

WITNESS STATEMENT OF DEFENDANT

1. I am _____, and I am the Defendant against whom this claim is made. The facts are true to the best of my belief and my account has been prepared based upon my own knowledge.

2. This is my supporting statement NUMBER 2 to my application dated _____ requesting to:

a. Set aside the default judgement dated _____ as it was not properly served at my current address.

b. Order for the original claim to be dismissed.

c. Order for the Claimant to pay the Defendant £275 as reimbursement for the set aside fee.

Case Law I wish to rely on:

The default judgment must be set aside if wrongly entered (CPR 13.2). As the claim form was not served (or validly served) in xxxxx 2018 (CPR 6.9 (3)) the time limit for acknowledging service has not begun. As the time limit has not begun it cannot have expired. As the time limit has not expired the condition in CPR 12.3(1)(b) has not been satisfied and this should result in a mandatory set aside.

This is on point with the court of appeal in Dubai Financial Group Llc v National Private Air Transport Services Company (National Air Services) Ltd [2016] EWCA Civ 71 (09 February 2016)

"Moreover, I do not consider that the CPR presents an obstacle in the circumstances of this case to setting aside judgment. CPR 13.2 provides that the court must set aside a default judgment where any of the conditions in rule 12.3(1) and 12.3(3) was not satisfied. The latter provision does not apply, but the former is relevant. CPR 12.3(1) states that a claimant may obtain judgment in default of an acknowledgment of service only if (a) the defendant has not filed an acknowledgment of service or a defence and (b) the relevant time for doing so has expired (*my italics*). I accept Mr McLaren's argument that, when an order for retrospective validation of an alternative method of service has been made pursuant to CPR 6.15(2) the relevant time for filing an acknowledgment of service is the period which the court must specify under CPR 6.15(4)(c). Where, as in this case, the court did not specify any such time there can be no relevant time which has expired for the purposes of CPR 12.3(1). If this analysis is correct the requirements of CPR 12.3(1)(b) have not been satisfied and so the court is obliged to set aside the default judgment pursuant to CPR 13.2(a).

I do not see it as a draconian consequence that a judgment, obtained after deemed service has been effected without specifying a time for that service to be acknowledged, should be set aside as of right in such a case. I agree that CPR 13.2 specifies the circumstances in which a default judgment must be set aside and in my judgment one of those circumstances is when judgment is entered in default of an acknowledgment of service when "any of the conditions in rule

12.3(1)...was not satisfied". Here one such condition was not satisfied, namely the time for acknowledgement of service had not expired, because none had ever become applicable.

This, to my mind, is not "playing technical games" (c.f. the passage from the Abela case, cited at paragraph 11 in the judgment of Longmore LJ). It is merely applying the principle that due process should be followed. If a defendant has never become under a valid obligation to acknowledge service, either as specified under the rules or by order of the court, I do not see how it can be that a judgment can be entered against him in default of such acknowledgment. He is simply not in default at all."

Statement of Truth

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

signed & dated
