EIP

Maternity wear retailers Seraphine Limited and Mamarella GmbH clash over serving proceedings out of the Jurisdiction

Background

The Claimant Seraphine Limited ("Seraphine") a maternity wear retailer had a trading relationship with the Defendant Mamarella GmbH ("Mamarella"), a German online retailer selling maternity wear. This relationship came to an end when Seraphine learned that Mamarella was selling maternity clothes which allegedly infringed Seraphine's unregistered Community design rights.

Seraphine issued proceedings in IPEC. On 13 June 2023, Seraphine initially attempted service on Mamarella by post in Germany without the court's permission stating service was permitted pursuant to the 1928 Convention between His Majesty and the President of the German Reich (the "1928 Convention"). Mamarella contested service and issued an application notice on 17 July 2023 seeking:

"(1) to set aside service and declare that the court has no jurisdiction on the grounds that (a) service was invalid and/or (b) none of the rules permitting service out of the jurisdiction without the court's permission applied, and/or (2) a stay of the proceedings pending the outcome of proceedings in Germany" (para 2).

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On 16 October 2023 Seraphine served the proceedings again, this time under the Hague Convention via the Foreign Process Section. Mamarella contested service again and issued an application on 20 November 2023 in similar terms as the 17 July 2023 application but dropping the point on service being invalid.

Legal Analysis

The main issue for the deputy judge to determine was whether Seraphine was entitled to serve the proceedings out of the jurisdiction without the court's permission. Further points on amendments to Seraphine's pleadings and Mamarella's alleged infringement of Seraphine's unregistered Community designs were also discussed by the judge, albeit in less detail.

~~Jurisdiction~~

CPR 6.33(2B)(b) states "[t]he claimant may serve the claim form on a defendant outside of the United Kingdom where, for each claim made against the defendant to be served and included in the claim form –

(b) a contract contains a term to the effect that the court shall have jurisdiction to determine that claim;".

Both parties agreed that the appropriate test to be applied when addressing the rule above was that of a "good arguable case" and was established in the Supreme Court ruling in Four Seasons Holdings Inc v Brownlie.

The test is:

"(i) that the claimant must supply a plausible evidential basis for the application of a relevant jurisdictional gateway; (ii) that if there is an issue of fact about it, or some other reason for doubting whether it applies, the court must take a view on the material available if it can reliably do so; but (iii) the nature of the issue and the limitations of the material available at the interlocutory stage may be such that no reliable assessment can be made, in which case there is a good arguable case for the application of the gateway if there is a plausible (albeit contested) evidential basis for it "[1]

Seraphine argued that the relevant agreement was that signed by Mamarella on 11 March 2021 and Seraphine on 27 April 2021 which is titled "Seraphine Limited Terms and conditions of sale" (the "**2021 Agreement**"). Seraphine relied on clause 25 which contains an exclusive jurisdiction clause which states:

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"(a) The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (whether or not such dispute or claim is contractual) shall be governed by, and construed in accordance with, the laws of England and Wales.

(b) The Company and the Buyer irrevocably agree that, subject to the following sentence, the courts of England and Wales shall have exclusive jurisdiction over any claim or matter arising under or in connection with the Contract (whether or not such dispute or claim is contractual) and that accordingly any proceedings in respect of any such claim or matter shall be brought in such courts. Nothing in the proceedings [sic] sentence shall limit the Company's right to take proceedings against the Buyer in any other court of competent jurisdiction"(para 14).

Mamarella's response was that the exclusive jurisdiction clause did not apply because there was no contract between the parties for all purchases made after the signing of the 2021 Agreement.

The judge further discussed the terms of the 2021 Agreement in dispute and decided on the balance of probabilities that Seraphine properly construed the 2021 Agreement to state that all subsequent orders placed by Mamarella were "Orders and led to the creation of Contracts which incorporated the Terms, and hence the exclusive jurisdiction clause" (para 21). Hence, the judge found that Seraphine had the stronger argument and a good arguable case for the purpose of CPR 6.22(2B)(b). Accordingly, Seraphine was permitted to serve the proceedings out of the jurisdiction without the court's permission.

~~Amendments to the Pleadings and Infringement~~

Seraphine wanted to amend their Particulars of Claim to rely on 2015 and 2019 terms and make allegations of infringement on nine new designs prior to the 2021 Agreement. Seraphine claims Mamarella was subject to either one of the previous agreements when Mamarella placed orders through Seraphine's TradeWeb platform.

Mamarella disagreed and argued that orders using the TradeWeb platform were not subject to any version of Seraphine's terms. Surprisingly, Seraphine was not able to provide evidence that any version of the terms was on the TradeWeb platform.

Consequently, the judge held that Seraphine did not have a strong argument to rely on the 2015 and 2019 terms and failed to satisfy the test under CPR 6.33(2B)(b), and could not seek to introduce the nine designs based on said terms.

Further arguments were put forth by Mamarella regarding the amendments to the pleadings and the judge proposed that Seraphine provides Mamarella with a revised draft

Amended Particulars of Claim in agreement with the above points, and he would adjudicate if a dispute arose.

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~~Stay of Proceedings and the 1928 Convention~~

The judge did not find it necessary to consider the Defendant's application for permission to rely on evidence of German law given the Defendant withdrew its application for a stay of proceedings (with the option to restore the application for a stay following the German proceedings) on the basis of forum non conveniens. Also, the parties did not further seek guidance on the validity of the 1928 Convention.

Comment

This is a case which once again highlights the importance of drafting unambiguous contract terms. In this instance, more clarity of the terms of the 2021 Agreement would have assisted in proving that the Defendant was subject to the exclusive jurisdiction clause and that the Claimant was allowed to serve proceedings outside of the jurisdiction without the court's permission.

Decision can be found here.

[1] Four Seasons Holdings Inc v Brownlie [2017] UKSC 80 and Goldman Sachs International v Novo Banco SA [2018] UKSC 34