

BRITISH VIRGIN ISLANDS COURT OF APPEAL

Marty Steinberge, Receiver and Lancer Offshore Inc, The Omnifund Limited -v- Swisstor & Co and Wise Global Fund Limited

PROCEDURE - CPR 7.3(3)B - CPR 8.13 - SERVICE OUT - CLAIM "AFFECTING A CONTRACT" - RESTITUTION

The claim was essentially one for repayment of money mistakenly and/or fraudulently paid under a contract. The respondents, Swisstor and Wise Global and others, had invested in funds held by Lancer and Omnifund, which were operated as a Ponzi scheme. Swisstor and Wise Global had benefitted from dishonestly calculated redemptions by several million dollars each. The Receiver began proceedings in the BVI seeking restitution of the moneys paid to Swisstor and Wise Global.

The court below granted the Receiver permission to serve the claim form out of the jurisdiction under Civil Procedure Rules ("CPR") 7.3(3)(b) on Swisstor and Wise Global. Leave was subsequently set aside by the Commercial Judge. The Receiver appealed. The Court of Appeal made three notable findings. First, that the Learned Commercial Judge construed CPR 7.3(3)(b) too narrowly. The Court followed *E.F. Hutton & Co (London) Ltd. -v- Mofarrij* which held that a claim sufficiently "affected" a contract if there was a "sufficient direct link" to the contract. Second, the power in CPR 8.13 to extend the validity of the claim form is only to be exercised for "good reason". Third, that Swisstor and Wise Global had a right to be sued by means of a claim issued within the statutory period of limitation and served within the period of the validity of the claim form.

The Court observed that the statutory limitation period should not be made elastic at the whim or sloppiness of a litigant and the public interest required that claimants adhere strictly to the time limit for service or else provide a good reason for dispensation.

In coming to this decision, the Court applied *City & General (Holborn) Ltd. -v- Royal & Sun Alliance plc* [2010] 131 ConLR; [2010] BLR 639; [2010] EWCA Civ 911.

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