

## FIRST SERVE: IN OR OUT? ENGLISH HIGH COURT OFFERS GUIDANCE ON SERVICE OF PROCEEDINGS IN RUSSIA UNDER THE HAGUE CONVENTION

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In a recent case, *Sloutsker v Romanova* [2015] EWHC 545 (QB), the High Court has ruled that English proceedings were validly served in Russia under the Hague Convention despite a Russian district judge issuing a certificate stating that the documents had not been served.

The claimant issued libel proceedings in the English High Court against the defendant. The claimant was a Russian citizen and a former Russian senator. The defendant was a Russian journalist and citizen and was resident in Moscow. The claim related to articles written by the defendant that had been published in various newspapers and websites.

The claimant obtained permission from the English Court to serve the claim in Russia. The Senior Master sent a request for service under the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial matters (the Hague Convention) to the relevant district court in Moscow.

The Moscow district court then summoned the defendant to attend a service hearing. The summons was sent by telegram and registered mail. A Russian court operative also certified that the telegram had been handed to the defendant in person but that the defendant had refused to sign an acknowledgment. The defendant did not appear at the service hearing.

A Russian district judge then certified, using the standard Hague Convention form, that the documents had not been served due to the non-appearance of the defendant. He returned the request for service to the English court. After this, a Russian advocate personally served the claim form on the defendant on behalf of the claimant.

The defendant disputed that this was valid service under Russian law as the method of service in Russia under the Hague Convention was by summons to court and she had not been summoned. She then applied to the English court for a declaration that the claim had not been validly served and that England was not the appropriate forum in which to hear the proceedings and that the permission to serve out of the jurisdiction should be set aside.

The English Court dismissed the defendant's application. The judge, Warby J, concluded that the claim involved a real and substantial tort in this jurisdiction, and that England was clearly the appropriate place in which to try the claim. He held that, on the facts of the case, the defendant had been validly served in accordance with Russian law and with CPR 6.40(3) (which allows service of English proceedings abroad by any method permitted by the Hague Convention).

Warby J noted the apparent contradiction in finding that the claim had been validly served and the fact that the Russian district judge had certified that the defendant had not been served. However, he relied upon evidence of a Russian legal expert, in particular on a Decree of the Federal Arbitrazh Court of the Urals District, which provided that if a defendant was notified of a service hearing and refused to take receipt of the documents at the service hearing he/she was deemed served with regard to the court proceedings abroad. This decree had arisen out of an attempt to serve on a Russian defendant in relation to English enforcement proceedings.

As to the defendant's assertion that she had not received the telegram, Warby J again relied upon the opinion of the Russian legal expert who stated that the procedural steps taken in the present case up to and including the service of the summons by registered post and by telegram "were sufficient and constitute effective service" under Russian law.

The effect of this evidence was that after the procedural means for notifying the defendant of the foreign proceedings had been exhausted, there was no obstacle to the conclusion that she was deemed served with the proceedings, despite her non-attendance at the service hearing. Further, Warby J also rejected the defendant's evidence that she had not received the telegram containing the summons to the Moscow service hearing, finding that in all probability she had had no intention of attending.

Warby J concluded that the proceedings had been served on the defendant pursuant to Russian law, and hence in accordance with the Hague Service Convention and CPR 6.40. He was fortified in reaching that conclusion by noting that it would be a very strange and improbable gap in Russian procedural law if it permitted a defendant to evade effective service of proceedings by the simple expedient of not turning up at a service hearing.

## COMMENT

This case highlights the fact that in order for the English court to find that proceedings have been validly served in Russia under the Hague Service Convention, it will have to be assured that the proceedings have been served in accordance with Russian law.

The case also provides clarity from an English perspective into the apparent contradiction between the certificate of non-service issued by the district courts charged with service and the finding of the Russian Federal Court that once service of the hearing summons has been effected then, regardless of whether the defendant attends the hearing or refuses to receive the documents, the foreign proceedings are deemed served.

Although this clarity might appear welcoming, one can see that a declaration of non-service from the district court in Russia might cause problems on enforcement. What if the claimant tries to enforce that English judgment in Russia before the same district court? The findings of an English judge are likely to have little or no relevance before a Russian judge, meaning that the underlying Russian law point may have to be argued afresh.

So what lessons can we draw from this?

Firstly, if a defendant in Russia tries to evade service by not attending a hearing when summoned, the Decree of the Federal Arbitrazh Court of the Urals District should be brought to the attention of the judge of the district court, if there is an opportunity to do so.

Secondly, the case reinforces how important it is to keep a good record of all steps taken to effect service in Russia and to notify the defendant of any hearings.

Lastly, although it will not be appropriate or available in all cases (especially in cases where there is no written contract), where you can you should try to employ in a contract an agent for service clause permitting service in accordance with English law on an agent based in this jurisdiction. This should allow for service to take place much quicker than under the Hague Convention and by a method that is less open to challenge or abuse, either in the course of the proceedings or on enforcement.

## CONTACT DETAILS

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