respondent and Payments] deny all claims made by the Claimant”.

The judgment of the district judge of 15 September 2015

9. At the hearing of the small claim on 15 September 2015, the district judge heard from the appellant in person and no doubt had regard, as she was required to do by CPR r. 27.9, to the documents filed on behalf of the defendant. At the end of the hearing she made an order to the following effect:

- (a) the respondent be joined as second defendant; an address for service in Luxembourg is also referred to;
- (b) the claim against AUK be dismissed;
- (c) judgment be entered in favour of the appellant against the respondent for damages to be assessed;
- (d) directions given for service of witness statements going to the assessment of quantum, with a view to an assessment hearing lasting one hour.

10. A direction in the order required the respondent to serve, by 26 October 2015, a witness statement exhibiting a list of transactions undertaken on the appellant's account with the respondent for the period 28 January until 20 April 2015. In default the respondent was to be debarred from further defending the assessment of quantum. The respondent complied with this direction.

The further directions of the district judge on 9 December 2015

11. On 9 December 2015 the file was considered by the district judge, without a hearing, and she made an order to the following effect:
- (a) striking out a list of specified additional claims (i.e. other than the present claim) which had been made by the appellant based on the same facts, on the basis that they were an abuse of process;
 - (b) giving the appellant permission to file and serve amended particulars of claim in the present claim to include all related claims, provided that the amended particulars of claim were served on the respondent and filed at court by 15 January 2016;
 - (c) permitting the respondent to file and serve an "amended defence" by 29 January 2016. Strictly speaking, the respondent, as opposed to AUK, had not filed its own defence previously.
12. The judge's order of 9 December 2015 is conveniently (but not quite accurately) referred to by the parties as "the consolidation order". Neither side applied immediately to set aside the consolidation order. Further, nothing was done, at least expressly, to set aside the judgment already entered on 15 September 2015 on the present claim. Despite the existence of that judgment, the parties went on to serve amended particulars of claim and an "amended defence" in the present action. Paragraph 10 of the amended defence dated 28 January 2015 (but in error for the same date in 2016) contained the following statement of the respondent's position at paragraph 10:

"The judgment entered on 15 September 2015 is irregular and should be set aside, given that the claim is now substantially different to the claim to which [AUK] filed a Defence in May 2015. In the alternative, insofar as the Judgment is allowed to stand, the Judgment can only be effective to the limit of the claim originally pleaded in April 2015 (i.e. the loss and damage for the period 10-12 February 2015) and ... all issues in

relation to liability must still be live in respect of the extended scope of the claim. It is contrary to the proper administration of justice, for the Judgment to bind the [respondent] in respect of claims which are only pleaded after the entry of Judgment.”

13. It should be noted that the appellant’s position as explained to us is as follows. To the extent that his amended particulars of claim are properly within the permission to amend granted by the district judge, their effect is that he now has judgment on all his additional claims, subject only to assessment of damages. He now values his claim at £100,000. If the judgment of 15 September 2015 (for £1,500) is not set aside, he will contend that liability on those additional claims added by amendment can no longer be challenged.

The hearing on 21 December 2016 and the judgment of the district judge

14. The matter came back before the district judge on 21 December 2016. Various applications, made on notice by both sides, were dealt with on that day, including an application by the appellant to set aside the consolidation order. That application was dismissed. Counsel for the respondent informed the court that he wished to make an oral application to set aside the judgment of 15 September 2015.
15. The district judge proceeded to set aside her judgment of 15 September 2015. Her reasoning was as follows. She first pointed out that the respondent was added as a defendant at the hearing on 15 September 2015. The respondent was not present at the hearing and was “therefore permitted under the Civil Procedure Rules to apply for variation/setting aside of the order made in their absence”. Next, the district judge pointed out that the proceedings had been complicated for two reasons. The first was the plethora of claims issued by the appellant. The second was that “Amazon” seemed to switch from one company to another. For example, the defence filed by AUK, the then-named defendant, was signed by the respondent. The defence should have been signed by AUK. Finally she said that, taking into consideration that the respondent had not filed and served a valid defence at the hearing on 15 September 2015 as they were not yet added as a party, and that the claim had significantly changed – the claimant now valuing his claim at £100,000 - it was clear that the judgment entered on 15 September 2015 must be set aside. Her consequent order dated 30 January 2017 contained the recital “the Claimant informing the Court that he realistically values the claim at £100,000”.

The first appeal and the judgment of HHJ Parfitt

16. The first ground of appeal to the judge was that the district judge had no jurisdiction to set aside her own earlier judgment of 15 September 2015. HHJ Parfitt held in summary:
 - i) It would have been open to the respondent to make an application to set aside the judgment under CPR r. 27.11, on the grounds that it had not been joined to the proceedings, but such an application would have been unattractive. Because the respondent had participated in the proceedings as if it had been a party it had waived the requirement to be served with the proceedings.

- ii) If that was wrong, the respondent had subsequently lost the right to complain about not being a party by complying with the order to provide information about quantum.
 - iii) CPR r. 3.1(7), which states that “[a] power of the court to make an order under these Rules includes a power to vary or revoke the order” did not enable the court to set aside a final judgment.
 - iv) However, he considered that whether under an inherent power to protect the courts’ processes from abuse and/or under CPR 3.1(2)(m), (i.e. the court’s power to “take any other step or make any other order for the purpose of managing the case and furthering the overriding objective”) it was necessary to set aside the 15 September 2015 order.
 - v) For that reason the district judge’s decision was justified and she had had jurisdiction to make it, particularly having regard to the claimant’s abuse of process and the fact that the proceedings had significantly changed.
17. The second ground of appeal related to the manner in which the application to set aside was made, that is to say orally and informally at the hearing on 21 December 2016. The judge held that the absence of an application notice, particularly as this was a matter of case management, was not fatal. I did not give permission for a second appeal on this ground, and I will therefore say no more about it.

The appeal to this court

18. I granted permission to appeal, limited to the question of whether the district judge had jurisdiction to set aside her own earlier order. I did not consider that the manner in which the discretion to set aside should be exercised justified a second appeal.
19. The appellant contends that the judge correctly treated the judgment of 15 September 2015 as final, but then went on wrongly to hold that such a judgment could be set aside under CPR 3.1(2)(m) or under the court’s inherent jurisdiction. This approach failed to respect the finality of a judgment recognised by section 70 of the County Courts Act 1984. The court’s powers to set aside judgments were to be found in the rules, and none of the rules in play could be relied on by the district judge to set aside her earlier, final judgment.
20. The respondent supports the judgment of the district judge. It also supports the judgment of the judge insofar as it upheld that judgment. By a respondent’s notice, the respondent also seeks to uphold the judgment on the following additional grounds:
- i) The district judge’s judgment should have been set aside under CPR 27.11 and the overriding objective. The respondent was not a party at or prior to the hearing on 15 September 2015, and so it could not have given the notice required by CPR 27.9(1). Neither the service of a defence dated 19 May 2015 nor the witness statement of Ms Scarafia dated 1 September 2015 were notice under that rule. Given the circumstances, the district judge could waive the requirements of CPR 27.11(2) (the requirement to make the application within 14 days);

- ii) The district judge also had the power to set aside her earlier judgment under CPR 3.1(7) where there had been a material change of circumstances.

Discussion

21. Section 70 of the County Courts Act 1984 provides:

“Every judgment and order of the county court shall, except as provided by this or any other Act or as may be prescribed, be final and conclusive between the parties.”

22. The words “except ... as may be prescribed” (subject to an argument which I consider separately below) allow for rules of court to prescribe categories of judgments and orders which are not to be treated as final and conclusive. It seems to me that, as the district judge was purporting to exercise the power under CPR r. 27.11, it is that rule to which one should look in the first instance before expanding the enquiry to other more general powers which may exist under the rules and elsewhere.
23. CPR r. 27 governs the small claims track. CPR r. 27.9 and r. 27.11 make provision for judgments in small claims to be entered in the absence of one or other party or both, and their setting aside, as follows:

“27.9

- (1) If a party who does not attend a final hearing—

(a) has given written notice to the court and the other party at least 7 days before the hearing date that he will not attend;

(b) has served on the other party at least 7 days before the hearing date any other documents which he has filed with the court; and

(c) has, in his written notice, requested the court to decide the claim in his absence and has confirmed his compliance with paragraphs (a) and (b) above,

the court will take into account that party’s statement of case and any other documents he has filed and served when it decides the claim.

- (2) If a claimant does not –

(a) attend the hearing; and

(b) give the notice referred to in paragraph (1),

the court may strike out the claim.

- (3) If –

(a) a defendant does not –

- (i) attend the hearing; or
 - (ii) give the notice referred to in paragraph (1); and
- (b) the claimant either –
- (i) does attend the hearing; or
 - (ii) gives the notice referred to in paragraph (1),

the court may decide the claim on the basis of the evidence of the claimant alone.

(4) If neither party attends or gives the notice referred to in paragraph (1), the court may strike out the claim and any defence and counterclaim.

27.11

(1) A party –

- (a) who was neither present nor represented at the hearing of the claim; and
- (b) who has not given written notice to the court under rule 27.9(1),

may apply for an order that a judgment under this Part shall be set aside and the claim re-heard.

(2) A party who applies for an order setting aside a judgment under this rule must make the application not more than 14 days after the day on which notice of the judgment was served on him.

(3) The court may grant an application under paragraph (2) only if the applicant –

- (a) had a good reason for not attending or being represented at the hearing or giving written notice to the court under rule 27.9(1); and
- (b) has a reasonable prospect of success at the hearing.

(4) If a judgment is set aside –

- (a) the court must fix a new hearing for the claim; and
- (b) the hearing may take place immediately after the hearing of the application to set the judgment aside and may be dealt with by the judge who set aside the judgment.”

24. Rule 27.9 gives a defendant who does not intend to attend the hearing the option of specifically requesting the court to decide the matter in his absence on the basis of his statement of case and any other material which he has filed and served. To do so he must give a notice in accordance with rule 27.9(1) (which I will call “a notice of non-attendance”). If he neither attends nor gives a notice of non-attendance, and the claimant does attend, the court may give its decision on the basis of the claimant’s evidence alone.
25. Rule 27.11 provides for the setting aside of a judgment obtained under Part 27. The right to apply is given only to “a party” who has neither attended (in person or via a representative) nor given a notice of non-attendance. Under rule 27.11(2) the application must be made within 14 days (as opposed to “promptly” as, for example, in rule 39.3, concerned with non-attendance at trials). Like all time limits, however, the 14 days can be extended by the court unless the rules provide otherwise (and they do not), and time can be extended even after the time limit has expired: see rule 3.1(2)(a). Time starts to run when notice of the judgment is served on the applicant.
26. Rule 27.11 imposes a number of further conditions before the power to set aside can be exercised. The applicant must have a good reason for not (a) attending the hearing or (b) giving a notice of non-attendance. These requirements are cumulative in that the policy behind the rule, it is to be presumed, is that it is not enough for a party to say that it is difficult to attend the hearing when he has the additional option of asking the court to deal with the case in his absence. The final requirement is that the applicant must have a reasonable prospect of success at the hearing. Nothing in the present appeal turns on this last requirement.
27. The respondent’s principal argument advanced by Mr Broomfield was that rule 27.11 provided the necessary jurisdiction for the district judge to set aside her previous order. The respondent was not a party who was present or represented at the hearing of the claim and was not a party who had given a notice of non-attendance. The respondent therefore fell into the class of applicant permitted to apply under rule 27.11(1). It had a good reason for not attending, namely that it was not a party, and the proceedings were not brought against it.
28. The appellant, for whom Mr Machell appeared, submitted, first, that rule 27.11 confers jurisdiction only in respect of applications made “under this rule”, and yet rule 27.11 had not been mentioned in the application made to set aside the judgment and its constraints had not been addressed. Secondly, the district judge did not have jurisdiction under the rule because the application was some 15 months out of time, and the application had not been made with reasonable or any celerity. Thirdly, he submitted that that the respondent had treated itself as a defendant because it had filed a defence and a witness statement and had identified itself and Payments as “the Defendant” in the Questionnaire. The respondent had therefore waived its right to rely on rule 27.11. Fourthly, the respondent had given written notice that it did not intend to attend the hearing, and was therefore barred by rule 27.11(1)(b) from applying. Finally, as it had deliberately chosen not to attend the hearing, as Ms Scarafia had explained, the respondent did not have a good reason for not doing so.
29. In my judgment the respondent was not a party to the claim within the meaning of these rules at any stage up to hearing on 15 September 2015. The only party up to that point had been AUK. It is incorrect to say that the respondent had filed a

defence. It had not. The defence was filed on behalf of AUK notwithstanding that it set out the position of the respondent and Payments if they were to be sued. The Questionnaire could not alter the fact that AUK was the only party.

30. AUK did indicate that it would not attend the hearing and, in the event, was successful in having the case against it dismissed. By contrast, the respondent had not even been served with the proceedings, let alone become a party. As a non-party, it was not in a position to give a notice of non-attendance under rule 27.9(1), and it had not asked the court to decide any claim against it in its absence.
31. It follows, in my judgment, that the respondent could meet the threshold conditions in rule 27.11(1)(a) and (b).
32. I do not accept that the respondent, by its involvement in filing the defence of AUK or by filing Ms Scarafia's witness statement, or by filing the Questionnaire, had waived the right to rely on rule 27.11, or become estopped from relying on it. There is nothing in the defence or Ms Scarafia's statement which amounts to an unambiguous assertion that the respondent wishes to be treated as a defendant. Read overall both documents preserve the position that the only party being sued is AUK, whilst at the same time providing information as to why no claim could succeed against any other Amazon entity. They do not invite the court to treat the respondent as if it were already a defendant. Mr Machell submitted that, even if it was not clear that the respondent was the defendant up to this point, when the Questionnaire was considered as well that it was clear that this was the case. I do not accept, even then, that there was anything which could amount to an express or implied waiver of the right to rely on rule 27.11. I therefore disagree with the judge on this point. I also do not agree that the respondent's compliance with orders after it had been joined as a defendant meant that it lost the right ever to contend that it met the requirements for an application under rule 27.11. Once the jurisdictional threshold is crossed, the decision whether to allow an application to set aside is subject to a broad discretion. I would accept that an application made while the claim was limited to £1,500 would face difficulties in relation to discretion, but those were not the circumstances which faced the district judge in December 2016.
33. I turn next to the requirement under rule 27.11(2) for the application to be made within 14 days. Read with rule 3.1(2)(a), this rule means that the applicant must make the application not more than 14 days after the day on which notice of the judgment is served on him, or such longer period as the court may allow under rule 3.1(2)(a) (before or after the time for compliance has expired). So understood, I do not accept that it can be said that the court lacked jurisdiction to set aside the judgment simply because of the lapse of time since the judgment. It could plainly exercise the jurisdiction in a case where the facts justified an extension of time.
34. It might fairly be said that the district judge did not expressly address an application for extension of time, but the fact (see below) that she was purporting to act under rule 27.11 suggests that she would have had the time requirements in mind. She was plainly aware of the lapse of time since the judgment, and she did refer to the way in which the claim had significantly changed since that date, from a claim valued at £1,500 to one worth £100,000. We are not concerned on this appeal with the exercise of the district judge's discretion, but I am satisfied that there was material before her which could justify the extension of time which she implicitly granted. This material

included the very significant change of circumstances when the consolidation order was made, and the fact that defence filed by the respondent contained the paragraph which I have set out at [12] above, which mitigates the effect of any delay. On the other hand, it is right to say that the respondent complied with the order of 15 September 2015 requiring it to serve information relevant to quantum, and did not apply to set aside or appeal the consolidation order. I am very far from saying that every judge would have exercised their discretion in favour of the respondent. The rival considerations, however, are not the subject of this appeal.

35. That brings me to the conditions set out in rule 27.11(3)(a) and (b), that the applicant had a good reason for not attending or being represented or giving a notice of non-attendance. I think the short answer to this point was that respondent, as a non-party, was not in a position to attend or be represented or give the notice. There was no reason at all for them to attend in their own right, or be represented, or give notice of non-attendance, as the action was not at that stage an action against them.
36. I do not think that the fact that the rule was not mentioned in the oral application to set aside the judgment assists the appellant. When the district judge referred in her judgment to the CPR she must have been purporting to act under this rule, and the judge agreed that this must have been the case. The district judge expressly referred to the fact that the respondent was not present or represented at the hearing, in words which track the language of rule 27.11(1)(a). She also referred to the fact that the respondent had not yet served and filed a valid defence or been added as a party as at September 2015. I accept that she did not explicitly address in her judgment the specific constraints of the rule. For the reasons I have explained, however, I am satisfied she must have had them in mind and that it was open to her exercise the power under the rule.
37. Mr Machell advanced with commendable brevity two further arguments with which I should deal. These arguments were not included in Mr Machell's well-structured skeleton argument but were advanced on the instructions of the appellant. The first argument was that the effect of section 70 of the County Courts Act 1984 was wider than I have indicated and only recognises a jurisdiction to set aside a final judgment on the merits if that jurisdiction is expressly prescribed by statute as opposed to by rule. I do not see how this can be a sensible reading of the section. I have set out the language of the section at [21] above. The exception provides for the setting aside of judgment where this is allowed for by "this or any other Act". Thus, statutory provision of a jurisdiction to set aside a final judgment is accommodated before one comes to the words "or as may be prescribed". Section 147 defines "prescribed" as "prescribed by rules of court". It is difficult to see how Parliament could have made it clearer that rules affecting finality of judgments in the County Court could be made by subordinate legislation in the form of rules of court. To be fair, Mr Machell recognised that this argument ran into difficulties when considered against the existence of Rule 39.3, which allows a judgment entered after a trial in the absence of a party (at which the merits will have been considered) to be set aside in certain circumstances. Despite the extent to which that rule has been litigated, it does not appear ever to have been suggested that its very existence conflicted with section 70. I therefore reject this argument.
38. The appellant's final argument was based on Article 1 Protocol 1 of the European Convention on Human Rights. He argued that the judgment obtained on 15

September 2015 was the appellant's property and his rights to this property could not be interfered with except in circumstances prescribed by law and where the principle of proportionality was satisfied. There was also the public interest in the finality of litigation to be considered. I do not consider there is anything in this point. If the judgment is set aside it is done in circumstances which are prescribed by law under rules of court. Mr Machell did not develop his submissions as to why the principle of proportionality was breached, or the public interest engaged, by setting aside the judgment. It seems to me, to the contrary, that it would be both disproportionate and contrary to the public interest to allow a judgment obtained in the absence of a party for £1,500 to provide in all circumstances a barrier to that party's defence of later abusive claims for a sum two orders of magnitude greater. Respect for the property interests of both parties demands either that the judgment be set aside, so that the claim can be considered in its entirety, or that the claim should be restricted to the original sum claimed. I do not think that the appeal to these broad human rights considerations advances the appellant's case.

39. In the circumstances it is not necessary for me to consider the alternative grounds relied on by the judge and the respondent to support the judgment of the district judge. These raise quite difficult questions as to the boundaries of the more general powers under CPR r. 3.1(7), 3.1(2)(m) and the court's inherent jurisdiction to set aside final orders. These issues are still not fully resolved, see: *Forcelux v Binnie* [2009] EWCA Civ 854 at [50] to [54]; *Hackney LBC v Findlay* [2011] EWCA Civ 8 at [18] to [25]; *Terry v BCS Acceptances and others* [2018] EWCA Civ 2422 at [75] and *Salekipour v Parma* [2018] EWCA Civ 2141 at [61] to [69]. Those questions are better considered in a case in which their application will affect the outcome. For those reasons I should not be thought to be endorsing the views expressed by the judge on the application of those provisions or that jurisdiction.
40. Following the hearing, we were sent further, uninvited submissions by the appellant in person. It is necessary to emphasise that the purpose of reserving judgment is not to allow a period for the parties to make copious further submissions, but to allow the court to reflect on the submissions which have been made orally and in writing up to the close of the hearing. The parties have had ample time to address the very narrow issue in the appeal, and it would be quite unfair to the respondent to allow the appellant to rely on a further set of submissions to which the respondent has not had an opportunity of replying. Nevertheless, I have read the appellant's further submissions. They do not improve, in any way, the cogent submissions made by Mr Machell in support of the appellant's case.
41. For the reasons I have given I would dismiss the appeal.

Lord Justice Lewison:

42. I agree.

Sir Brian Leveson P:

43. I also agree.