



Neutral Citation Number: [2024] EWHC 3321 (Comm)

Case No: CL-2019-000118

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

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

Date: 16 December 2024

Before :

Mr Justice Jacobs

Between :

The Public Institution for Social Security	<u>Claimant</u>
- and -	
Al-Wazzan (as representative of Al Rajaan) &	<u>Defendant</u>
Others	

Hugh Norbury KC and Christopher Burdin (instructed by Stewarts Law) for the Claimant
Timothy Sherwin (instructed by PCB Byrne LLP) for the Defendant

Hearing dates: **16th December 2024**

Judgment

Mr Justice Jacobs

Monday, 16 December 2024 (14:50pm)

Judgment by MR JUSTICE JACOBS

1. This is an application by four Defendants, the 42nd – 45th Defendants (“the heirs” or “the Al-Rajaan Children”), who have been joined to the present proceedings by Order dated 25 April 2024. The heirs are the children of Mr Fahad Al-Rajaan. Together with their mother, Muna Al-Rajaan Al-Wazzan, they are the heirs of their late father. Mr Al-Rajaan was the 1st Defendant in a very substantial piece of litigation with which I am dealing as the assigned judge, and which is due for a trial – estimated to last the best part of a year – starting in March 2025.
2. The heirs’ application concerns an order for service out of the jurisdiction, and related orders, dated 12 June 2024. They apply for various orders in their application notice, including that the court has no jurisdiction, or, in the alternative, will not exercise its jurisdiction; and that the purported service of the Amended Claim Forms be set aside. They also seek to set aside the joinder ordered in the Order dated 25 April 2024.
3. Although a number of points were canvassed in the parties’ skeleton arguments, the key point upon which the parties’ oral argument has focused is whether or not this was an appropriate case for the grant of permission to serve out of the jurisdiction, on the basis that the heirs were necessary or proper parties to the claim: see Practice Direction 6B paragraph 3.1 (3). If that issue is resolved in favour of the Claimant (‘PIFSS’), then there is no other realistic separate argument (e.g. *forum non conveniens*) which would mean that the grant of permission to serve out of the jurisdiction was inappropriate. Mr Sherwin, who has appeared and argued the case very ably on behalf of the heirs, has acknowledged that, insofar as his written argument advanced other points, such as “no serious issue to be tried” and “*forum non conveniens*”, they really stand and fall with his principal argument on necessary or proper party. Resolution of the necessary or proper party issue in favour of PIFSS would also mean that it would not be necessary to decide arguments concerning: (i) whether one of the heirs, Fajer Al-Rajaan, had been validly served within the jurisdiction pursuant to the provisions of the Companies Act 2006 s. 1140; and (ii) whether it was permissible to serve two of the heirs (Fajer and Fawaz Al-Rajaan) without permission, pursuant to the Brussels Recast Regulation or the Lugano Convention.
4. The factual background in summary is as follows. PIFSS alleges that corrupt schemes were orchestrated by Mr Al-Rajaan, who was its Director General from 1984 to 2014, with the assistance of other defendants. It is PIFSS’ case that Mr Al-Rajaan abused his position at PIFSS to secure payment of secret commissions to himself and third parties who assisted him.
5. The heirs are the children of Mr Al-Rajaan and his wife, Ms Al-Wazzan. They are all, it is accepted for present purposes, resident outside the jurisdiction. It is not alleged that they participated in the alleged corrupt schemes, or provided any assistance for them. Their joinder in the present proceedings arises because they are their father’s heirs.

6. The application to join the heirs which was granted in April 2024, and then to serve out of the jurisdiction, arises from the death of Mr Al-Rajaan on 6 September 2022. His death resulted in the court making a number of orders. On 14 November 2022, I made an order appointing Ms Al-Wazzan to represent Mr Al-Rajaan's estate in the proceedings pursuant to the then relevant rule, CPR 19.8(1)(b), now 19.12(1)(b). I subsequently made an order varying the freezing order which had been made at an early stage in the proceedings. On 26 March 2023, Henshaw J made an order appointing Ms Al-Wazzan in two respects: (1) as administrator *ad litem* to represent the estate in respect of the present proceedings; and (2) as administrator *ad colligenda bona* to represent the English estate of Mr Al-Rajaan for the purpose of collecting, getting in and receiving his English estate. Those orders of Henshaw J have been described in the argument before me as a “limited” grant; it was not a full grant of all powers to Ms Al-Wazzan as administrator. The orders were limited to Mr Al-Rajaan's estate in England and its representation in these proceedings.
7. The context of PIFSS' application for joinder of and service out on the heirs is that it is apparent that the assets which are within the English estate of Mr Al-Rajaan are most unlikely to be sufficient to meet a very substantial judgment, if that is what PIFSS succeed in obtaining against the estate. Accordingly, PIFSS will need to look elsewhere in order to enforce any judgment that they are successful in obtaining against the estate.
8. There are various potential jurisdictions where enforcement might take place. The jurisdiction on which the argument has focused in today's hearing is Switzerland, where there appear to be substantial assets. The reason for the focus on Switzerland is that the estate contends that when Mr Al-Rajaan died, he had Swiss domicile, and that Swiss law governs his estate planning and issues of succession. It is by no means clear at the present stage that that will in fact be proven to be the case. There is an issue which arises in relation to whether or not Mr Al-Rajaan did have Swiss domicile. It is, however, common ground that that is not an issue with which the court can begin to grapple on today's application. For present purposes, the case must proceed on the basis that there is an arguable case that Mr Al-Rajaan did have Swiss domicile.
9. This means that Swiss law relating to inheritance is relevant to the position of the heirs, and this has been the subject of an expert report, served by PIFSS, which I will summarise in due course. The main point is that, applying Swiss law, Mr Al-Rajaan's heirs, including the 42nd – 45th Defendants, would succeed to his liabilities. That is a general summary of the position. There are some complications, because Swiss law permits heirs to disclaim their inheritance. They can do so without any difficulty provided they act promptly within a period of three months, and potentially can do so by obtaining an extension of time to do that at a later stage.
10. PIFSS argues that there are two reasons why the heirs are proper parties to the present proceedings. They are summarised in paragraph 25 of PIFSS' written argument as follows:

"In the circumstances, PIFSS joined the Al-Rajaan Children [i.e. the heirs]: (i) because pursuant to Swiss law, PIFSS has a claim against them as successors to Mr Al-Rajaan's liability; and (ii) to

avoid the risk of an outcome whereby, following a (very substantial) trial in England, PIFSS succeeds in obtaining a judgment against [the estate] only to find that it does not bind the Al-Rajaan Children in relation to assets outside this jurisdiction. Such an outcome would be inimical to the overriding objective and the interests of justice."

11. The application for permission to serve out was supported by two witness statements from solicitors at Stewarts Law, PIFSS' solicitors: the first witness statement of Pia Mithani, originally served in relation to the joinder application; and the seventh witness statement of Mr Nicholas Haworth. Attached to Mr Haworth's statement was an expert report of a professor of law in Switzerland, Mr Dominique Jakob. Since the content of that report is material to the issues which arise in the present case, I will quote a number of passages below. Professor Jakob's evidence was not in fact challenged in any evidence submitted by the heirs in relation to their application to set aside the orders with which I am concerned. That application was supported by the 4th witness statement of Mr Thomas McKernan. It is fair to say that that witness statement did not clearly identify the central point which has been developed in argument by Mr Sherwin in his written and oral submissions.

Swiss law

12. Professor Jakob was asked a number of questions, and in the first section of his report he expresses his conclusions on the key issues. Those most material for present purposes are paragraphs 1, 3, 4 and 8. The bold text below reproduces the use of bold text in Professor Jakob's report.

"1) **Swiss succession law follows the principle of universal succession.** At the moment of the decedent's passing, the heirs **automatically succeed the decedent with regard to all of their assets and liabilities.** There is no succession of individual heirs into individual assets; rather the heirs **as a group jointly assume the decedent's legal positions** (pertaining to assets as well as liabilities) and henceforth constitute a **community of heirs** (art 602 of the Swiss Civil Code (CC)). This process happens automatically, i.e., no official act or acceptance (or even knowledge) on the heirs' part is necessary. It also happens regardless of whether the deceased's assets exceed the liabilities or vice versa."

"3) The heirs may **freely decide on a division** of the estate's assets and liabilities if they are able to come to an agreement. However, failing a unanimous decision by the community of heirs, each heir may demand the testamentary dispositions instructing a certain way of dividing the estate be respected. All heirs are **jointly and severally liable for the estate's debts**, meaning that the decedent's creditors may choose which heir to demand payment from, provided that the debt is one that an heir is (theoretically) able to pay alone (which is the case, e.g., for tort debts). As a result, **one**

heir can be held liable for **the entirety of the debt** and then take recourse against the other heirs internally."

"4) The heirs are not forced to accept the automatic acquisition of the inheritance if the estate debts clearly exceed the assets. **They may disclaim their inheritance for any reason whatsoever** (art 566 CC). The **deadline to disclaim is three months**, starting at the time the (statutory) heirs learned of the decedent's death or the (appointed) heirs receive the official notice of the decedent's will (art 567 para. 1 and 2 CC). If the heir fails to declare that they disclaim the inheritance within the relevant time limit, they **acquire it without reservation** (art 572 para 1 CC). The deadline may, however, **be extended or reinstated for good cause** (art 576 CC)."

"8) In order to enforce a judgment against the entirety of the estate assets in Switzerland, the judgment **must be binding on all the individuals who own the estate**. This is a result of the principle of **joined ownership of the estate assets**. The estate itself does not have legal personality and cannot, in principle, sue or be sued; if the defendant recorded in the judgment is 'the estate', such a judgment would, from the Swiss point of view, **not be binding on the heirs**. If the recorded defendant is **one single heir only**, then such judgment may be enforced **against that heir and their quota of the estate**, but **not the estate as a whole**. If the judgment lists **all heirs as defendants**, then the judgment binds the entire community of heirs and as a result, **the entirety of the estate assets** can be used in its enforcement. The binding judgment can then (in specific cases) be enforced against the estate or (in other cases) against the individual heirs."

13. So those were the principal conclusions, and in subsequent parts of the report, Professor Jakob expands upon them.

14. At paragraph 1b-2, when explaining the general position under Swiss law, Professor Jakob says this:

"The decedent's debts become **personal debts** of the heirs, meaning that they are liable for those debts not only with the estate assets, but **with their personal assets as well**. As a result, the assets that may be used to pay for the decedent's debts extend to the heirs' assets, potentially resulting in an advantage for the decedent's creditors; this principle applies even when **the estate liabilities exceed the estate assets...**"

15. I pause to note that the position under Swiss law in that regard is very different to the position under English law, as explained in Mr Sherwin's submissions. Broadly speaking, the position under English law is that once the available assets of the estate are exhausted, that, in practical terms, is the end of enforcement against the assets of the estate. This approach will apply to Mr Al-Rajaan's estate's English assets. If PIFSS succeeds in obtaining a substantial judgment, the English estate will almost certainly be insolvent, with no recourse to the heirs.
16. On page 14 of his report, Professor Jakob identifies the process by which an heir can disclaim an inheritance and he addresses the question of the time frame which applies and whether it can be extended. In paragraph 1e-3, he identifies that the deadline to disclaim is three months, but he says as follows:
- "However, the deadline may be **extended or reinstated for good cause** (art. 576 CC). **Ongoing proceedings** concerning estate assets or liabilities that influence the decision may constitute good cause to **extend or reinstate the deadline** to disclaim an inheritance. Significant liabilities previously unknown to the heirs rendering the estate overindebted may also constitute good cause to reinstate the deadline. However, the decision to extend is **not a given**: the **creditors' interests** are to be weighed against the **heirs' interests**. When deciding on an extension, the authority will consider whether the heirs had an opportunity to gain enough knowledge of the estate's assets to decide on a disclaimer within the deadline. This depends on the relationships between the heirs and the decedent, the personal circumstances of the heirs (such as business acumen and health status) as well as their geographical proximity. In principle, if the heirs were previously aware that the exact amount of the estate liabilities (or assets) was uncertain, a later development to their disadvantage does not constitute good cause to reinstate the deadline."
17. I pause here to say that it is not possible at the present time to express any view one way or the other as to whether or not there will in the present case either be a disclaimer or, more importantly, whether or not an extension of time will be granted by the Swiss courts. The position as things currently stand is that the heirs have not disclaimed and did not do so within the three-month period. It follows that they will need to extend the deadline if they wish to disclaim and, as Professor Jakob has said, the decision to extend is not a given. It is therefore possible to envisage a scenario in due course where the heirs do seek to disclaim, particularly if there is a very substantial liability which is imposed by a judgment of this court on the Al-Rajaan estate, and where an extension application is unsuccessful. Equally, it may be that an extension application could be successful. As Mr Norbury KC has submitted in the course of his argument, either course of action will potentially benefit PIFSS in terms of recovery against assets in Switzerland. If the application to extend fails, then the Swiss assets of the heirs – such as immovable property and other assets as well – will become available for enforcement, and they will also have a joint and several liability. By contrast, if

the heirs do successfully extend the time to disclaim, this will mean that the Swiss assets would no longer be being claimed by the heirs and therefore these assets would in principle become available to PIFSS for enforcement purposes in relation to any judgment which has been obtained in England.

18. On page 20, a number of questions were posed which Professor Jakob answers. In particular, he answers the following questions set out in (c) at the top of the page:

"To the extent (if any) that the Swiss court would apply Swiss law to issues of succession, would the Swiss court recognise and enforce the English judgment against the deceased's assets in Switzerland if:

i. The defendant recorded in the judgment is the defendant's 'Estate'?

ii. The defendant recorded in the judgment is one (but not all) of the deceased's heirs?

iii. The defendants recorded in the judgment included all of the deceased's heirs?"

19. The conclusion which Professor Jakob reaches is that it is necessary for the defendants to include all of the deceased's heirs in order for there to be an enforceable judgment. He expresses that view in the following terms in paragraph 2c-2:

"As a first step, the **main proceedings** must lead to a judgment that is, from a Swiss perspective, enforceable in principle. In order for the enforcement title to be enforceable against the **entirety of the estate's assets**, the judgment must be **binding on all the individuals who own the estate**, i.e., the entire community of heirs. This is a result of the principle of joined ownership of the estate assets (*supra* 1c-1) and also follows from a key principle of Swiss debt enforcement law, which mandates that the debtor subject to the debt enforcement procedure be **legally identical** with the defendant recorded in the judgment whose enforcement is sought. In an inheritance context, this means that if the estate assets are subject to Swiss succession law, the judgment must either have been rendered **against the deceased person** (who preceded the community of heirs as owner of the estate, meaning a judgment binding on the deceased would be binding on the community of heirs) or against **every single member of the community of heirs**, as judgments rendered against only some of the heirs do not have res judicata effects against the others. Neither the community of heirs nor "the estate" have **legal personality**, nor are they **capable of suing or being sued** as such. In order for the entire community of heirs to be bound by the judgment, they **must therefore be sued jointly**."

20. In paragraph 2c-3 he identifies a number of exceptions to this principle. But it does not seem to me that, at least as things presently stand, there would be any exception which arose simply because the English court had appointed personal representatives of the deceased. There is a possibility of an exception, which Professor Jakob identifies, when a testator appoints an executor or when a Swiss authority puts an estate administrator or representative of the community heirs in charge of representing the estate. However, neither of those things has happened. Mr Sherwin has submitted that the Swiss court might, in the context of the present case, pay regard to the fact that the English court has appointed a personal representative, and take the view that this was sufficient to engage the exception identified by Professor Jakob. There is, however, nothing in Professor Jakob's report which supports the proposition that the Swiss court would pay any regard to that. He refers to the appointment by a Swiss authority, not by an overseas court.

21. In paragraph 2c-4, Professor Jakob pulls the points together and says as follows:

"The above means that the heirs must **each be named in the recitals** of the statement of claim as well as the judgment, as a suit 'in the name of the heirs of X', '**against the heirs of X**' or '**against the Estate of X**' is not admissible from the perspective of Swiss succession law. The first question must therefore be answered **in the negative**. If the recorded defendant is **one single heir only**, then such judgment may be enforced **against that heir and their quota of the estate**, but **not the estate as a whole**, as the remaining heirs are not bound by the judgment ... As a result, **the second question** must also be **answered in the negative**, as only *part* of the deceased's assets will be subjected to such debt enforcement proceedings. If the judgment lists **all heirs as defendants**, then the judgment binds the entire community of heirs and as a consequence **the entirety of the estate assets** can be used in its enforcement. The **third question** must therefore be **answered in the affirmative**."

22. The questions which are there being answered are those quoted above. The third question was: "Must the defendants recorded in the judgment include all of the deceased's heirs?" Professor Jakob gives the answer in the affirmative to that question. He goes on to say in paragraph 2c-5:

"Once a judgment that is enforceable in principle has been rendered, it remains, as a second step, to be decided who **debt enforcement proceedings** may be initiated against. In principle, debt enforcement proceedings in Switzerland must be carried out against a **natural or legal person**. In an inheritance case, under a set of special conditions, debt enforcement proceedings may be initiated against **the estate of a deceased person**. If those special conditions are not fulfilled, debt enforcement must be carried out against **the heirs individually**..."

23. On behalf of the heirs, Mr Sherwin submitted as follows.
24. Section 1(1) of the Law Reform (Miscellaneous Provisions) Act 1934 provides as follows:
 "...on the death of any person after the commencement of this Act all causes of action subsisting against or vested in him shall survive against, or, as the case may be, for the benefit of, his estate."
25. The editors of *Williams, Mortimer & Sunnocks: Executors, Administrators and Probate* 22nd Edition state at paragraph 37-03:
 "If a claim is based on a cause of action against the deceased, it will (unless it was personal to the deceased or was a claim in defamation), survive and be enforceable against their representative."
26. Mr Sherwin submits, and there is no dispute about this, that the statement in *Williams* is true even in the case of the limited grant to Ms Al-Wazzan such as occurred here.
27. Against this background, Mr Sherwin submits that the correct defendant – and indeed the only correct defendant – to any claim, based on a cause of action against the deceased, is the personal representative. He refers in that context to the current version of CPR Rule 19.12(2), which provides:
 "Where a defendant against whom a claim could have been brought has died and (a) a grant of probate or administration has been made, the claim **must** be brought against the persons who are the personal representatives of the deceased." (Emphasis supplied)
28. The rationale for that approach derives from a long line of English authority distinguishing between the concepts of administration and succession. This distinction is very clearly drawn in the recent decision of the Court of Appeal in *Viegas v Cutrale* [2024] EWCA Civ 1122. He therefore submits that, in the ordinary course, where a creditor seeks either to establish a claim against a deceased's estate, or to enforce it, he or she must claim against the personal representative. The personal representative must then pay the debt, or contest it. No issue of succession arises.
29. This approach does not change in an international context. That is because an English grant of representation only extends to the English estate: see *Dicey, Morris & Collins: The Conflict of Laws* Rule 156. The administration of the English estate is governed by English law: *Dicey* Rule 159, and *Viegas* at [99] – [100].
30. These basic principles as to the effect of an English grant of representation, and the administration of an English estate being governed by English law, were not controversial.
31. At the heart of Mr Sherwin's submission was the proposition that it is not permissible to collapse the distinction between administration and succession. The process of

administration, which is governed by English law and which vests the role of the defendant in the personal representative, cannot be side-stepped. He refers in that context to paragraphs [120], [123] and [124] of the decision in the *Viegas* case. In that case, the question which arose was whether heirs in Brazil, who would have had title under Brazilian law to pursue certain claims, were permitted to pursue those claims in English proceedings in circumstances where there had been no administration order. The Court of Appeal held that the entire question of who can sue in English proceedings was a matter properly to be characterised as being concerned with the administration of the estate. That was a matter governed by English law, and it followed that the provisions of Brazilian law, which were materially different to English law, were of no consequence to the question of who can sue.

32. Although that case was concerned with whether heirs could sue, rather than with the question of whether heirs could be sued, Mr Sherwin submitted that there are passages in the judgment which indicate that the principles laid down by the Court of Appeal were equally applicable to both situations. He refers in particular to paragraphs [120] and [123] of the judgment of Newey LJ, with whom the other judges agreed:

"[120] In broad terms, it seems to me that, under the law of England and Wales, matters relating to the collection of a deceased person's assets and the payment of debts are considered to relate to the "administration of estates" and the distribution of assets after that is considered to relate to "succession". As Warrington LJ said in *Re Lorillard*, "it is only when the administration is over that the law of domicile comes in". Likewise, Henderson J said in *High Commissioner of Pakistan* that "it is only when one gets on to the question of succession and who is entitled beneficially to share in the estate that one looks to the law of the domicile of the deceased".

...

[123] If, as I consider to be the case, the collection of a deceased person's assets and the payment of debts must be distinguished from the distribution of assets after that, the question whether the heirs have title to sue must, I think, fall to be treated as one relating to the administration of the deceased persons' estates rather than one of succession." (Underlining supplied – the words emphasised by Mr Sherwin)

33. For that reason, the court concluded that it was not necessary or relevant to look at Brazilian law:

"[124] In the present case, there is no suggestion that any relevant cause of action of a deceased person has been the subject of a "sharing". As matters stand, therefore, the heirs are, for the purposes of characterisation, to be viewed as seeking to administer the estates of the deceased persons, not as having succeeded to any causes of action of the deceased persons. It follows that Brazilian

law is not applicable and that the heirs cannot advance the claims in this jurisdiction without obtaining letters of administration here."

34. Hence Mr Sherwin submits that whether or not one is looking at a cause of action on behalf of heirs, or potential causes of action against heirs, the relevant law of succession does not come into it, at least until the debts have been ascertained and paid and the estates thereby administered. He submits that any attempt to say otherwise erroneously collapses the principled distinction between administration and succession.
35. In summary, therefore, he submits that what PIFSS has sought to do simply cannot be done. He says that it is wrong to attempt to add successors as defendants where, as in the present case, the estate is properly constituted in England with Ms Al-Wazzan as the personal representative of her late husband. He submits that succession is irrelevant at the present stage of proceedings and that the only proper defendant in the context of the English proceedings is the estate and the estate has been properly joined. He says that the distinction between succession and administration must be respected and it should not be collapsed or amalgamated. He also says that it may well be that one will never get to any issues of succession in the present case, because the heirs are likely to disclaim, if there is a significant judgment in England against the estate. But in any event, he says that it is not permissible for the English court, at trial, to make any order against the heirs. That, he says, is legally impossible: the court cannot start applying Swiss law of succession and give a judgment against the heirs in the forthcoming trial. For that reason, he submits that the heirs are not necessary or proper parties. Once the court had recognised that making an order against the heirs was legally impossible, it was wrong to join them. They were strangers to the proceedings, and it was not appropriate to join people simply because they might ultimately have an interest by virtue of succession. They had no connection to the litigation here. The correct party, the administrator, had been sued, and there was no justification for joining anyone else.
36. Mr Sherwin described the case as raising what he says is a narrow issue of law. He was not aware of any authority where a case had proceeded against successors in circumstances where a deceased's personal representative had been joined.
37. On behalf of PIFSS, Mr Norbury KC put the case, as I have already outlined, on two alternative bases.
38. His first point is that, pursuant to Swiss law, PIFSS has a claim against the children as successors to Mr Al-Rajaan's liability, and he submits that that is a claim which can be decided and enforced by the English court in the forthcoming trial. He urges the court not to take a narrow approach of simply applying English law of administration to the issue. The court should look at the broader picture, in circumstances where Mr Al-Rajaan, and his estate, has assets all over the world. He referred in that context to paragraphs [80] – [82] of *Viegas*, and submitted that characterisation in the present case should take into account that the present action, and potential enforcement, was multi-jurisdictional.

39. His second and alternative submission was that it was appropriate for PIFSS, by joining the heirs, to seek to avoid the risk of an outcome whereby, following a very substantial trial in England, they succeed in obtaining a judgment only to find that it does not bind the heirs in relation to assets outside this jurisdiction. He submits that PIFSS is understandably motivated by a desire to ensure that a judgment in England is obtained against the correct parties, but he emphasises that the claim is not pursued to deal with the succession of Mr Al-Rajaan's assets, nor are they pursued solely for the purposes of improving PIFSS' prospects of enforcing an English judgment against the estate of Mr Al-Rajaan against the heirs. That is merely a secondary consequence of the primary purpose, which is to obtain a judgment against the Al-Rajaan heirs in these proceedings. He relies upon the evidence that under Swiss law, which the heirs contend to be the relevant law of succession, they are liable parties by succession and therefore they are the correct parties to the claim following Mr Al-Rajaan's death. He submits also that it would be inimical to the interests of justice if, after a very substantial trial here, a judgment against the estate were not enforceable against the heirs.
40. So those, in summary, are the parties' submissions, and in his oral argument Mr Norbury emphasised the first submission. Following this route would be a preferable outcome from PIFSS' perspective, because it would open up the possibility that at the forthcoming trial the court will actually decide that the heirs are all jointly and severally liable by virtue of the provisions of Swiss law. He also submitted, however, that the second alternative route was sufficient to permit the joinder of the heirs.

Discussion

41. The applicable test for "necessary or proper party" is well established. It is set out in the judgment of Lord Collins in *AK Investment CJSC v Kyrgyz Mobil Tel Limited* [2011] UKPC 7 as follows:
- "... the question whether D2 is a proper party is answered by asking: "supposing both parties had been within the jurisdiction would they both have been proper parties to the action?"
42. Lord Collins then refers to a number of authorities which included statements that "D2 will be a proper party if the claims against D1 and D2 involve one investigation", and where the expressions "closely bound up" and "a common thread" are used.
43. The question which always arises when there is an issue about the application of a gateway in paragraph 3.1 of Practice Direction 6B (here the "necessary or proper party" gateway in paragraph 3.1 (3)) is whether there is a good arguable case that the claim comes within the gateway. For that purpose, a claimant needs to have the better of the argument.
44. It seems to me that the first route which Mr Norbury has relied upon, namely that the court will be in a position to determine the heirs' alleged joint and several liability, is by no means straightforward. I do not have to come to a final view on that particular route and I decline to do so at the present stage. But it does seem to me that there was considerable force in the argument which was advanced by Mr Sherwin as summarised above, as to why it would be inappropriate for the court to decide the question of whether or not (applying Swiss law) the heirs are jointly and severally liable. Mr Norbury's argument in that regard, if accepted,

would seem to me to involve some departure from the approach which was taken in the *Viegas* case.

45. I accept Mr Norbury's point, and it was a point which I made to Mr Sherwin myself, that the focus of the decision in *Viegas*, and the other authorities which are discussed in that decision, is upon the question of whether or not the party has title to sue rather than the question of whether a defendant has liability. However, it does seem to me that there is support for Mr Sherwin's proposition, that the same principles apply in both situations in paragraphs [120] and [123] (quoted above), where Newey LJ refers to "payment of debts" on two occasions.
46. However, that is not the end of the argument, because there is also Mr Norbury's alternative route: i.e. that it is important that the heirs should be joined in the present proceedings in order to ensure that they are bound by the result of the case that Mr Al-Rajaan, and now his estate, has a significant liability to PIFSS.
47. The evidence of Swiss law to which I have referred indicates that, unless the heirs are parties, any judgment which is obtained may not be enforceable in Switzerland. The same would logically apply to other jurisdictions which apply a similar civil law approach to that of Switzerland.
48. The consequence of that would be that if PIFSS were to obtain a substantial judgment against Mr Al-Rajaan's estate, and then to seek to enforce that judgment in Switzerland against the heirs, the heirs could potentially say that they were in a position to recontest the question of whether there was any liability at all. I sought to question Mr Sherwin as to whether or not that was the position of the heirs. He said that the heirs have not accepted that there is any liability on the part of Mr Al-Rajaan or his estate to PIFSS. Mr Sherwin says that the heirs do not know, and therefore they cannot admit that there is any liability.
49. It follows, in my view, that there is an issue, as between PIFSS and the heirs, as to whether there is in fact a liability on the part of the estate to PIFSS; i.e. the very issue that is to be determined in the forthcoming trial. It is also clear that the heirs have not given any indication, let alone any undertaking, that in the context of enforcement proceedings in Switzerland (or indeed elsewhere), they would not take the point that the issue of liability had yet to be determined as against them.
50. In the light of Professor Jakob's evidence, it cannot now be assumed that the heirs will be able successfully to disclaim their inheritance. Accordingly, and bearing in mind that the estate's English assets will be insufficient to meet a substantial judgment, it is reasonably possible that there will indeed be enforcement proceedings in Switzerland, in which PIFSS seek to enforce the liability of Mr Al-Rajaan (and now his estate) against the heirs. Professor Jakob's evidence indicates that an English judgment against Ms Al-Wazzan as administrator will not be sufficient to bind the heirs, and that what is required is for the defendants recorded in the judgment to include all of the deceased's heirs.
51. This is not a case where a claimant is seeking to join random parties. It is a case where Mr Al-Rajaan has died, and where the 42nd – 45th Defendants, his children, are in fact his heirs. It is also the case that under Swiss law, which is alleged to be the domicile of Mr Al-Rajaan,

the process of liabilities being passed to their heirs has (as Professor Jakob has said) occurred automatically.

52. It does seem to me that in circumstances where the heirs are on any view closely associated with Mr Al-Rajaan, and where there is prospective enforcement against assets in Switzerland which would otherwise belong to the heirs, there is every reason why it is necessary and proper for them to be joined as parties to the present proceedings, so as to ensure that they are bound by the result. If so, then they would not be in a position to assert in the context of Swiss enforcement proceedings that there was in fact no liability on the part of the estate to PIFSS. If the position were otherwise and they were not joined to the present proceedings, PIFSS would potentially be in the position of having to prove again the liability which, on this hypothesis, they had successfully established by virtue of a trial which is going to last the best part of a year. Absent joinder, PIFSS would therefore potentially have to surmount a substantial obstacle to enforcement in Switzerland, because the heirs could contend that they were not bound by the result of the major trial that is going to take place. I consider that this would be a most undesirable consequence.
53. Looking at the evidence as a whole including (i) what Mr McKernan on behalf of the heirs has said in his witness statement, namely that he fully reserves the position on enforcement, and (ii) that there is no statement by the heirs that they agree to be bound by the result of the forthcoming trial if liability is established, it is proper that the heirs should be party to the present proceedings in order that they are bound by the result.
54. It does not seem to me that there is any authority which is to the contrary effect. The position of who is a necessary or proper party is well established on the basis of the authorities to which I have referred. The Court of Appeal in the *Viegas* case was not considering the question of whether defendants may, in particular circumstances, be necessary or proper parties, whether they are heirs or not. The question, to my mind, must be looked at on the basis of all the facts of a particular case. The applicable rules relating to joinder of new parties (see CPR 19.2) are wide, and it was not suggested that the joinder of the heirs in this case, ordered in April 2024, was not permitted by CPR 19.2. There is also no authority which suggests that simply because one defendant is the correct defendant for the purposes of a claim which is being made against that person – in the present case, Ms Al-Wazzan is clearly a correct defendant in relation to the claim which is made against Mr Al-Rajaan's estate – it is therefore impermissible to join another party as a defendant.
55. I do not consider that there can be any objection in principle to joining a party in order to ensure that that party is bound by the result of a case, if that is appropriate in the light of all the facts of the case. In the course of argument, Mr Norbury identified a number of situations where a party could be so joined: for example, the *Chabra* jurisdiction in the context of freezing injunctions, where it is permissible to join a party against whom no cause of action is asserted, but who holds an asset allegedly belonging to another. He also referred me to CPR 19.13 which provides a mechanism for binding persons, in particular circumstances, without them being formally made a party. He also gave the example of proceedings brought by an assignee, where the assignor is joined as a defendant in order to ensure that the latter is bound. Whether or not it will be appropriate to join a party, for the purposes of ensuring that that party will be bound by the result, is ultimately dependent on all the facts of a case.

56. In circumstances where, as in the present case, there is a likely insolvency in England if the claim succeeds and where it is going to be necessary for the claimants to take proceedings against assets abroad, it is sensible and appropriate, in my judgment, to take steps to ensure that the heirs are bound by the result of the court's decision so as to prevent a situation arising where the claimants have to argue the entirety of the case again in a different jurisdiction in order to establish the core underlying liability which, on this hypothesis, they have established in England.
57. For those reasons, which essentially comprise Mr Norbury's second route, there is a good arguable case that the heirs are necessary or proper parties. They will therefore be joined to the present proceedings. It will be open to Mr Norbury in due course to say that the first route is nevertheless available as well and that the court should therefore be imposing joint and several liability in the forthcoming trial on the heirs. That will be a matter to be argued in due course, and the heirs will no doubt argue, relying on *Viegas*, that the imposition of liability is inappropriate.
58. Having resolved the issue of "necessary or proper party" in favour of PIFSS, there is no separate point which would mean that the order for service out of the jurisdiction should be set aside. This is because, in summary: (1) there is a serious issue to be tried, as between PIFSS and the heirs, as to whether or not there is any liability on the part of the Al-Rajaan estate to PIFSS; and (2) the appropriate forum for the resolution of that issue is England, where the trial of that central issue is about to begin as between PIFSS and the estate.
59. Accordingly, I dismiss the heirs' application and do not set aside the June 2024 order for permission for service out of the jurisdiction, or any other aspect of that order or the April 2024 joinder order.
60. For reasons outlined at the beginning of this judgment, it is also unnecessary to resolve arguments as to whether, as a result of s. 1140 of the Companies Act 2006, the 44th Defendant (Fajer Al-Rajaan) has already been properly served within the jurisdiction. Mr Sherwin sensibly did not address detailed argument on that issue, which in practice only arises if permission to serve out of the jurisdiction were to be set aside. There is in any event a long line of first instance decisions which supports the proposition that Fajer has been properly served.