

A practical approach to substituted service: Grand Court allows substituted service of a winding up

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The Grand Court of the Cayman Islands (**Court**) recently handed down written reasons (**Ruling**) [1] for ordering substituted service of a winding up petition on Bridge Global Absolute Return Fund SPC (**Bridge Global**) by permitting the documents to be sent by email to its sole director, residing out of the jurisdiction. The approach adopted by the Court in Bridge Global demonstrates the pragmatic manner in which the Court has managed questions around service of originating processes and is particularly relevant where COVID-19 and other global factors have prevented, and may continue to prevent, personal service of documents by traditional means.

Background

Brazen Sky Limited (**Petitioner**) presented a petition to the Court to wind up the company on the just and equitable ground. Directions were ordered for service of the petition, summons for directions and supporting documents on the Company's registered office as required by section 70 of the Companies Act (2021 Revision) (**Act**). Upon attempting to effect personal service in the usual way, it was discovered that the Company's registered office had been closed and no longer existed. The Petitioner applied for an order for substituted service to be effected by sending copies of the said documents to the sole director of the company by email.

Considerations

In determining the application the Court considered the jurisdictional basis for making an order for substituted service on a company registered under the Act. While there was limited judicial authority on the question of jurisdiction, the Court considered that a clear statutory basis had been identified.

The Companies Winding Up Rules (CWR) O.1, r.4 provides that the Grand Court Rules (GCR) for service^[2] and substituted service^[3] apply to every petition, summons or other documents required to be served under the CWR. The rules relating to service out of the jurisdiction^[4] also apply where this is required.

The Court noted that GCR O.65, r.4^[5] pivotally provides that substituted service may be ordered where personal service (at the registered office in the case of a company) is "*impractical for any reason*". The Court held that the crucial question was whether service by email to a sole director is reasonably likely to bring the documents to the notice of the company. The Court considered that it would and that the Petitioner should not be put to undue time and expense seeking to identify a means for service against a company at a registered office that no longer existed and that had seemingly been closed by the company as a delaying tactic.

The Court did not consider that leave to serve out of the jurisdiction was required under GCR O.11 notwithstanding that the sole director resided out of the jurisdiction. The company (who was yet to be formally served) was resident in the jurisdiction and the director being "served" abroad was not being served personally in the strict sense, but was merely being notified of the proceedings as an overseas agent of the locally residing respondent to the proceedings.

The approach adopted by Kawaley J is consistent with that adopted by Mangatal J in *Bush v Baines*^[6], holding that "*The purpose of service of proceedings is to bring the proceedings to the notice of the defendant. It is not about playing technical games*"^[7]. It is also consistent with that taken by Segal J in *China Shanshui*^[8], where upon considering an application for substituted service on respondents to a just and equitable winding up petition located in the People's Republic of China and Taiwan, Segal J emphasised that "*in interpreting and applying GCR O.65, r.4, the Court was required to have regard to the overriding objective, which required that the Court seeks to deal with the case before it justly, expeditiously and economically...*"^[9].

Conclusion

The Ruling is a welcome reminder of the pragmatic approach the Court will take in interpreting statutory and procedural provisions of Cayman Islands law to avoid injustice being occasioned as a result of a party's evasive tactics. This is consistent with the approach the Court has taken in a number of recent cases to ensure that proceedings are brought to the attention of defendants in a fair and appropriate manner while also preventing practical difficulties posed by personal service requirements stymieing legitimate claims.

^[1] In the matter of Bridge Global Absolute Return Fund SPC, Written Reasons dated 10 May 2022 per Kawaley J

[2] GCR Order 10

[3] GCR Order 65

[4] GCR Order 11

[5] GCR O.65, r.4(1) *If....it appears to the Court that it is impractical for any reason to serve that document personally on that person, the Court may make an order for substituted service of that document.* GCR O.65, r.4(3) *Substituted service of a document...is effected by taking such steps as the Court may direct to bring the document to the notice of the person to be served.*

[6] *Bush v Baines, Taylor and Attorney General* [2016] (2) CILR 274

[7] *Ibid* at [317]

[8] *China Shanshui Cement Group Limited*, Unreported judgment dated 27 January 2021 per Segal J

[9] *Ibid* at [67]

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