COLLAS CRILL

Building a gateway upon a gateway: Eurasia Sports Limited v Mahchi Aguad [2018] EWCA Civ 1742

OCTOBER 2018

A recent decision of the English Court of Appeal in the Eurasia Sports Limited v Mahchi Aguad, has arguably broadened the definition of what constitutes "the necessary or proper party" jurisdictional gateway. Through combination with the relatively new gateway (4A), claims against the same defendant can arise out of the same or closely connected facts.

Background

The claim was brought by Eurasia, a betting company operating from Alderney. It claimed that the 11 defendants (all residents of either Peru or Taiwan), had attempted to defraud the company by encouraging it to provide online gambling services without any security. It was alleged that the 11 defendants had defrauded Eurasia in excess of £12.5m whilst the Appellant, Mr Aguad, was alleged to have owed £2.6m of that amount alone. Eurasia brought claims in both contract and tort (conspiracy).

Eurasia wished to bring it's claims in the English Courts and so required leave of the Court to serve the defendants out of the jurisdiction. In order to do so, it was incumbent on Eurasia to establish, amongst other things, a good arguable case that it's claims fell within one of the 'jurisdictional gateways' set out in the English Civil Procedure Rules.

In respect of Mr Aguad, the judge at first instance held that both claims in contract and tort could be tried in England. The judge found that whilst the contract between Mr Aguad and Eurasia was formed in Peru (and thus the contract gateway was not available), the damage suffered as a result of the alleged tort was suffered by Eurasia in England. Accordingly, the tort gateway applied to the conspiracy claim and, as the facts related to the tort and contract claims were closely connected, gateway 4A applied and both claims could be tried against Mr Aguad in England (the other elements of the test for service out being satisfied).

Importantly the judge also found that the contracts between Eurasia and Mr Aguad's co-defendants were formed in England and thus, (a) for these defendants, the contractual gateway for contract did apply; and (b) Mr Aguad was a necessary and proper party to these contractual claims, and so that gateway also applied and service out against Mr Aguad could be founded on this basis as well.

Mr Aguad appealed.

Findings of the Court of Appeal

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.

The Court of Appeal rejected the judge's conclusion that damage for the tort claim had been suffered in London. Instead, the Court held that the actual damage caused took place where Eurasia's security money was usually received – where being Malta. Therefore, the Court had been incorrect in its decision that there was jurisdiction to hear the claim relating to a tort gateway; no harm had occurred in the United Kingdom or Wales.

Despite this finding, the Court upheld the order for service out of the jurisdiction and rejected the defendant's appeal. It did so employing a combination of the 'necessary and property party' gateway and the 'similar facts' gateway 4A. The Court reasoned that:

1. The contractual claims against the co-defendants were properly triable in England;
2. The contractual claims against Mr Aguad could be tried in England as he was a necessary and proper party to those claims; and
3. The tort claims against Mr Aguad could be tried in England through the application of Gateway 4A.

Effects

The argument that this decision significantly extends the scope of service out is evident. The Court of Appeal has effectively built a gateway upon a gateway in order to establish jurisdiction of the English courts over substantially foreign claims. However, in coming to its decision, the Court expressly considered and discounted an objection that such a derivative use of the gateways was impermissible.

This decision will be of significant interest to Guernsey lawyers and potential litigants. As an offshore financial centre, service out applications are frequently considered by the Royal Court. In considering such applications, the Guernsey courts have expressly applied the English CPR gateways, and English jurisprudence in general. The decision in Eurasia, and the way in which gateways have been combined by the Court, should provide a spur for inventive Guernsey lawyers looking for ways to found jurisdiction in Guernsey.

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.

COLLAS CRILL

For more information please contact:



Michael Adkins

Partner (Advocate) | Guernsey

t: +44 (0) 1481 734 231 | **e:** michael.adkins@collascrill.com

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.