

All England Reporter/2009/October/Olafsson v Foreign and Commonwealth Office - [2009] All ER (D) 224 (Oct)

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**Olafsson v Foreign and Commonwealth Office**

[2009] EWHC 2608 (QB)

**Queen's Bench Division**

**Eady J**

**22 October 2009**

*Practice - Service out of the jurisdiction - Method of service - Defendant purportedly serving libel proceedings on behalf of claimant on third party by invalid method in Iceland - Claimant obtaining judgment in default in England against third party - Claimant successfully applying for order dispensing with service of claim form and particulars of claim - Claimant bringing proceedings against defendant seeking damages for negligence - Defendant admitting liability - Whether claimant acting unreasonably in seeking to recover loss rather than attempting to mitigate loss by obtaining second judgment in default and taking steps to enforce it in Iceland.*

**Abstract**

*Practice - Service out of the jurisdiction. The Queen's Bench Division held that the claimant had not acted unreasonably in seeking to recover his loss which flowed from the negligence of the defendant in failing to serve libel proceedings in Iceland in accordance with the local requirement.*

**Digest**

The judgment is available at: [2009] EWHC 2608 (QB)

The claimant was an Icelandic businessman who lived England. He alleged that he had been seriously libelled in material published on a website, in 2004, by a professor of political science in the University of Iceland (the professor). The claimant commenced proceedings in the English court. The claim form was issued on 4 August 2004, the claimant being entitled to serve the proceedings out of the jurisdiction in Iceland under CPR 6.19(1) because Iceland was a party to the Lugano Convention. His solicitors took appropriate steps to have the claim form served in Iceland, making a request of the High Court on the prescribed form for service abroad. Pursuant to

CPR 6.26(4)(b), a senior master forwarded the documents to the defendant Foreign and Commonwealth Office requesting that they be served 'in accordance with the law of the country where the service is effected'. The defendant sent the relevant documents for service with a letter to the consul in Reykjavik under CPR 6.26(1)(b) (service through a British consular authority). The letter, which the claimant and his solicitors did not see until much later, stated that, according to the defendant's records, there was no local objection to process being served personally by a member of the consular staff, and asked the consul to arrange for service to be effected by that method as soon as possible. Such service would only be good under Icelandic law if the professor signed a declaration confirming receipt of the relevant documents. The consul went to an address in Reykjavik, identified the professor, and gave him the claim form and all the other documents. The professor was not asked to, and did not, sign a written receipt. Accordingly, the documents were not served on him in accordance with Icelandic law. In due course, service was held to have been ineffective. The claimant and his solicitors thought that the documents had been duly served in Iceland, and obtained judgment in default against the professor. The claimant's solicitors kept the defendant informed of the progress of the proceedings, but he played no part in them. Subsequently, in July 2005, damages were assessed at £65,000 and a permanent injunction was granted and costs were awarded. The defendant made an application in England to set aside the judgment on the basis that the claim form had not been served in accordance with Icelandic law. The master declined to set aside the judgment and exercised his discretion under CPR 3.10 and/or 6.9 'to correct any error in service'. The professor appealed to the judge, who held that CPR 3.10 could not be used in a case where there had been no service under the relevant rules for service, namely the rules in Iceland (see [2007] 2 All ER 88). The claimant sought an order under CPR 6.9 dispensing with service of the claim form, which the judge made. The professor appealed that decision to the Court of Appeal, but it was dismissed on 3 March 2008 (see [2008] All ER (D) 11 (Mar)). The House of Lords refused a petition for leave. The claimant brought proceedings against the defendant for negligence over the failed attempt to serve the libel proceedings in Iceland, in September 2004, in accordance with the local requirements. He sought to recover his loss flowing from the negligence of the defendant, which, inter alia, included the loss of the judgment awarded by the court on 13 July 2005, and compensation for inconvenience arising from the litigation he had been obliged to undertake. Liability was admitted. The instant matter concerned the determination of issues relating to the quantification of the claimant's loss.

An issue arose as to whether the claimant had acted unreasonably in seeking to recover his loss rather than attempting to mitigate his loss by obtaining a second judgment in default in England and taking steps to enforce it in Iceland.

The court ruled:

In the circumstances, the claimant had not acted unreasonably in seeking to recover his loss and, in particular, in respect of the judgment and costs awarded in July 2005. He should not be required to

undertake uncertain litigation against a third party with a view to enforcement in Iceland - especially having been refused an indemnity by the defendant. On the evidence, such proceedings were likely to fail (see [33] of the judgment).

*Pilkington v Wood* [1953] 2 All ER 810 considered.

Mark Vinall (instructed by Olswang) for the claimant.

Steven Kovats (instructed by the Treasury Solicitor) for the defendant.

Tunde Gbadamosi Barrister.