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Case No: BR-2025-000542

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)

Rolls Building
Royal Courts of Justice
7 Rolls Buildings
London EC4A 1NL

Date: 16 June 2026

Before:

INSOLVENCY AND COMPANIES COURT JUDGE GREENWOOD

- -

IN THE MATTER OF GHANIM BIN SAAD MAJID AL SAAD AL KUWARI
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

Between:

EMIRATES NBD BANK PJSC

Petitioner

- and –

GHANIM BIN SAAD MAJID AL SAAD AL KUWARI

Respondent

- -

Mr William Edwards KC (instructed by DWF (Middle East) LLP) for the Petitioner
Mr Alexander Milner KC (instructed by Signature Litigation LLP) for the Respondent

Hearing date: 30 April 2026

- -

JUDGMENT

This judgment was handed down remotely at 10.30am on 16 June 2026 by circulation to the parties or their representatives by e-mail.

ICC JUDGE GREENWOOD:

Introduction

1. On 25 June 2025, the Petitioner, Emirates NBD Bank PJSC ("**the Bank**"), presented a bankruptcy petition ("**the Petition**") against the Respondent, Mr Ghanim Bin Saad Majid Al Saad Al Kuwari ("**Mr Ghanim**"). The Petition was based on an unpaid judgment debt in the principal sum of £16,312,559, default judgment having been entered against Mr Ghanim on 7 February 2025, in proceedings brought in England by the Bank in the Commercial Court. The purpose of those proceedings was to enforce, by common law action on a foreign judgment, a judgment of the Dubai Court of First Instance entered on 5 October 2023 (and subsequently upheld notwithstanding Mr Ghanim's appeals to both the Dubai Court of Appeal and Court of Cassation). Indisputably therefore, the Bank is Mr Ghanim's creditor.

2. On or shortly after 23 May 2025, prior to the presentation of the Petition, a statutory demand addressed to Mr Ghanim had been delivered to three properties in London, each of which is held by a BVI incorporated company, at 36-38 Queen Anne's Gate, SW1, 40 Queen Anne's Gate, SW1, and 42 Queen Anne's Gate, SW1 (together, "**the QAG Properties**"). Valid service of the demand was not in issue.

3. The QAG Properties are without doubt properties on a most grand scale. For example, a valuation produced by Savills dated 6 April 2022, described them as comprising "*a personalised palace in St James Park with a full ancillary staff house and a separate private office*", "*a truly unique and truly "trophy" asset*", worth at that time in the order of £115 million. For the purposes of the application before the court (but, I would emphasise, not otherwise) it was accepted on behalf of Mr Ghanim that the Bank has at least a good arguable case that the QAG Properties are a "*place of residence*" that is his, within the meaning of section 265(2)(b)(i) of the Insolvency Act 1986 ("**the IA 1986**"), and in that sense, that the Bank has a good arguable case that the English court would have jurisdiction to make a bankruptcy order.

4. By virtue of rule 10.14(1) of the Insolvency (England and Wales) Rules 2016 ("**the IR 2016**"), and Schedule 4 to the IR 2016, a bankruptcy petition is treated, for the purposes of service, as a "*claim form*", to be served personally by the petitioner, subject to court

order under paragraph 1(5) of Schedule 4, in cases where personal service is "*impracticable*".

5. In the present case, the Bank made various attempts to serve the Petition on Mr Ghanim personally, on 9-10 July and 15 July 2025, at times when it was accepted on his behalf that he was in England, at the QAG Properties. On 6 August 2025, those attempts having been unsuccessful, the Bank applied for an order allowing for service by an alternative method under paragraph 1(5) of Schedule 4. Its application was supported by the first witness statement of Mr Tarik Sharif, of DWF (Middle East) LLP, its solicitors, also made on 6 August 2025.

6. The first hearing of the Petition was listed at 10:30am on 12 August 2025. However, in advance of that hearing, on 8 August 2025, ICCJ Agnello ordered, without a hearing (having considered the Bank's application and the statement of Mr Sharif) that the Bank was permitted to serve the Petition on Mr Ghanim by various alternative methods comprising advertisement in the London Gazette, various acts to be undertaken at the QAG Properties, and also by sending it by email to certain listed addresses. The hearing of the Petition was postponed. In addition, having been made without notice and without a hearing, the 8 August Order ("**the Agnello Order**") provided that any person affected by it could apply to set it aside, or to vary it, within 14 days of service.

7. Service of the Petition in accordance with the terms of the Agnello Order (which was sealed on 11 August 2025) was effected on 12 August 2025. Mr Ghanim's evidence - not accepted by the Bank - was that by that time, he had left England and returned to Qatar, which is where he is based, and where he lives with his family (although he travels extensively for the purposes of business): he is a Qatari citizen.

8. On 26 August 2025 (albeit not formally issued until 27 August) Mr Ghanim applied to set aside the Agnello Order. It was that application that came before the court on 30 April 2026, and in respect of which this is my judgment.

9. Essentially, on Mr Ghanim's behalf, it was argued:

    9.1. first, that having returned to Qatar, he was not "*present*" (more accurately, that there was no good arguable case that he was present) in England on 8 August

2025, when the Agnello Order was made (or indeed, on 12 August 2025, when the Petition was allegedly served) and that therefore, in the absence of permission to serve the Petition out of the jurisdiction (neither sought by the Bank, nor granted) the Agnello Order ought not to have been made and/or was ineffective, because the court at that time had no jurisdiction in respect of Mr Ghanim; reliance was placed in particular on the decisions of the Court of Appeal in Fridman v Agrofrima Oniks LLC [2026] EWCA Civ 139 and of HHJ Matthews, sitting as a Judge of the High Court, in Broom v Aguilar [2024] EWHC 1764 (Ch); and,

9.2. second, that in any event, alternative service ought not to have been ordered, because the Bank had not shown (or made attempts at personal service sufficient to show) that personal service was "*impracticable*". In particular, it had not attempted (at all) to serve Mr Ghanim personally in Qatar, despite its knowledge that he both resides and has a business address in that country.

10. A third argument, that in support of its application, the Bank had relied on materials improperly obtained from the Court's file in respect of proceedings concerning a statutory demand previously served on Mr Ghanim by Cantervale Limited in February 2022 (but set aside on Mr Ghanim's application) was ultimately not pressed, and I will consider it no further.

11. The Bank's case was:

11.1. first, that service of bankruptcy petitions is not subject to the principles explained in Fridman and Broom, because the court's jurisdiction in respect of a debtor is statutory, conferred by section 265 of the IA 1986, rather than by virtue of service, such that there is no scope for an alternative service order conflicting with rules about service out (as is the case in respect of proceedings commenced by Part 7 Claim Form) or impermissibly conferring on the court jurisdiction (which would ultimately fall to be decided at trial, as for example, in Portrait v Minai [2023] EWHC 1605 (Ch), rather than at the outset of proceedings on a challenge under Part 11 of the CPR);

11.2. second, that in any event, it had a good arguable case that Mr Ghanim was present in England as at the date of the Agnello Order (and it was not said by Mr Ghanim that he was not in England as at the date of presentation);

11.3. third, that if he was not present on 8 August 2025, it was because he had left England in full knowledge of the Petition, and of the Bank's attempts to serve it on him, and in those circumstances, whether he had left in order to evade service (as to which it had a good arguable case) or otherwise, alternative service was permissible, without any need for permission to serve abroad;

11.4. finally, that the evidence justified alternative service: in short, Mr Ghanim is no ordinary person living in unremarkable circumstances, uncomplicatedly amenable to personal service; in England, he owns (or in effect controls) a "*personalised palace*" protected by security staff; once he had decided not to accept (or co-operate in facilitating) personal service, and had instead retreated behind the "*impassable façade*" of his staff, the prospect of successful personal service was fanciful, and further attempts therefore practically pointless.

12. The evidence comprised, in addition to Mr Sharif's first statement, his second statement of 15 January 2026, and on behalf of Mr Ghanim, the first and second statements of Ms Carla Hanna (made on 9 November 2025 and 1 April 2026) and his own first statement, made very recently, on 28 April 2026. Ms Hanna is the General Counsel of Ghanim Bin Saad & Sons Group Holdings ("**GSSG**"). GSSG is owned and was founded by Mr Ghanim; its head office is in Doha, Qatar; according to Ms Hanna's evidence, it is "*the business that takes up most of his time and attention*".

Presentation and Service of a Bankruptcy Petition: the Court's "Jurisdiction"

The Relevant Provisions

13. As I have said, in respect of the court's jurisdiction, the Bank relied on section 265 of the IA 1986, which provides:

> (*1) A bankruptcy petition may be presented to the court under section 264(1)(a) only if -*

(a) the centre of the debtor's main interests is in England and Wales, or

(ab) the centre of the debtor's main interests is in a member State (other than Denmark) and the debtor has an establishment in England and Wales, or

(b) the test in subsection (2) is met.

(2) The test is that—

(a) the debtor is domiciled in England and Wales, or

(b) at any time in the period of three years ending with the day on which the petition is presented, the debtor—

(i) has been ordinarily resident, or has had a place of residence, in England and Wales, or

(ii) has carried on business in England and Wales.

(3) The reference in subsection (2) to the debtor carrying on business includes—

(a) the carrying on of business by a firm or partnership of which the debtor is a member, and

(b) the carrying on of business by an agent or manager for the debtor or for such a firm or partnership.

(4) In this section, references to the centre of the debtor's main interests have the same meaning as in Article 3 of the EU Regulation.

(5) In this section "establishment" has the same meaning as in Article 2(10) of the EU Regulation.

14. As to a bankruptcy petition's service, by virtue of rule 10.14(1) of the IR 2016, a petition must be served by the petitioner on the debtor in accordance with Schedule 4 (to the IR 2016). Paragraph 1 of Schedule 4 states, in relevant part:

"*(2) Service is to be carried out in accordance with Part 6 of the CPR as that Part applies to either a "claim form" or a "document other than the claim form" except where this Schedule provides otherwise or the court otherwise approves or directs.*

...

(5) If for any reason it is impracticable to effect service as provided for in paragraphs (2) to (4) then service may be effected in such other manner as the court may approve or direct.

(6) The third column of the table below sets out which documents are treated as "claim forms" for the purposes of applying Part 6 of the CPR and which are "documents other than the claim form" (called in this Schedule "other documents").

(7) The fourth column of the table sets out modifications to Part 6 of the CPR which apply to the service of documents listed in the first and second columns.

(8) Part 6 of the CPR applies to the service of documents outside the jurisdiction with such modifications as the court may approve or direct."

15. The accompanying table contained in Schedule 4 states that for the purposes of service, a bankruptcy petition is to be treated as a "*claim form*", but that unless the court otherwise directs, it is to be served personally (and to that extent, the provisions of Part 6 are modified).

16. Under CPR Part 6 generally, by virtue of rule 6.5(1), personal service is permitted, but not mandatory, unless "*required by another Part, or any other enactment, a practice direction or a court order*". In practice, mandatory personal service of proceedings and other documents is somewhat exceptional. Usually regarded as the most important example of a situation in which it is made necessary by the CPR concerns applications for contempt of court under the provisions of Part 81, where it acts as an additional procedural protection in circumstances in which a person may be committed to prison. The need for personal service of a petition tends to underline the exceptional and serious nature of a bankruptcy order, which immediately divests the debtor of their property, and which, for example, confers on the court under section 364 of the IA 1986, in certain circumstances, a power to bring about a debtor's arrest, or under section 366, to order that a bankrupt be privately examined and compelled to provide information and documents, without the protection of the privilege against self-incrimination.

17. As to alternative service:

17.1. By virtue of IR 2016, Schedule 4, paragraph 1(5), if for any reason personal service of a petition is "*impracticable*", the court can order that service be effected in some other alternative manner.

17.2. The IR 2016 replaced, with effect from 6 April 2017, the Insolvency Rules 1986 ("**the IR 1986**"). Under those Rules, by virtue of rule 6.14(2), if the court was "*satisfied … that* ***prompt personal service*** [of a bankruptcy petition] *cannot be effected because the debtor is* ***keeping out of the way to avoid service*** *of the petition or other legal process,* ***or for any other cause****, it may order substituted service to be effected in such manner as it thinks just*" (emphasis added). That provision used the language (of promptitude) that had been found in the RSC before 1962 (the effect of the change was discussed by Goulding J in In re Conan Doyle's Will Trusts, Harwood v Fides Union Fiduciare [1971] 1 Ch 982).

17.3. Under CPR rule 6.15, service by an alternative method or at an alternative place is permitted only where there is shown to be "*a good reason*", which is essentially a matter of "*factual evaluation*" for the court: see Barton v Wright Hassall llp [2018] 1 WLR 1119, at [9]-10], *per* Lord Sumption. Although the test under Schedule 4 is differently expressed (and therefore, to that extent at any rate, CPR rule 6.15 is displaced) the essential nature, purpose and ultimate effect of the exercise must be the same: see Re a Judgment Debtor (No. 1539 of 1936) [1937] Ch 137.

17.4. The present CPR rule 6.15 replaced CPR rule 6.8 as it stood before 1 October 2008 (which itself reflected RSC Order 65, rule 4(1), in its final form). That predecessor rule made it necessary to show that service by a prescribed method was "*impracticable*": in other words, it stated the same test as that which is now (still) applicable under IR 1986 Schedule 4, paragraph 1(5). As a matter of language, "*impracticability*" is narrower, certainly less flexible and open-textured, than "*good reason*": in practice, there are likely to be good reasons other than impracticability, but on the other hand, impracticability will often constitute a good reason.

17.5. Thus, in respect of proceedings generally, the test under the RSC was expressed in terms of promptitude (until 1962), then of impracticability (until 2008), and is now expressed in terms of "*good reason*"; in respect of bankruptcy petitions, until 2017, the test was expressed in terms of promptitude, and is now expressed in terms of impracticability.

17.6. Schedule 4, paragraph 1(5), is augmented by the Practice Direction: Insolvency Proceedings [2020] BCC 698 ("**the 2020 IPD**"), which came into effect on 3 July 2020. At paragraph 12.7, it provides as follows:

"*Where personal service of the bankruptcy petition is not practicable, service by other means may be permitted. In most cases, evidence that the steps set out in the following paragraphs have been taken will suffice to justify an order for service of a bankruptcy petition other than by personal service*:

(1) One personal call at the residence and place of business of the debtor. Where it is known that the debtor has more than one residential or business addresses, personal calls should be made at all the addresses.

(2) Should the creditor fail to effect personal service, a letter should be written to the debtor referring to the call(s), the purpose of the same, and the failure to meet the debtor, adding that a further call will be made for the same purpose [at a specified date and time]. *Such letter may be sent by first class prepaid post or left at or delivered to the debtor's address in such a way as it is reasonably likely to come to the debtor's attention. At least two business days' notice should be given of the appointment and copies of the letter sent to or left at all known addresses of the debtor. The appointment letter should also state that:*

(a) in the event of the time and place not being convenient, the debtor should propose some other time and place reasonably convenient for the purpose;

(b) in the case of a statutory demand …;

(c) (in the case of a petition) if the debtor fails to keep the appointment, an application will be made to the Court for an order that service be effected either by advertisement or in such other manner as the Court may think fit.

(3) When attending any appointment made by letter, inquiry should be made as to whether the debtor is still resident at the address or still frequents the address, and/or other enquiries should be made to ascertain receipt of all letters left for them. If the debtor is away, inquiry should also be made as to when they are returning and whether the letters are being forwarded to an address within the jurisdiction (England and Wales) or elsewhere.

(4) If the debtor is represented by a solicitor, an attempt should be made to arrange an appointment for personal service through such solicitor. The Insolvency Rules permit a solicitor to accept service of a statutory demand on behalf of their client but not the service of a bankruptcy petition."

17.7. Ultimately however, the statutory test is one of "*impracticability*", to be established on evidence. Whilst the IPD is consistently referred to by the court, and sets out ("*in most cases*") its usual requirements and approach, each case will nonetheless turn on its own facts.

18. As to service of a petition on a debtor outside the jurisdiction:

18.1. By virtue of Schedule 4, paragraph 1(5), the provisions of CPR Part 6 - including therefore Part IV, which contains the rules relating to service out of the jurisdiction - are applicable. The 2020 IPD merely states, at paragraph 5.2, that "*subject to the Court approving or directing otherwise, CPR Part 6 applies to the service of Court documents … out of the jurisdiction*." Those provisions have been understood to mean that in this respect the court should take the same approach as it adopts on an application made under Part 6 (which is to say that there must be a real prospect of success on the claim; that there must be a good arguable case that the claim falls within a relevant "*jurisdictional gateway*"; and that England and Wales is clearly and distinctly the appropriate forum), but that the requirements of the "*relevant gateway*" are found in section 265 of the IR 1986, rather than in Practice Direction 6B to the CPR (thus, bringing "*service out of the jurisdiction in insolvency proceedings in line with the principles applicable in other court proceedings*": see HRH Prince Hussam Bin Saud Bin Abdulaziz Al Saud v Mobile Telecommunications Company KSCP [2022] EWHC 744 (Ch), *per* Roth J. at [6]-[13], and East Riding of Yorkshire Council

v KMG SICAV-SIF-GB Strategic Land Fund [2023] EWHC 2884 (Ch), *per* Michael Green J, at [20]-[28] (albeit in relation to a winding-up petition)).

18.2. Of course, the mere fact that for the purposes of service out, the court has found that the petitioner has a "*good arguable case*" that the requirements of section 265 are satisfied, does not mean (even if the point was argued *inter partes*) that the debtor cannot raise the same issue (again) at the final hearing, at which, in respect of this question, there may be, and often is, oral evidence, as for example in Portrait v Minai, referred to above at paragraph 11.1.

18.3. Previously, under the IR 1986, by virtue of rule 12A.20, CPR Part 6 applied to service of court documents "*outside the jurisdiction with such modifications as the court may direct*". A bankruptcy petition was treated as a "*claim form*" by virtue of rule 12A.16(3), and therefore, in most cases, the court's permission was required to serve out.

The Purpose and Effect of Service

19. One of the basic functions of service of proceedings (or of a document in the course of proceedings) is to bring the matter or document to a person's attention in fact, so that they know of it, have notice of it, and are given a fair opportunity to respond to it: "*It is a fundamental principle of justice that a person cannot be made subject to the jurisdiction of the court without having such notice of the proceedings as will enable him to be heard. The principle is perhaps self-evident*", *per* Lord Sumption in Cameron v Liverpool Victoria Insurance Co Ltd [2019] UKSC 6, at [17].

20. The position is no different in relation to bankruptcy proceedings. If anything, given the serious nature of their consequences, the need for proper service is guarded with particular care. For example, in Re a Judgment Debtor (No. 1539 of 1936) (referred to above) at [1937] Ch 137, 145, Slesser LJ said:

> "*The general position of a person to whom notice is addressed that legal process may be made against him which may result in consequences prejudicial to him and which in certain circumstances he may be able, by performing certain acts, to avoid, and the position even more generally, is discussed in Porter v. Freudenberg [1915] 1 K. B. 857, and more particularly considered in*

the judgment of Lord Reading, who delivered the judgment of the Court. His Lordship was there considering the conditions under which substituted service might be permitted, a problem which had become particularly acute at the outbreak of the recent War by reason of the fact that service was sought against persons who had thereby become alien enemies; but the observations of the Court are of general application. Lord Reading laid down in general terms what are the considerations which should move a judge in Chambers before whom an application is made for substituted service of a writ, and he said this: First, "to satisfy himself that there exists a practical impossibility of actual service." That matter does not here arise, because clearly on the evidence there was not a practical possibility of actual service, seeing that the debtor, by common agreement, was at the time out of the realm. Next: "To satisfy himself .... that the method of substituted service asked for by the plaintiff is one which will in all reasonable probability, if not certainty, be effective to bring knowledge of the writ or the notice of the writ (as the case may be) to the defendant." Then follow these extremely important words: "Our English procedure has hitherto been laudably superior to the Continental in not permitting that which may be called 'constructive service,' such as, e.g., by public notices or advertisements, whereby a defendant may be condemned unheard because he has had no knowledge of the proceedings against him." Those later words indicate clearly to my mind that the Court of Appeal in Porter v. Freudenberg were considering not only the important problem which was there raised, for the reasons which I have stated, but were considering the general principle of law that the defendant shall not by defective notice be condemned unheard because he has no knowledge of the proceedings against him.

In such a case as the present - and indeed, it may be, in dealing with all instruments which call upon a party to answer a claim at law - one has to consider what exactly the notice to be given calls upon the person served to do, and what rights it gives him. ***In the case of an act of bankruptcy - which is a matter of the most serious public consequence, involving, if it be followed ultimately by a declaration of bankruptcy, deprivation both of public and of private civil rights, disallowing the debtor to serve in public capacities or in either House of Parliament, disabling him from performing public functions,***

and interfering with his ordinary rights as a citizen to make such contracts as he will - the Court should, if anything, be more careful than it might be in ordinary legal process resulting, perhaps in damages, or some other legal consequences. Perhaps one need not say "more careful," because complete care is necessary in every case. In so far, however, as Mr. Tindale Davis has argued that some distinction is to be made in favour of the creditor in dealing with the Bankruptcy Rules in contradistinction to the Rules of the Supreme Court, I say that, if any distinction is to be made, it ought to be made in favour of a more rigorous interpretation of the Bankruptcy Rules , which are in their very nature of a penal or semi-penal character. *In point of fact the principles stated in Porter v. Freudenberg are of entirely general application*." (Emphasis added.)

21. The same strict approach was evident in Regional Collection Services Ltd v Heald [2000] BPIR 661, in which the obligation cast on a putative bankruptcy petitioner to "*do all that is reasonable*" for the purpose of bringing a statutory demand to the attention of a debtor, was described as a "*high one*" by Nourse LJ, at [15]. As in respect of a petition, if practicable, a statutory demand must be served personally: see IR 2006, rule 10.2.

22. Nonetheless, despite the central importance of actual notice, proof that a person (as in the present case) in fact knows of a claim or document (or even has it in his possession) is neither sufficient nor invariably necessary to establish proper, valid service. That is because, for reasons of certainty and predictability, and as described above in the present context, there are particular rules of court that in every case prescribe the methods and manner according to which service is to be effected. Valid, effective service is (only) achieved by compliance with those rules (subject to an order of the court, itself made under the rules).

23. Furthermore, compliance with the rules is important because, in addition to giving a person notice in fact of a claim proceeding against them, service of an originating process or application has another critical function: it is the very foundation of the court's adjudicatory jurisdiction. In Johnson v Taylor Bros. & Company Ltd [1920] AC 144 (a case concerned with service outside the jurisdiction) at 154, Lord Dunedin said:

"*I understand that jurisdiction according to English law is based on the act of personal service and that if this is effected the English law does not feel bound by the Roman maxim "Actor sequitur forum rei." It is far otherwise in other systems where service is in no sense a foundation of jurisdiction, but merely a sine qua non before effective action is allowed. Now service being the foundation of jurisdiction, it follows that that service naturally and normally would be service within the jurisdiction. But there is an exception to this normal rule, and that is service out of the jurisdiction. This however is not allowed as a right but is granted in the discretion of the judge as a privilege, and the rule in question here prescribes the limits within which that discretion should be exercised.*"

24. The same point (as to the court's jurisdiction) was made by Lord Sumption in Cameron (referred to above), at [14]:

> "*... The court generally acts in personam. Although an action is completely constituted on the issue of the claim form, for example for the purpose of stopping the running of a limitation period, the general rule is that "service of originating process is the act by which the defendant is subjected to the court's jurisdiction": Barton v Wright Hassall llp [2018] 1 WLR 1119, paragraph 8. The court may grant interim relief before the proceedings have been served or even issued, but that is an emergency jurisdiction which is both provisional and strictly conditional. In Dresser UK Ltd v Falcongate Freight Management Ltd [1992] QB 502 the Court of Appeal held that, for the purposes of the Brussels Convention (the relevant provisions of the Brussels Regulation are different), an English court was "seised" of an action when the writ was served, not when it was issued. This was because of the legal status of an unserved writ in English law. Bingham LJ described that status, at p 523, as follows:*
>
> > *"it is in my judgment artificial, far-fetched and wrong to hold that the English court is seised of proceedings, or that proceedings are decisively, conclusively, finally or definitively pending before it, upon mere issue of proceedings, when at that stage (1) the court's involvement has been confined to a ministerial act by a relatively junior administrative officer; (2) the plaintiff has an unfettered choice*

whether to pursue the action and serve the proceedings or not, being in breach of no rule or obligation if he chooses to let the writ expire unserved; (3) the plaintiff's claim may be framed in terms of the utmost generality; (4) the defendant is usually unaware of the issue of proceedings and, if unaware, is unable to call on the plaintiff to serve the writ or discontinue the action and unable to rely on the commencement of the action as a lis alibi pendens if proceedings are begun elsewhere; (5) the defendant is not obliged to respond to the plaintiff's claim in any way, and not entitled to do so save by calling on the plaintiff to serve or discontinue; (6) the court cannot exercise any powers which, on appropriate facts, it could not have exercised before issue; (7) the defendant has not become subject to the jurisdiction of the court."

The case was decided under the Rules of the Supreme Court. But Bingham LJ's statement would be equally true (mechanics and terminology apart) of an unserved claim form under the Civil Procedure Rules."

25. Accordingly, if a person cannot be served, it follows that the court cannot exercise its powers in respect of that person.

26. In the present case, as I have said, Mr Ghanim relied on the decision of the Court of Appeal in Fridman (referred to at paragraph 9.1 above). That case concerned the alleged service of a claim form on the defendant, within the jurisdiction, no permission to serve out having been sought or granted, at (what was alleged to have been) his "*usual*" or "*last known*" residence in Hampstead, London, despite the fact that he was an "*excluded person*" within section 8B of the Immigration Act 1971 and was therefore living abroad, not entitled to enter the UK, both at the time proceedings began, and as at the date of their alleged service.

27. In those circumstances, it was held that the defendant had not been validly served. Essentially, that was because there is, it was held, a fundamental rule of both procedure and substantive jurisdiction (unaffected therefore by the CPR) that a person is only amenable to service by whatever means (and therefore in principle, by virtue of such service, subject to the court's power) if either they are "present" within the territorial

jurisdiction, or otherwise, if they are not, it is a case in which service is or has been permitted, for example, by order of the court under CPR rule 6.37, or by agreement, or by virtue of a statutory provision, such as section 1140 of the Companies Act 2006. Broadly, that is because a person outside the territorial jurisdiction is not usually, without more, subject to the powers of the English court.

28. It follows that although the court is of course able to permit, if appropriate, alternative service of proceedings to be effected by means wholly within the jurisdiction, on a person outside the jurisdiction, it can only do so if the case is one in which service outside the jurisdiction would be permitted (or otherwise, for some other reason, service within the jurisdiction is permitted, despite the absence of the person served). A claimant cannot, by seeking permission to serve by alternative means within the jurisdiction, circumvent or outflank the need (if otherwise it exists) to obtain permission to serve outside the jurisdiction: see for example, Marashen v Kenvett [2017] EWHC 1706 (Ch), at [17]-[36], *per* David Foxton QC, as he then was, sitting as a Deputy High Court Judge. In that case, at [19(v)] in setting out his reasons, the judge said:

> "*… there is something unsatisfactory in there being a requirement which it is common ground applies in this case, that the case be a suitable one for service out, without a formal determination of that question in an order which is susceptible to direct challenge. The benefit of analysing a case such as this one as requiring (a) an order for permission to serve out of the jurisdiction; and (b) a decision as to the method of service which allowed service to be effected in the jurisdiction, is that it clearly separates the two different issues under consideration, allowing the resolution of each in accordance with the applicable regime. Thus, as Mr Salzedo QC pointed out, in the present case it should be for the claimant to meet the forum conveniens burden which applies to a party seeking permission to serve out, rather than for the defendant to identify a more convenient forum as is the case when a stay is sought of proceedings commenced by service within the jurisdiction (applying Spiliada Maritime Corp. v. Cansulex [1987] A.C. 460). Similarly, so far as the first issue is concerned, the requirements of CPR Part 11 should be satisfied*."

29. In Broom (also referred to at paragraph 9.1 above), an application was made by a trustee in bankruptcy under sections 339 and 340 of the IA 1986, against the bankrupt's wife.

The application was issued on 29 August 2014. On 4 February 2015, various unsuccessful attempts at service having been made, the court made an order for service of the application by alternative means. By that time however, unknown to the trustee/applicant, the respondent to the application was no longer resident or present in England, having emigrated to Spain with her husband in October 2014 (after the application was issued). The application proceeded to trial, and on 18 March 2015, in the absence of the respondent, an order was made against her for payment of various sums. She applied to set aside that order, including on the basis that the trustee's application had not been validly served on her. It was not a case in which there was permission to serve out. Her application succeeded.

30. In those circumstances, the judge, HHJ Matthews, having considered in some detail the history and authorities, reached the following conclusions:

> *93. In my judgment, the authorities make clear that, in a case where the defendant is in fact outside the jurisdiction, the "fundamental rule" adverted to by Lawrence Collins J in Chellaram and approved in qualified form by the Court of Appeal in SSL International applies. That person is simply not subject to the jurisdiction of the English court, unless brought within the relevant statutory extension to persons abroad. In the present case of insolvency proceedings in 2014-15, the rules governing that extension were contained in the 2014 Practice Direction. But, no permission having been obtained for service on the appellant out of the jurisdiction, that statutory extension did not apply either. So, in my judgment, the court had no jurisdiction over her.*
>
> *94. It is true that rule 6.15 was applied to insolvency proceedings by virtue of rule 7.51 A of the 1986 Rules. It is also true that rule 12A.20 provided that CPR Part 6 was to apply to service outside the jurisdiction. But rule 6.15 is a rule which, as Cadogan Properties, Marashen, M v N, Interbunker Holdings and BBG make clear, can be applied only in relation to persons over whom the court has jurisdiction. As I have said, there are two ways to achieve that. Either the person is physically within the territorial jurisdiction at the time of the order for alternative service, or permission has been given for service of the proceedings on that person out of the jurisdiction under the statutory extension. Rule 6.15 cannot be used as a "bootstraps" argument to create "long-arm"*

jurisdiction, and thus "outflank" the special provisions for permission to be obtained for service out.

95. The respondent pointed to the problem that his predecessor faced in this case. The predecessor trustee did not know, when he applied for and obtained the alternative means service order, that the appellant was no longer within the jurisdiction. In those circumstances, the respondent said, he should be allowed to proceed on the basis that she was still in the jurisdiction at the time. I do not agree. Jurisdiction is fundamental, and the English rules are clear. The court has jurisdiction over a person within its territorial jurisdiction. It also has jurisdiction over persons outside that territory, but only when the statutory conditions are satisfied. Here, no permission having been obtained to serve out, they were not. The English court does not have jurisdiction over persons outside the territory just because the claimant honestly but mistakenly, and even reasonably, believes (if that be the case) that the intended defendant is actually within it. …

...

96 ... By applying for an alternative service order, but not permission to serve out, [the trustee] *took the risk that* [the respondent to the application] *was no longer within the jurisdiction. Unhappily for him, that risk matured.*

97. The consequence is this. At the time that the court made the alternative service order in relation to the appellant in February 2015, it had no jurisdiction over her. Accordingly, compliance with that order could not amount to service of the proceedings upon her under English law. Hence the court on 18 March 2015 had no jurisdiction to make the substantive order which it purported to make. …"

31. In short, in respect of a given person, the English court has no power at all, even in principle, to act, or to determine disputes or make orders, unless that person is either present within its territorial jurisdiction, or the court has given permission to serve that person outside the jurisdiction, or it is a case in which service is otherwise permitted or has been agreed.

The Bank's Case on Jurisdiction

32. In the present case, against that background, the first issue concerned the bankruptcy court's "*jurisdiction*" - a word described by Lewison LJ in Orexim Trading Ltd v Mahavir Port and Terminal Pte Ltd [2018]1 WLR 4847, at [20] (a case involving permission to serve out of the jurisdiction), as "*slippery*" - a word which apart from describing a territory, might be used in various different senses, albeit ultimately all related to the court's power to act in respect of a given person or dispute.

33. As explained, the Bank's argument was that service of bankruptcy petitions is not subject to the principles explained in Fridman and Broom and elsewhere, because the court's "*jurisdiction*" in respect of a debtor is statutory, conferred by section 265 of the IA 1986, rather than by virtue of service, such that there is no scope for an alternative service order conflicting with rules about service out (as in respect of proceedings commenced by Part 7 Claim Form) or impermissibly conferring on the court jurisdiction, which would ultimately fall to be decided at trial.

34. In my judgment, the Bank's argument was wrong because it confused two different meanings of the word "*jurisdiction*", and because (no doubt for that reason) it was contrary to authority.

    34.1. As explained, valid service of an originating process such as a bankruptcy petition is the foundation of the court's adjudicatory jurisdiction – the power to determine (including to dismiss following trial) a given claim in respect of a given person. Section 265 serves a quite different purpose: it defines the varieties of connection between debtor and place (England and Wales) at least one of which must be established, on the balance of probabilities, if a bankruptcy order is to be made. In that sense, section 265 is indeed "*jurisdictional*" (as is, for example, in most cases, valid service of a statutory demand in respect of a liquidated debt in excess of the bankruptcy level: see sections 267 and 268 of the IA 1986). If the petitioner fails ultimately to prove one or other of the relevant geographic connections, the court has no power - no "*jurisdiction*" - to make a bankruptcy order. However, that does not mean that the court will (or that it could or should) assume (adjudicatory) jurisdiction to determine a petition

against a person not present within the (territorial) jurisdiction, and not otherwise capable of being served, without permission to serve out. In respect of such a person, the court simply has no power at all; an application for permission should be made, as in HRH Prince Hussam Bin Saud Bin Abdulaziz Al Saud (cited above); it was not suggested that a bankruptcy petition falls within CPR rule 6.33.

34.2. The Bank's argument would entail the possibility of a debtor not present in the jurisdiction, having to come to the jurisdiction to contest an obviously meritless petition, based for example on an unliquidated debt. The fact that his defence might succeed is beside the point – the court ought not to have assumed jurisdiction to determine his case in the first place. If it determines that it is able to do so, despite the debtor's presence abroad, its decision ought to be embodied in an order that can be challenged by reference to the relevant criteria (as explained in Marashen).

34.3. The point is now clear as a matter of authority, as explained by the Court of Appeal in Fridman. Although that case concerned a Part 7 claim form, there is no reason to think that the same fundamental principles do not apply to bankruptcy proceedings.

The Bank's Further Submissions

35. A further submission made by Mr Edwards KC on behalf of the Bank concerned the possibility of service within the jurisdiction (or logically, outside the jurisdiction, by a permissible method, but without the need for permission) in circumstances where the person to be served has gone out of the jurisdiction in order to evade service, or in any event, has gone out in full knowledge of the claim and of the claimant's wish to serve and pursue it, or perhaps in any event. In that regard, Mr Edwards relied on three decisions of the Court of Appeal, Jay v Budd [1898] 1 QB 12, In re Urquhart (1890) 24 QBD 723, and In re Nelson [1918] 1 KB 459.

36. In the first, Jay, a writ for service within the jurisdiction had been issued against a defendant at that time present within the jurisdiction. The defendant, knowing of the claim (indeed, having himself been handed a copy of the writ) had then gone out of the jurisdiction, albeit not to evade service. Nonetheless, despite his absence, an order for

substituted service within the jurisdiction was held on an *ex parte* application (by a majority, Rigby LJ dissenting) to have been validly made. At [1898] 1 QB 12, 15-16, Lord Halsbury LC explained his decision, which was based on his understanding of the effect and meaning of the rules which enabled substituted service, and on the need in fact to give notice of the claim to the defendant, and provide him a fair opportunity to defend it (rather than by reference to the court's adjudicatory jurisdiction based on service). He said:

> "*Under the old practice, as I have said, great delay and expense were occasioned in bringing before the Court a reluctant defendant, who was not desirous of having the question in dispute brought into court. To avoid the evils attendant on that practice the provisions of the rules on the subject have given power to the Court under certain conditions to order substituted service. The rule provides that, "when service is required, the writ shall, wherever it is practicable, be served in the manner in which personal service is now made, but if it be made to appear to the Court or a judge that the plaintiff is from any cause unable to effect prompt personal service, the Court or judge may make such order for substituted or other service, or for the substitution for service of notice by advertisement or otherwise, as may seem just."* ***The words of the rule only require that it shall "be made to appear to the Court or a judge that the plaintiff is from any cause unable to effect prompt personal service," and I do not feel at liberty to import into the terms of the rule a qualification to the effect that, if the impossibility of effecting personal service arises by reason of the defendant's leaving the country directly after he hears of the litigation, the rule cannot be applied.*** *The rule furthermore makes it the duty of the Court to inquire into the circumstances of the case and make such order as may seem just. No Court or judge would exercise the jurisdiction given by the rule unless satisfied that it was just that there should be substituted service in the manner proposed, or without taking care that full opportunity was given to the defendant of defending the action. In this case I think every element exists which was contemplated by the rule as affording ground for substituted service*." (Emphasis added.)

37. Collins LJ explained his reasons in similar terms at [1898] 1 QB 12, 19: "*The words of Order IX., r. 2, provide for substituted service, if it be made to appear to the Court or a judge that the plaintiff is from any cause unable to effect prompt personal service. The facts of the case clearly bring it within those words. Then, is there anything in any other rule that prevents us from giving their full effect to those words? I cannot find anything*."

38. In the second case, Urquhart, orders for substituted service of a bankruptcy notice and a bankruptcy petition were held to have been validly made under rule 154 of the Bankruptcy Rules 1886, notwithstanding that the debtor (a judgment debtor, who had resided in England, but who was "*a domiciled Scotchman*") was out of the jurisdiction both when the notice and petition were issued, and at the time of the orders). Rule 154 provided that, "*A petition shall be served upon the debtor by an officer or bailiff of the Court, or by the creditor, or his solicitor, or by some person in their employ; provided that, if personal service cannot be effected, the Court may extend the time for hearing the petition, or if the Court is satisfied by affidavit or other evidence on oath that the debtor is keeping out of the way to avoid such service, or service of any other legal process, or that for any other cause prompt personal service cannot be effected, it may order substituted service, to be made by delivery of the petition to some adult inmate at his usual or last known residence or place of business, or by registered letter, or in such other manner as the Court may direct, and that such petition shall then be deemed to have been duly served on the debtor*."

39. At (1890) 24 QBD 723, 725, Lord Esher MR said:

> "*It is said that the registrar had no jurisdiction to make an order for substituted service of the bankruptcy notice, because at the time when the order was made the debtor was not in England. It is said that an order cannot be made for substituted service unless the debtor is within the jurisdiction; so that, if the creditor had known where he was, he could have been personally served with the notice.* ***Is there any such restriction in rule 154? It says that the Court may order substituted service to be made, if it is satisfied by evidence "that the debtor is keeping out of the way to avoid such service." There is nothing in those words to shew that an order for substituted service cannot be made if the debtor is keeping out of the way out of the jurisdiction. There is nothing to confine the words to a debtor who is keeping out of the way within the***

jurisdiction. The words are quite general, and, in my opinion, if the Court is satisfied that the debtor has gone out of the jurisdiction to avoid service, an order for substituted service can be made*. An order for service out of the jurisdiction cannot be made except under peculiar circumstances*." Again, emphasis added.)

40. Fry and Lopes LJJ agreed. At (1890) 24 QBD 723, 726, Lopes LJ said:

> "*Much to my surprise, it has been contended that an order for substituted service cannot be made when a debtor has gone out of this country to avoid service. In Watt v. Barnett, Mellor, J., said (at p. 186): "I think that the object of the 2nd rule of Order IX. was to obviate the difficulties that the plaintiff might be exposed to by reason of a defendant's going abroad and keeping abroad, and it being impossible to effect personal service, and to prevent the plaintiff's right being entirely defeated by reason of these difficulties. It was intended, in my opinion, in such cases to enable the Court to order substituted service, and that when such substituted service is directed it should have all the effects of personal service." Those observations of Mellor, J., have been over and over again approved, and I think the present case is well within them.*"

41. Again therefore, the Court's decision was based on its construction of the relevant rules, and their application to the facts.

42. Finally, the decision in Nelson concerned (amongst other things) substituted service of a bankruptcy petition in England on a judgment debtor at that time an officer in the Army, quartered in Ireland, held to be valid. One of the debtor's arguments (see [1918] 1 KB 459, at 452) was that the procedure for substituted service within the jurisdiction was not applicable to a person out of the jurisdiction "*unless he has gone out of it in order to avoid service*" – it does not appear to have been argued that no such order should have been made because the debtor was abroad. For the most part, the Court's decision concerned the effect in England of the certificate granted by the Court of Bankruptcy in Ireland. The issue of service was dealt with briefly by Swinfen Eady LJ at [1918] 1 KB 459, 466, by reference to the words of the relevant rules. He said simply:

"*It was contended on his behalf that no order could be made in bankruptcy for substituted service of the petition, when the debtor was out of the jurisdiction, unless he was keeping out of the way to escape from service of process. It is true that under r. 156 of the Bankruptcy Rules, 1915, provision is made for substituted service where "the debtor is keeping out of the way to avoid such service": but the rule is not limited to that event; it provides for substituted service if "for any other cause prompt personal service cannot be effected," and r. 158 provides for service where a debtor petitioned against is not in England. Mr. Cutler Smith's evidence established that the registered letters addressed to the debtor at 62, Pall Mall were duly forwarded to him; and when the debtor's solicitors attended on the adjourned hearing of the petition they admitted the debt and the act of bankruptcy, the latter being non-compliance with the bankruptcy notice, which had been sent by registered post as authorized. There was no irregularity in the mode of service of the petition, and the order for substituted service cannot be set aside. On this point the appeal fails*."

43. The Court in Nelson was therefore unconcerned, by reference to the applicable rules, that the debtor had not gone away in order to evade service (and "evasion" was the particular issue raised) – the rules enabled substituted service if "*for any other cause prompt personal service cannot be effected*", and contemplated the possibility of service outside the jurisdiction.

44. In my judgment, these authorities do not assist the Bank in the present case.

    44.1. Mr Milner KC, for Mr Ghanim, did not as such seek to reconcile them with the decision in Fridman, in which none of them were cited; neither are they cited in the current White Book, although I note that Jay and Urquhart were cited in Porter v Freudenberg [1915] 1 KB 857 (which was not itself referred to in Fridman). In Fridman, although the Court of Appeal held that "*temporary absence*" from the jurisdiction was not such as necessarily to negate a person's "*presence*" for the purposes of service (so that "*presence*" was to that limited extent given an expanded meaning) it was said (*per* Lewison LJ at [81]) that "*it seems to me that the concept of temporary absence for this purpose must be kept within relatively narrow bounds*". Plainly, that implies (for example) that a person's permanent absence (for whatever reason, honourable or otherwise,

regardless of their knowledge of the intended or actual proceedings, and regardless of their desire to avoid them) would render service without the court's permission, an impossibility.

44.2. Moreover, the decision in Fridman was based on the absence or presence of the defendant as at the date of service, not issue (although the defendant was in fact absent throughout): as a matter of principle, that makes good sense because it is service (not issue) that establishes the court's jurisdiction (see Barton [2008] 1 WLR 1119 at [8], and Cameron [2019] UKSC 6 at [14], and as explained above) and ordinarily, without more, the English court ought not to assume jurisdiction in respect of a person who is not present within the jurisdiction.

44.3. The decision in Broom (approved in Fridman) was plainly based on the respondent's absence as at the date of service (since she appears to have been present as at the date of issue). Before the introduction of the CPR, if it was intended to serve a writ on a person abroad, it was necessary both to obtain leave to issue the writ in the first place, as well as to serve it; if a person was in fact abroad as at the date of issue, a writ issued for service within the jurisdiction could only be served on him if he came back to the jurisdiction. The date of issue assumed greater significance.

44.4. As to the decisions themselves, Jay was decided on an *ex parte* application, without argument; the submission made on the debtor's behalf in Nelson assumed that service was in principle permissible despite the debtor's absence from England; and in Urquhart, the debtor had departed the jurisdiction and was absent even at the time of issue (which would suggest a principle even beyond the possibility raised by Mr Edwards); none involved a detailed consideration of the principles discussed in Fridman, which reviewed many of the important authorities in this connection. In my view, all three decisions should be understood as having in each case turned on the language, and on the courts' understanding of the meaning and effect, of the relevant rules at that time, and therefore confined to their own circumstances; they do not stand for the broad propositions suggested by Mr Edwards, or embody principles (in respect of "*evasion*" for example) that somehow continue to exist outside those rules.

44.5. In Fridman, at [28], paragraph 1.05 of Professor Briggs' Civil Jurisdiction and Judgments (8th Edition) was quoted. As Professor Briggs said, "*When the relevant committee alters the procedural rules about the service of documents, it is altering the rules which define the international reach, the jurisdiction of the court without any overt recognition that this is what it is doing. It is the strangest thing*…". The rules now applicable to the Bank's petition (the IR 2016 and the 2020 IPD, set out above) plainly contemplate, as I have explained, that if a debtor is abroad, for whatever reason, good or bad, the petitioner should seek permission to serve out of the jurisdiction. In my judgment, the relevant rules do not (and do not purport to) displace the substantive jurisdictional rule explained in Fridman. There is no reason to think that the relevant bankruptcy rules have a more expansive jurisdictional effect than Part 6 of the CPR. Accordingly, a respondent debtor must be "*present*" in the jurisdiction as at the moment of service of the petition (and/or as at the date of an alternative service order – in the present case, as explained below, Mr Ghanim alleges absence on both dates): alternative service within the jurisdiction on a person not present within the jurisdiction (and not therefore susceptible to valid personal service) would plainly serve to circumvent the rules and the need for permission which they make explicit - it is not permissible, and it follows that the Bank's further submissions in this regard were wrong.

Was Mr Ghanim "Present" in the Jurisdiction between 8-12 August 2025?

45. The second issue was whether in any event, the Bank had a good arguable case that Mr Ghanim was present within the jurisdiction as at the date of the Agnello Order. The relevant evidence and facts were as follows.

46. The Petition was presented on 19 June 2025. On 9 July 2025, a process server (Mr McLaren) attended at the QAG Properties. Although he did not appreciate it at the time, he appears to have seen and photographed Mr Ghanim entering 36-38 QAG. When Mr McLaren attended again on 10 July 2025, he was told by a security guard that Mr Ghanim "*does not reside at any of the properties and is currently living in Doha, Qatar*."

47. Mr McLaren provided the security guard with three sealed envelopes addressed to Mr Ghanim at the QAG Properties, each containing a letter of appointment requesting Mr

Ghanim's attendance at 8:30am on "*Tuesday 16 July 2025*" for the purposes of effecting service of the Petition. The security guard told Mr McLaren that he would forward the documents to Mr Ghanim.

48. In fact, 16 July was a Wednesday, and Mr McLaren re-attended the QAG properties on Tuesday 15 July 2025 (not 16 July as he had indicated in his letter). Again, he did not meet with Mr Ghanim but spoke to the same security guard who stated that "*as he had previously said the debtor does not reside in the UK and has not done so for 3 years*". Mr McLaren asked the security guard whether he had forwarded the letters of appointment. The security guard replied that he had not, and stated that the letters of appointment were "*somewhere in a pile of mail*" for Mr Ghanim.

49. Mr Ghanim did not deny that he was in London between 9-10 and on 15 July 2025.

50. On 6 August 2025, the Bank applied to postpone the first hearing of the Petition and for permission to serve by an alternative method. On 7 August 2025, Mr Ghanim's solicitors, Signature Litigation LLP, wrote to the Bank's solicitors, DWF, and said, amongst other things, that it had been instructed by Mr Ghanim on 1 August 2025 for the purpose of challenging the English court's jurisdiction in relation to the Petition, and that although Mr Ghanim had not been served with either the statutory demand or the Petition, he had nonetheless instructed Signature, having come to know of the existence of the Petition by other, informal means.

51. On 8 August 2025, DWF replied to Signature, stating that before receiving their letter, the Bank had already made an application for an alternative service order, and that it was awaiting the court's decision. It enclosed with its letter copies of the Petition and the statutory demand; according to Ms Hanna's evidence, this was the first time that Mr Ghanim had received a copy of either.

52. As I have said, the Agnello Order was made on 8 August and sealed on 11 August 2025; it was served, with the Petition, on the following day, 12 August 2025.

53. Whilst the Bank's evidence in support of its alternative service application (Mr Sharif's First Witness Statement), addressed the issue of Mr Ghanim's residence (and whether the QAG Properties were a "*place of residence*" for the purposes of section 265 of the

IA 1986), it did not state a case in respect of his "*presence*" in the jurisdiction. In making "*full and frank disclosure*", Mr Sharif acknowledged that Mr Ghanim's country of residence was consistently recorded as being Qatar, and that he (Mr Ghanim) would be likely to say at any substantive hearing of the Petition that "*he only visits the UK and is in England for a fraction of the year*" (a statement which Mr Sharif did not say would be untrue, but merely insufficient to prevent a finding that the court has jurisdiction under section 265 based on an English "*place of residence*").

54. Mr Ghanim's evidence, in his witness statement made on 28 April 2026 - very shortly before the hearing - was that he was "*present in Qatar throughout all of August 2025*", having entered Qatar on 27 July 2025, and having stayed there until 2 September 2025. Ms Hanna's evidence on his behalf, was that Mr Ghanim is a Qatari national, living in Doha, Qatar, in a "*very valuable and luxurious property*", worth in the region of US$ 20 million, as "*his and his family's home*". Furthermore, as I said at the outset, that he is the founder and owner of GSSG, and conducts much of its business (which "*takes up most of his time and attention*") from its head office in Doha (where Ms Hanna herself has "*routinely*" met him, as well as "*frequently*", at his Doha residence). She added:

> "*Mr Ghanim's business undertakings require him to travel extensively. In the three years prior to the bankruptcy petition being presented, Mr Ghanim has travelled to approximately 24 different countries on varying numbers of occasions. However, he regularly returns to Doha and stays there for extended periods of time, consistently with Doha being his home.*
>
> *During this period Mr Ghanim has travelled to London on 11 occasions (as well as to Istanbul on 4 occasions, Paris on 3 occasions, Kuala Lumpur on 2 occasions, and single visits to a number of other places around the world). Mr Ghanim's stays in London are usually short. Ordinarily, he will only stay in London for periods of one night to up to one week. For example, on four occasions he stayed between two and six days. As far as I am aware, his longest stays in the last three years have been of 14 and 18 days*."

55. I understood it to be common ground that (other than at trial) in deciding issues of jurisdiction, including where there is a dispute about whether someone has been served within the jurisdiction (see Kaefer Aislamientos SA de CV v AMS Drilling Mexico SA

de CV [2019] EWCA Civ 10, and Boettcher v XIO (UK) LLP [2023] EWHC 801 (Comm)) the court applies a "*good arguable case*" test; it does not decide such issues on the balance of probabilities.

56. That approach comprises the three-limbed test first articulated in Brownlie v Four Seasons Holdings Inc [2017] UKSC 80, meaning, in the present context, that the Bank must supply a plausible evidential basis for the allegation that Mr Ghanim was present in the jurisdiction on 8-12 August 2025; that if there is an issue of fact about that allegation, or some other reason for doubting it, the court must take a view on the material available, if it can reliably do so; but, the nature of the issue and the limitations of the material available at the interlocutory stage may be such that no reliable assessment can be made, in which case there is a good arguable case if there is a plausible (albeit contested) evidential basis for the allegation.

57. In the present case, the issue concerned Mr Ghanim's "*presence*" in England at the relevant time, in the sense described above at paragraph 44.1. That issue was contested by the Bank. The question therefore was whether there was a plausible (albeit contested) evidential basis for the Bank's allegation. In my judgment, on the available evidence, there was not, for the following reasons.

    57.1. First, whether or not any weight ought to be attached to Mr Ghanim's statement, there was no evidence (at all) to support the contention that he was actually physically present in England between 8-12 August 2026; against that, his statement - to the effect that he was in fact in Qatar - was undoubtedly bare, and was unsupported by any document; it was also late; but nonetheless, it was unchallenged, and given Ms Hanna's evidence about his family, property and business interests in Qatar (broadly, his numerous and close connections with that place) it was not, by any means, inherently incredible; on the contrary, it was entirely consistent with Ms Hanna's evidence. Although Mr Edwards made complaint that the statement was served late (and that no weight should be attached to it) the Bank made no application to adjourn the hearing in order to investigate the position further and/or respond.

    57.2. Second, whilst certainly there was a good deal of evidence to support the contention (admitted by Mr Ghanim to be arguable for present purposes, but not

otherwise) that the QAG Properties are his place of residence for the purposes of section 265, and whilst it was accepted that Mr Ghanim was indeed in England during or for parts of July 2025 (including at times when the Bank sought to serve the Petition on him personally), and furthermore, that he travels to England from time to time for various purposes - the evidence did not in my judgment establish, or even plausibly evidence the contention, that he was "*present*" in England at the relevant time, despite a short or temporary absence (such as a holiday, or business trip); to sufficiently support such a contention would require evidence of a more settled or enduring presence within the jurisdiction, even if sometimes temporarily interrupted; by contrast, the evidenced pattern of Mr Ghanim's visits to England (11 stays in 3 years, mostly of less than a week) was not sufficient to make him "*present*" in England at all times, whether or not he can be said to have a residence here (or to establish a good arguable case to that effect).

58. As I have explained, it is not relevant that Mr Ghanim knew (if he did) of the Petition before he left England, or even (for the purposes of determining whether he was "*present*") that he left (if he did) <u>in order to</u> prevent or avoid personal service. In any event, whilst there was evidence that he knew about the Petition before leaving, and that he did not actively facilitate its service, it cannot plausibly be suggested that he left deliberately in order to evade service – there was no evidence whatever to support that contention.

59. In the circumstances, the Bank's second argument fails: there was no good arguable case that Mr Ghanim was present in the jurisdiction at the relevant time

<u>Was Personal Service Shown to "Impracticable"?</u>

60. The final issue concerned the merits of the Bank's application for alternative service. In the circumstances, it was not necessary to consider this point in any real detail.

61. However, in this respect, the particular problem (now) for the Bank is that on my understanding, as explained above, permission to serve outside the jurisdiction ought first to have been sought, and having attempted service in Qatar, as well as in England, the Bank ought then to have sought an order for alternative service. However, service in Qatar was not attempted at all. Whilst I understand the submission that a debtor such as

Mr Ghanim is quite capable of evading personal service if that is what he wishes, it is very difficult to find that personal service in Qatar was impracticable, where it was not even attempted. There was no real evidence of Mr Ghanim's circumstances in Qatar, or for example, of his daily or regular routine/s. Service in those circumstances may well have been impracticable, but it seems to me (in this case at any rate) that it must be at least attempted if that is what the court is going to find.

62. In the circumstances therefore, I will accede to Mr Ghanim's application:

62.1. first, because there was no good arguable case that he was "present" in the jurisdiction at the relevant time; a bankruptcy petition cannot be served on such a person by alternative means within the jurisdiction, without permission to serve out; in consequence, service pursuant to the Agnello Order was ineffective; to adopt the language of HHJ Matthews in Broom - by applying for an alternative service order, but not permission to serve out, the Bank took the risk that Mr Ghanim was no longer within the jurisdiction; unhappily for the Bank, that risk matured; and,

62.2. second, because in those circumstances, in the present case, service abroad not having been attempted, it was not shown that personal service was impracticable.

Dated 16 June 2026