JUDGMENT : Mr Justice Lightman: Chancery Division. 9th March 2007

INTRODUCTION

1. On the 13th March 2006 the defendants in this action ("the Defendants") applied for orders setting aside two orders of Master Bragge, the first dated the 26th August 2005 permitting service outside the jurisdiction and the second dated the 13th January 2006 authorising service on the Defendants by a method not permitted by the CPR ("the Alternative Service Order") and the first defendant Naza Motor Trading SDN BHD ("Naza Motors") applied for an order staying these proceedings under section 9 of the Arbitration Act 1996. On the 16th May 2006 the claimant Nigel Albon ("Mr Albon") applied for an order continuing an injunction previously obtained on a without notice application to restrain the Defendants from proceeding with arbitration proceedings in Malaysia. These and certain other applications came before me on the 16th November 2006.

2. I first heard and determined the application to set aside the order permitting service outside the jurisdiction and in my judgment dated the 23rd January 2007 ("the Judgment") I refused to set aside the order in respect of the most significant claim to relief in the action against Naza Motors, namely that in respect of what is referred to as the UK Agreement, but I set aside the order in respect of the other claim against Naza Motors, namely that in respect of what is referred to as the South African Agreement. Mr Albon in the course of the hearing abandoned opposition to the application by the second defendant Tan Nasimuddin Amin ("Mr Nasim") to set aside the order in respect of one claim against Mr Nasim and in the Judgment I set aside the order in respect of the other claim made against Mr Nasim. In the circumstances, with the setting aside of the order against Mr Nasim in respect of the two claims made against him, my order was to the effect that he should cease to be a party to the proceedings.

3. On the 6th February 2007 the hearing commenced of the application (now by Naza Motors alone) to set aside the Alternative Service Order. Since Mr Nasim had ceased to be a party to the proceedings and the parties did not want my previous order to be amended (in case of an appeal by Mr Albon against my order that Mr Nasim cease to be a party) so as to retain Mr Nasim as a party to the determination of the challenge to the Alternative Service Order against him, it is now unnecessary to decide whether the Alternative Service Order against him should be set aside. But on the basis that the merits or otherwise of the order made against him may be relevant on the examination of the merits of the order made against Naza Motors, I was invited to hear and I did hear argument on that issue.

4. Well prior to the hearing on the 6th February 2007 directions were given as to the timetable for serving evidence as to fact and expert evidence and both parties had ample time prior to the hearing to adduce all the evidence as to fact and all the expert evidence which they wished to rely on. The hearing proceeded at the insistence of the parties as well as myself on the basis that the outstanding application should be determined on the evidence before the court. On this ground Mr Nathan, counsel for Naza Motors, quite properly took objection to Mr Albon adducing on the application for a stay expert evidence served late and giving further evidence during the hearing e.g. as to the state of health of Mr Daniel at various times. Both counsel were given every opportunity to make detailed submissions at the hearing and I gave short adjournments to enable them to take instructions as the hearing proceeded whenever requested for this purpose. Submissions were concluded on the 8th February 2007. I made it clear that I wished immediately to prepare my judgment so that it could be determined as soon as possible whether I would need to decide the further issues of the stay sought by Naza Motors and of the injunction sought by Mr Albon. These issues do not arise if I accede to the application of Naza Motors to set aside the Alternative Service Order.

5. After I had commenced writing this judgment I was in receipt of a plethora of emails emanating from counsel. In one of them Mr Nathan sought to put before me further evidence (and in particular expert evidence) and supplement and reinforce the submissions which he had made in court. I declined to allow this course to be pursued. It was unfair to Mr Albon and unfair to the court. In another he wrote that he believed that he was duty bound to draw to my attention his concern that his submission may not have come across sufficiently clearly that the English version of the application notice for permission to serve outside the jurisdiction ("the Application Notice") was not included in the documents served on Naza Motors on the 28th October 2005. This was not to the best of my understanding part of the case made in the evidence to which I was taken or the submissions (written or otherwise) of Mr Nathan, but some support for this proposition may in fact be found in the documentation before the court. After the lapse of time and at this very late stage of the hearing Sheridans (the solicitors for Mr Albon) have not been able to investigate the matter fully. What is significant is that the thrust of the case which Mr Albon has faced in the correspondence and at this hearing has been a complaint of the failure to serve a translation into Malay of the Application Notice. Fortunately the question whether the English version of the Application Notice was served is of marginal (if any) importance and has no impact on my determination of the present application.

6. It occurred to me in the course of the preparation of this judgment that CPR Part 1.1(3), which had not been referred to, might be relevant and I accordingly invited submissions in writing with respect to it and in particular its application where a claimant faces the difficulties which Mr Albon faced in effecting service of process on Naza Motors. Both sides acceded to this invitation. So far as the submissions on behalf of Naza Motors improperly went beyond the limits of addressing the relevance of this rule (to which course Mr Waksman for Mr Albon took legitimate exception) I ignored them.

7. The full relevant factual background to the issue now before me is to be found in the Judgment save for the detailed circumstances leading up to and surrounding the application for alternative service. In this judgment I need only repeat a few of the facts recited in the Judgment and set out those detailed circumstances.

THE RELEVANT FACTS

8. As I set out in paragraphs 1-3 of the Judgment Mr Albon is a dealer in motor cars trading as "NA Carriage" resident in England. He is in financial difficulties which (he says) have been occasioned by the default of the Defendants in payment of the sums due to him the subject of the claims in this action. (Indeed Mr Natham at the hearing expressed the concern on the part of Naza Motors that Mr Albon will be unable to meet costs orders made against him.) Naza Motors is a very substantial Malaysian company involved in the motor car business. Mr Nasim, the principal shareholder in and a director of Naza Motors, is a wealthy Malaysian businessman resident in Kuala Lumpar and has a house and other property in London. His children were educated here and he visits England often.

9. Mr Albon and Naza Motors have had business dealings (including partnership ventures) with each other for many years in England, Malaysia and South Africa.

10. According to Naza Motors on the 29th July 2003 a Joint Venture Agreement ("the JVA") was entered into in Malaysia between Naza Motors, Mr Nasim and Mr Albon. This provided (amongst other things) that all disputes between them (covering the disputes the subject of this action) should be resolved by arbitration in Malaysia according to Malaysian law. Mr Albon however says that he never entered into or signed any such agreement, and that so far as his signature appears on the document relied on, the signature was lifted from some other document. The issue of forgery gives the measure of the present hostility between the parties who have formerly been friends.

11. On the 10th August 2005 Mr Albon commenced this action in which he made claims against Naza Motors for sums allegedly due under the UK and South African Agreement and against Mr Nasim: (a) in respect of his alleged knowing receipt of alleged overpayments made under the UK Agreement at the request of Naza Motors to Mr Nasim; and (b) in respect of the alleged payment by Mr Albon pursuant to an agreement for their repayment of personal expenses of Mr Nasim in London. The claim form (since it was issued prior to the grant of permission to serve outside the jurisdiction) was stamped in standard common form "not for service out of the jurisdiction".

12. On the 26th August 2005 on an application made without notice supported by a witness statement of Mr Daniel (a partner in Sheridans, Mr Albon's solicitors) dated the 16th August 2005 Mr Albon applied to Master Bragge for and obtained an order giving permission for 6 months to serve the Defendants outside the jurisdiction. Under the CPR such service had to be effected within six months of the issue of the claim form. The order read:

> *"(1) that the Claimant has permission to serve (i) the Claim Form and Particulars of Claim (ii) the Application Notice dated 16th August 2005 [(i.e. the application for permission)] (iii) the witness statement of Alan Daniel dated 16th August 2005 and (iv) a copy of this Order on the First Defendant at 115 Menara … Kuala Lumpur Malaysia and on the Second Defendant at [his home at] 2A Lorong … Kuala Lumpur Malaysia.*
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> *(2) that the Defendants respectively have 24 days after service on them of the claim form in which to respond by either:*
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> *(a) filing and serving an admission;*
>
> *(b) filing and serving a defence; or*
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> *(c) filing and serving an acknowledgement of service …"*

Under the Civil Procedure Rules, Mr Albon was required in serving the above documents to comply with the applicable rules of Malaysian law.

13. Thereupon Mr Daniel supplied what he considered to be the relevant documents to the firm of Malaysian lawyers Messrs Chooi & Co ("Chooi") and gave them instructions to translate them into Malay and to effect service of them on the Defendants. I shall refer to the documents served as "the Documents". The Documents translated did not include the Application Notice. The claim form included in the Documents remained marked "not for service out of the jurisdiction". Mr Nathan pointed out and sought to rely on for the first time in the middle of the hearing a reference in a letter written by Chooi to the fact that the Documents included copies but not (as required under the order) duplicates of the claim form and particulars of claim. This fact is not otherwise referred to in the evidence. This objection may well be a good one, but again, even if a good one, does not alter my decision.

14. It is I think convenient at this stage to deal separately with the events relating to service on Mr Nasim and on Naza Motors and I shall deal with the events relating to Mr Nasim first.

(a) Mr Nasim

15. On the 8th November 2005 a process server instructed by Chooi attended at 2A Lorong to serve the Documents on Mr Nasim. Mr Nasim was not at home and a person in the house at the time told the process server that this was so and apparently added that, if he had been at home, he would not have seen anyone. The process server took away with him the Documents which he had intended to serve.

16. Thereafter on the 9th November 2005 Chooi posted a letter to Mr Nasim proposing a meeting for the purposes of service. Mr Nasim was away when the letter arrived and accordingly there was no response. On the 14th November 2005 Chooi wrote again to Mr Nasim enclosing the Documents "by way of service". Mr Nasim was still away. But on his return home, he found the letter dated the 9th November 2005 and discussed it with Mr Shafee

of Shafee & Co (his solicitors and the solicitors for Naza Motors) and on his instructions Mr Shafee on the 21st November 2005 wrote to Chooi proposing that service be effected by appointment the very next day at the premises of Naza Motors. The Documents were served on him accordingly.

17. It later became apparent to Mr Albon's advisers that the Documents served may have been defective, and to cure this possible defect Mr Daniel decided to reserve Mr Nasim, not in Malaysia, but in London on the occasion of a visit by Mr Nasim to London. On the 2nd December 2005 he instructed a process server in London to serve Mr Nasim here, but on that very day Mr Nasim was due to return and did return to Malaysia without any such service having been effected. Thereafter Mr Daniel made no further effort to serve Mr Nasim in Malaysia or to agree any arrangements for re-service with Mr Nasim's solicitors.

(b) Naza Motors

18. I now turn to the sorry (indeed troubling) story of service on Naza Motors. There is a striking contrast between the wholly cooperative attitude adopted by Mr Nasim and his solicitors on his behalf and the wholly uncooperative and indeed obstructive attitude adopted by Naza Motors and their solicitors. No reason has been given why Naza Motors did not act in the same way as Mr Nasim.

19. On the 28th October 2005 Ms Chin Pieh Yee ("Ms Chin") of Chooi left the Documents at the registered office of Naza Motors. The member of staff she was able to speak to there refused to acknowledge receipt. Ms Chin then proceeded to the business premises of Naza Motors to ascertain whether she could make an appointment with a director or the company secretary to serve the process. She was told in the reception area that she must make an appointment with a Ms Sally before she could meet any director or officer personally to deliver the process. Ms Chin took down Ms Sally's telephone number. She called this number on the 31st October 2005 to fix an appointment, but no-one answered. On the 2nd November Ms Chin called again and Ms Sally said that she would try to fix a date the following week and asked her to call again on the 7th November to confirm the appointment. On the 7th November 2005 Ms Chin called again and Ms Sally told her that the directors would only be back from leave the following week and asked her to call back on the 11th November 2005 to fix another appointment. On the 11th November 2005 Ms Sally transferred Ms Chin's call to Ms Norliza who told him that the directors had appointed Messrs Shafee & Co to handle the matter. Ms Norliza said that she could not fix an appointment until she had obtained legal advice and asked him to call again on the 14th November 2005. On that date Ms Norliza told Ms Chin that the directors did not want to accept service and would be more comfortable if she dealt with their lawyers. On the 15th November 2005 Ms Norliza said that Shafee & Co would accept service.

20. On the 16th November 2005 Chooi wrote to Shafee & Co inquiring whether they had instructions to accept service for Naza Motors. On the 17th November 2005 Shafee & Co replied requesting time to obtain instructions. On the 21st November 2005 the Defendants' London solicitors FSI Stephens Innocent ("FSI") acknowledged service by lodging an Acknowledgement of Service at the High Court giving notice that the Defendants intended to defend all the claims and to contest jurisdiction. The same day they wrote a letter to Master Bragge copied to Mr Daniel in which they stated that Naza Motors "was delivered with certain papers [under the heading of this action] at an address in Malaysia around the 28th October 2005" and that Naza Motors did not accept that it had been properly served in Malaysia with regular process. FSI went on to say that they wished to draw the Master's attention to the following matters which seemed to invalidate the attempted process:

> *"1. It appears that the fee paid at the time of issue of this Claim was incorrect and it should, therefore, never have been issued. As you will be aware, when claiming alternative relief there is an additional fee of £400.00 to be paid. In these circumstances the whole process appears to have been irregularly begun.*
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> *The papers delivered in Malaysia had certain omissions. Translations – not certified true – into Bahasa Melayu (the official Malay language), were delivered to offices of Naza Motor Trading SDN BHD. Importantly, no original translation of the Application Notice for leave to serve out referred to in your Order of 26th August was [not] delivered at all. And the Claim Form delivered in Malaysia was still endorsed, 'Not for service out of the jurisdiction'.*
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> *…*
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> *The purpose of raising these points is that whilst some officers of the Naza Motor Trading SDN BHD and their lawyers speak English –albeit not as their first language – not all do. As a consequence, it is their desire to move forward and deal with this matter with due dispatch and in a regular manner, but the Defendant does not wish to be disadvantaged by dealing with partial and unofficial translations of these proceedings; particularly, where they would incur costs in dealing with proceedings that have been issued irregularly: as are those which are presently extant."*

21. On the 21st November 2005, in the letter to Sheridans enclosing FSI's letter to the Master, FSI wrote that this was the last day for filing an acknowledgement of service in their defective proceedings and invited Sheridans to withdraw them in default of which they would take steps to obtain an appropriate order.

22. On the 24th November 2005 Shafee & Co wrote to Chooi that they had no instructions to accept service on behalf of Naza Motors. Also on the 24th November 2005 Chooi sent by hand to Naza Motors a letter stating that without prejudice to the service of the 28th October 2005 they requested an appointment with the company secretary or a member of the board so that sealed versions of the process could be handed to them. Also on the same day Sheridans wrote to FSI replying to their letter dated the 21st November 2005 stating that: (1) the allegations of irregularity of service were without foundation; (2) their overriding concern was to ensure that there

was no dispute regarding service which would only serve to significantly increase costs; and (3) for this purpose, since Mr Albon had until the 9th February 2006 to effect service to avoid any disputes, they would ask their agents to re-serve on the Defendants with the claim form not marked "not for service out of the jurisdiction" and any additional fee paid on the Claim form. They indicated willingness to extend time for service of the Defence.

23. On the 30th November 2005 counsel advised Sheridans to re-serve in Malaysia and to include in the documents a translation of the Application Notice.

24. On the 2nd December 2005 FSI faxed to Sheridans a letter stating that: (1) Sheridans had accepted that the proceedings had been invalidly served in Malaysia; (2) Chooi had written to Naza Motors advising them that the documents served were incorrect; (3) the documents delivered to Naza Motor's registered office on the 28th October 2005 were "merely photocopies, various [unspecified] items of which were missing".

25. The same day after receipt of the above fax a telephone conversation took place between FSI and Sheridans and Sheridans replied by fax to the fax from FSI disagreeing that their agents had accepted that the proceedings had been invalidly served and maintaining the opposite; but nonetheless to avoid any issue stating that they proposed to re-serve, and recording that in the telephone conversation FSI had stated that they did not have instructions to accept service for what FSI stated were "obvious reasons". What they were has never been disclosed. I find it difficult to think of any reason other than the perceived advantage to Naza Motors of requiring Mr Albon to incur the cost and expend the effort of surmounting the hurdles in his way to effecting service and of the possibility of Mr Albon failing to do so.

26. On the 5th December 2005 FSI wrote to Sheridans the letter which is central to this application. I shall refer to it as the 5th December Letter. In it FSI said:

"For the avoidance of doubt, you (by your agents in Malaysia, Messrs Chooi & Co) have already accepted that service on the First Defendant is invalid. This can be the only proper interpretation of your agent's admission in a letter dated 24 November 2005 that it failed to a) serve Proceedings on the first Defendant at its proper address for service and b) serve Proceedings sealed by the Court and in accordance with the Order of Master Bragge.

We too want to avoid expensive and unnecessary applications regarding service, hence us raising these issues at this early stage and agreeing with you an extension of time in order to regularise matters….

On further reflection, and recognising that we filed an Acknowledgement of Service (albeit conditional and qualified) and given that it is now common ground that there still needs to be effective re-service on the First Defendant, we suggest the best course now must be for the First Defendant's Acknowledgement of Service to be withdrawn by consent….

A new Acknowledgement of Service can be filed and served as and when proper service of the Proceedings is effected on the First Defendant in Malaysia and subject to the status of service of Proceedings on the Second Defendant being clarified, an Acknowledgement of Service can be filed and served on his behalf at the same time, in order that the Proceedings and foreshadowed CPR Part 11 applications can be heard concurrently, if not resolved in the meantime."

27. A consent order agreeing to withdrawal of the Acknowledgement of Service was signed by both parties on the 5th December 2005, made by Master Bragge on the 14th December 2005 and sealed on the 19th December 2005.

28. By letter dated the 16th December 2005 Naza Motors gave "Notice of Dispute-Conciliation" notice under the JVA seeking resolution of the dispute with Mr Albon.

APPLICATION FOR ALTERNATIVE SERVICE

29. Before I set out the details of the application for the Alternative Service Order I should set out the relevant rule and practice direction. CPR Part 6.8 headed "Service by Alternative Method" reads (so far as material) as follows:

"6.8(1) Where is appears to the court that there is a good reason to authorise service by a method not permitted by these Rules the court may make an order permitting service by an alternative method."

30. The Part 6 Practice Directions reads (so far as material) as follows:

"9.1 An application for an order for service by an alternative method should be supported by evidence stating:

(1) the reason an order for an alternative method of service is sought."

31. By his application notice dated the 10th January 2006 Mr Albon's solicitors on his behalf gave notice of intention to apply for an order that he should have permission pursuant to CPR Part 6.8 to serve "the Claim Form, the Particulars of Claim and other necessary documents" on the Defendants by delivering them to the offices of Shafee & Co at 25A Jalan Tunku, Kuala Lumpur "because the claimant has been unable to effect service upon the Defendants".

32. The application was supported by the 2nd witness statement of Mr Daniel which stated that: (1) he obtained translations of what he considered to be all relevant documents and this did not include the Application Notice; (2) copies of the relevant documents were served at the registered office of Naza Motors, but unfortunately the copy of the claim form served was marked "Not for service out of the jurisdiction"; (3) it initially appeared that Mr Nasim was evading service but Chooi were able to effect service on him on the 22nd November 2005 by an appointment with Shafee & Co at their offices; (4) in his case also the Application Notice was not translated and

the claim form was marked: "not for service out of the jurisdiction"; (5) FSI had raised in both cases the failure to provide the translation and the marking. Mr Daniel went on to say:

"5… In relation to the First Defendant they raise the additional point that service at the registered office of a Malaysian company is not good service. Chooi dispute that this is right as a matter of Malaysian law but it is clearly unsatisfactory that this matter should potentially mean service has been bad…."

33. Mr Daniel exhibited a bundle of correspondence and recorded the unsuccessful efforts made to persuade Naza Motors to accept service. As regards Mr Nasim he stated that he had on the 2nd December 2002 instructed process servers to serve Mr Nasim on his visit to London at his home in London, but that his staff there had said that he had returned to Malaysia and would not be returning until January 2006. He added that service on Shafee & Co would bring the proceedings to the notice of the Defendants.

34. Mr Albon attended by counsel before Master Bragge on the 19th January 2006. Counsel recounted the history of the proceedings and took the Master to what counsel considered to be the relevant correspondence and Master Bragge made the Alternative Service Order as asked. Alternative service was effected in accordance with that order on the 5th February 2006. On the 10th February 2006 the period for service of the proceedings abroad expired. On the 13th March 2006 the Defendants made the application before me to set aside the Alternative Service Order.

DECISION

35. It is necessary to say something on CPR Part 6.8. An alternative service order is an exceptional order. For there to be jurisdiction to make such an order, the court must be satisfied at the time of the hearing before the court that "there is a good reason to authorise service by a method not permitted by these Rules". Once satisfied that jurisdiction exists the court must decide whether in the exercise of its discretion it ought to make the order. At both stages it is of critical importance that the court has in mind CPR Part 1.1(1) and (2).

36. CPR Part 1.1(1) provides that the CPR are a new procedural code with the overriding objective of enabling the court to deal with cases justly. CPR Part 1.1(2) provides that dealing with a case justly includes, as far as practicable, ensuring that the parties are on an equal footing, saving expense, dealing with the case in a way which is proportionate to the financial position of each party and ensuring that it is dealt with expeditiously and fairly. CPR Part 1.1(2) provides that the court must seek to give effect to the overriding objective when it exercises any power given by the Rules or interprets any rule (subject only to one inapplicable exception). CPR Part 1.1(3) imposes a duty on the parties (and by implication on their legal representatives) to help the court to further the overriding objective and extends to requiring them to cooperate with each other in enabling the achievement of the overriding objective.

37. Accordingly the provisions of CPR Part 6.8 and the requirement of a good reason for authorising an alternative method of service must be interpreted and applied in a manner which gives effect to the overriding objective. In particular the court must have in mind the horrendous cost of litigation today, the hurdles thereby created in the way of obtaining justice on the part of those with limited means (and in particular those with limited means facing litigants with abundant means) and the need to ensure that cases proceed expeditiously. The question whether there is good reason is a matter to be determined by the judge at the date of the application on the particular facts of the case before him. It is not a precondition of the making of the order that service by a method permitted by the Rules is impracticable: it is only necessary that there is a good reason to make the order. In deciding what is a good reason the court will have in mind the overriding objective and whether the making of the order will enable the court to deal with the case justly. There is no good reason if the application is made to achieve a collateral object which the Rule is not designed to confer e.g. a step ahead in a race to commence proceedings in this jurisdiction before they are commenced elsewhere. The court will have in mind in circumscribing the ambit of what is a good reason that a finding of its existence is only the first stage in the process: the second stage must then be gone through of deciding whether the court's discretion should be exercised having regard to all the facts including the parties' conduct.

38. Before I consider whether the challenge to the Alternative Service Order in respect of Naza Motors, for the reasons which I have already given I shall first make a few observations about the Alternative Service Order in respect of Mr Nasim. In my judgment there was clearly no good reason to authorise service by an alternative method on him. Mr Nasim was away when the initial effort was made to serve him. There was no justification for any suggestion in Mr Daniel's witness statement that Mr Nasim may have been evading service. The alleged remark by a member of his staff that Mr Nasim would not have seen the process server even if he had been at home (even if it was to be attributed to Mr Nasim, which I doubt) was not unreasonable bearing in mind that the process server apparently turned up without prior appointment. It was no basis for a suggestion that Mr Nasim would evade service. Such an allegation of what is tantamount to dishonesty ought not lightly to be made and ought never to have been made against Mr Nasim and is belied by the facts. For as soon as he returned home, Mr Nasim immediately made himself available for service. When later it became apparent that re-service was required or desirable, there is no reason to believe that he would not have acted likewise. At the very least he should have been asked to do so. The remarkable suggestion on behalf of Mr Albon is that it was for Mr Nasim (in the absence of a request) to volunteer to make himself available for service. There was no good reason for the order against Mr Nasim.

39. I turn to the position regarding Naza Motors. I have set out the lengthy and expensive exercise which Mr Albon has been required to finance and undertake in his efforts to serve proceedings on Naza Motors and most

particularly the protracted "stringing along" of Ms Chin between the 28th October and 24th November 2005 culminating in an assurance that Shafee & Co would accept service followed by a withdrawal of that assurance with no explanation.

40. The (or at least a) reasonable interpretation of the conduct of Naza Motors and their legal advisers, as of their statement that there were "obvious reasons" for the absence of instructions to their solicitors to accept service, was the desire to make life as difficult as possible for Mr Albon whilst protesting the contrary. Support may be found in the contents of FSI's letter dated the 21st November 2005 to Master Bragge stating that service on Naza Motors was defective for the following reasons: (1) non-payment of the fee on the claim; (2) the absence of the original or a translation into Malay of the application for service out; (3) the absence of translations of any of the documents; (4) the claim was on a County Court form; (5) the statement of truth on the claim form was incorrect; and (6) the claim form was endorsed "not for service out of the jurisdiction. Grounds (1), (4), (5) and (6) so obviously lacked any substance that Mr Nathan did not even seek to sustain them. Grounds (2) and (3) depended on whether Malaysian law required translations. There was no evidence before me of any such requirement under Malaysian law. I decline to infer in the absence of evidence spelling out this requirement that Malaysian law laid down any such requirement from the material before me and in particular the fact that translations were provided of the bulk of the Documents. The protestation of prejudice arising from the failure to translate the Application Notice into Malay (that its non-English speaking officers would be disadvantaged) would appear to be exaggerated. It is not stated that there was any need for its non-English speaking officers to be able to read the document in question or that they could not make do with a readily available translation. (It is to be borne in mind that Naza Motors instructed FSI at some date prior to the 21st November 2005, staff in Kuala Lumpur spoke English and the relevant part of the document, if its meaning was not obvious from the supporting witness statement, could be translated quickly and cheaply, if at any cost at all, and certainly at a cost lower than instructing FSI to write their letter of the 21st November 2005.) Support may also be found in FSI's letter dated the 2nd December 2005 in which the complaint is expressed that there were delivered on the 28th October 2005 "merely photocopies, various items of which were missing". The absence of particularisation in the allegation can only be embarrassing. I add the repeated and unjustified assertions in the correspondence that Sheridans and Chooi "conceded" that service on the 28th October 2005 was irregular: the correspondence referred to made no such concession. It is against this background and the background of the history of non-cooperation on the part of Naza Motors (contrasting with the conciliatory stand at all times taken by Mr Albon anxious to resolve any outstanding issue regarding service) and the disparity in their means, that I must turn to the impact of the 5th December 2005 Letter and its sequel.

41. The Alternative Service Order was sought and granted on the ground that Mr Albon had been unable over a substantial period to effect service on Naza Motors, that the six month life of the Claim Form was fast expiring; and that for the first time in the 5th December Letter FSI raised the question whether service at 115 Menara, Kuala Lumpur was service at its proper address for service. The letter had begun (as had earlier letters) with the baseless statement that Chooi had already accepted that service on the 28th October 2005 was invalid. The letter went on that Chooi had accepted that it failed to serve proceedings on Naza Motors "at its proper address for service". Chooi had not so accepted. In any ordinary case it may well be that the reasonable response is merely to write refuting these assertions and proceed with re-service regardless. But against the background of a history of Naza Motors and its legal advisers taking all and any available steps to frustrate proper service, and with the date of expiration of the 6 month period for service ever drawing closer, I think that it was reasonable for Mr Albon to take steps to avoid any further disputes on the issue of service (a goal which FSI had protested was their ambition) by applying and obtaining the Alternative Service Order. The Alternative Service Order in the real world, leaving aside the legal issues involved, was a mere technicality: Naza Motors and their legal advisers had received the relevant documents and knew all about the issues and claims made in the action which, in the absence of disclosure of the claims of Naza Motors in the arbitration proceedings in Malaysia, must be presumed to be mirror images of the issues and claims in the arbitration.

42. I have been concerned at the passage of time between receipt of the 5th December Letter and the date of the application. It is however reasonable to allow a period of time for consideration of the letter, decision-making and instructing counsel to settle the application and evidence in support as well as the Christmas period and in any event the delay does not preclude a finding of the existence of good reason for the order sought and can have occasioned Naza Motors no prejudice. I am not aware that Naza Motors has alleged any such prejudice. It may well be that in this case Mr Daniel has in various respects acted unwisely and that Mr Albon would have been better served by a solicitor with greater expertise and experience in international litigation (a benefit enjoyed by Naza Motors) but the impact of these shortcomings on Mr Albon's part must be determined in the light of the overriding objective.

43. In my judgment the Master correctly held that there was good reason on the 18th January 2006 to authorise service by alternative means. The order put the matter of service beyond doubt and the occasion for further bickering and procrastination on the topic of service: it saved cost (a matter of the greatest moment to Mr Albon though not to Naza Motors) and time and rendered academic any deficiencies in the documents previously served. The order could occasion no prejudice to Naza Motors save the loss of the chance of a windfall if service at its registered office should for any reason be held to be irregular or Mr Albon's resources to finance this action should be exhausted.

44. I am likewise satisfied that in my discretion the Master was correct in exercising his discretion to make the order. It was the order which the overriding objective practically dictated. I would have done likewise. This is a very important case for Mr Albon: the sums at stake (as well as the costs) are critical to his financial survival. The order saved further expense and time, promoted the objective of dealing with the case justly and was necessary to protect Mr Albon whose financial position fighting an immensely wealthy opponent called for such protection.

45. I have considered whether my view of the Alternative Service Order obtained in respect of Naza Motors is and should be materially affected by my view (for the reasons given) that the order ought not to have been obtained in respect of Mr Nasim. After anxious consideration I have concluded that the outcome in respect of Mr Nasim should not and did not improperly affect the outcome in respect of Naza Motors. I recognise that the suggestion made that Mr Nasim might have desired to evade service was without foundation and indeed was unmaintainable in the light of his later agreement to accept service. But the Master was told of this agreement; and there was ample material before the Master on which to make the order against Naza Motors and there is no reason to believe that this suggestion had any part, let alone any significant part, in his decision-making in respect of the order against Naza Motors or should have done so.

46. I have given careful consideration to the question whether CPR Part 1.1(3) has scope for application and can require a party to cooperate in effecting service on him. The conduct of Naza Motors in this regard has in my judgment fallen below the standard to be expected of parties under CPR Part 1.1(3) in purely domestic litigation. Mr Nathan has submitted that for the purposes of the CPR Part 1.1(3) a person cannot become a "party" before he has been served and in support he relied on section 151 of the Supreme Court Act 1981. I do not think that that section provides any support for that proposition: it merely provides that for the purposes of that Act the term "party" includes any person who has been served with notice of or has intervened in the proceedings. The section (so far as it goes) would appear to support quite the contrary and to accord with the indication afforded in the CPR that a person joined as a defendant is a party when a claim is made against him: see CPR Part 2.3 and CPR Part 7.2. Foreigners sued in this country plainly require a degree of protection before any actual or potential challenge to the jurisdiction has been finally and authoritatively resolved and, if the rule does apply in principle, it may require sensitive application in practice. I have not however heard detailed oral submissions on the question of the application of CPR Part 1.1(3) and, as it is unnecessary, it is in my view undesirable to say anything further on it.

47. I have anxiously considered the arguments presented by Naza Motors of failure on the part of Mr Albon to make full and proper disclosure to the Master on the application for the Alternative Service Order. There is no doubt that Mr Albon had the obligation to make full disclosure of what was relevant to decision-making on the issue whether that order should be made. There was no obligation to make full disclosure of what was relevant to the grant of permission to serve outside the jurisdiction or the issues raised by Naza motors in respect of compliance with the obligation to make full disclosure on the application for permission to serve outside the jurisdiction. I am satisfied that there was no relevant non-disclosure, and that, if there was any, it was honest and unintentional and (very much as I decided in the Judgment to reject the challenge to the order giving permission to serve outside the jurisdiction in respect of the UK Agreement) guided by the overriding objective I hold that it would be disproportionate and wrong to set aside the Alternative Service Order on that ground and thereby deprive Mr Albon of the right to proceed with the action and give Naza Motors a totally unmerited windfall.

CONCLUSION

48. I therefore dismiss the application by Naza Motors to set aside the Alternative Service Order.

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Mr Stephen Nathan QC & Dr Colin Ong (instructed by Finers Stephens Innocent, 179 Great Portland Street, London W1W 5LS) for the Respondents