

Dispute Resolution  
Case Law Update  
Rosling King LLP



### Background

Lonestar Communications Corp LLC (the “**Claimant**”) issued a claim for damages against five defendants, resulting from the tort of unlawful conspiracy and unlawful interference with business arising out of alleged cyberattacks. The Claimant made an application to Court pursuant to CPR 6.16, for an order dispensing with service of the claim form on the second Defendant (“**Mr Marziano**”). CPR 6.16 provides that the Court may dispense with service of a claim form in exceptional circumstances. The Claimant also made an application to dispense with service of other documents pursuant to CPR 6.28. In its application to Court, the Claimant submitted that Mr Marziano was aware of these proceedings, and was taking steps to evade service.

The Claimant validly served the First, Third and Fifth Defendants. The Claimant attempted to serve the Second Defendant in Israel through the Hague Convention channels, but these attempts failed. Following this, the Claimant’s solicitors made six attempts to inform Mr Marziano of these proceedings. The first attempt was to seek the contact details of the Mr Marziano from the solicitors acting for the Third and Fifth Defendants, on the basis that Mr Marziano is, or was, or had been the CEO of both of those companies. As a result, the Claimant’s solicitors wrote two letters to DLA, who acted for Mr Marziano in other proceedings, but were informed that DLA were no longer instructed in relation to those matters. The second attempt was made in July 2019, where the Claimant’s solicitors sent a message by Facebook Messenger to Mr Marziano, with evidence showing that message was sent and reached its target. A further message was sent in October 2019 using Facebook Messenger, however this attempt failed. The third attempt used a Flickr account, whereby the Claimant’s solicitors sent two messages via Flickr to inform Mr Marziano of these proceedings on 14 and 24 October 2019. No response was received to the messages.

The Claimant’s fourth attempt used information obtained from the leak of the Panama papers. These papers suggested Mr Marziano had a connection with a company called AMG, which had an address in Anguilla. The Claimant’s solicitors sent a letter to Mr Marziano at the Anguilla address, which arrived on 27 August 2019, but no response was received. The fifth attempt involved Mr Marziano’s personal website, which referred to his connection to a company called Sofixtech which has an address in Israel. The Claimant’s solicitors sent a letter on 17 October 2019 to that address, and delivery of the letter was confirmed on 22 October 2019. The documents were returned by Sofixtech by letter on 24 October 2019, stating that they do not act for Mr Marziano. The sixth attempt to contact Mr Marziano was through LinkedIn. The Claimant’s solicitors sent a request to be connected to Mr Marziano, but the request failed.

### The Decision

The Judge explained that Mr Marziano’s failure to respond to the Facebook messages and subsequent termination of that account, together with the removal of content from Mr Marziano’s personal website indicated that not only is Mr Marziano aware of proceedings, but he is doing his best to evade service. The solicitors acting for the Third and Fifth Defendants sent document preservation notices to Mr Marziano, which would have informed him of these proceedings. Mr Marziano had corresponded with Norton Rose using WhatsApp when they sought his permission to give his Israeli telephone number to the Claimant. There had also

been press reports of the proceedings.

The Court considered the Claimant's application to dispense with service under CPR 6.16, and concluded that exceptional circumstances existed. The Judge decided that proper attempts had been made by the Claimant to serve in Israel using the Hague Convention channels, which had failed. The Judge stated that the Claimant's solicitors had made "heroic efforts" using the internet and social media to establish contact with Mr Marziano and inform him of these proceedings. In the context of CPR 6.16 and the Claimant's application, the Court inferred that not only was Mr Marziano aware of proceedings but was taking active steps to evade service. The Judge also considered the fact that the Claimant gave an undertaking to the Court to continue to take steps to inform Mr Marziano of proceedings.

The Court finally considered whether, in the circumstances, it was fair and just to make the order dispensing with service. The Judge concluded that if the order was not made, there would be prejudice to the Claimants because they would be unable to proceed with their claim against Mr Marziano. In respect of Mr Marziano, the Judge decided that in circumstances where it appears, he was aware of these proceedings and was taking steps to evade service, there can be no prejudice to him in making the order under CPR 6.16. The Claimant also made an alternative application for an order for alternative service both retrospectively and prospectively. The Judge decided that because the forms of alternative service involved the steps already taken by the Claimant (i.e. Facebook, Flickr, letters to AMG), no further method of bringing proceedings to Mr Marziano's attention formed the subject matter of the alternative application. Therefore, it was fair, just and appropriate for the Court to make the requested order under CPR 6.16 and 6.28.

#### Commentary

The Judge's decision in Lonestar Communications serves as a reminder to legal practitioners that the Court's will only grant applications to dispense with service under CPR 6.16 in "exceptional circumstances". It is clear from both the Judge's reasoning, and facts in this case, that whilst the Court has powers to grant both prospective and retrospective service orders pursuant to CPR 6.16 and 6.28, it is likely to require evidence of more than just a failure in the formal routes of service to exercise its discretion.

This decision demonstrates that the Courts, in appropriate circumstances, are prepared to modify the rules on service in accordance with advances in internet and social media platforms. The Judge drew on the Claimant's solicitors proactive attempts to contact Mr Marziano and inform of him proceedings by six different means, using internet and social media, following failure of the conventional Hague method of service. In these circumstances, it is difficult to imagine what further steps the Claimant could have taken to inform Mr Marziano of proceedings. The decision also sends a message to Defendants, who are aware of proceedings, but seek to actively evade service, even by the more unconventional means of service using internet or social media.

For further information, please contact [Georgina Squire](#) or the Partner with whom you usually deal.