

Neutral Citation Number: [2012] EWCA Civ 1569
IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM HIGH COURT OF JUSTICE
CHANCERY DIVISION
THE HONOURABLE MR JUSTICE BRIGGS
[2012] EWHC 1155 (Ch)

Royal Courts of Justice
Strand, London, WC2A 2LL
Date: 29/11/2012

Before :

THE RIGHT HONOURABLE SIR ANDREW MORRITT, CVO, CHANCELLOR OF
THE HIGH COURT, VICE PRESIDENT OF THE COURT OF PROTECTION
THE RIGHT HONOURABLE LORD JUSTICE LONGMORE

and

THE RIGHT HONOURABLE LORD JUSTICE DAVIS

Between:

1) ALFA LAVAL TUMBA AB	<u>Respondents</u>
2) ALFA LAVAL KRAKOW Sp. zo.o (Formerly WYTWÓRNA SEPARATOR KRAKÓW Sp.zo.o)	<u>/Claimants</u>
- and -	
1) SEPARATOR SPARES INTERNATIONAL LTD (In Liquidation)	<u>First</u> <u>Defendant</u>
	<u>Second</u>
2) MARK RICHARD HARDWICK PACY	<u>Defendant</u>
	<u>Third</u>
	<u>Defendant &</u>
3) SEPARATOR SPARES INT. POLAND Sp. Zo.o	<u>Appellant</u>
	<u>Fourth</u>
	<u>Defendant &</u>
4) DANIEL JASIKOWSKI	<u>Appellant</u>

(Transcript of the Handed Down Judgment of
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Official Shorthand Writers to the Court)

Mr Martin Howe QC & Mr James St Ville (instructed by **Adams Solicitors**) for the
Appellants
Mr John Baldwin QC (instructed by **Hogan Lovells International LLP**) for the **Respondents**

Hearing dates: 7th & 8th November 2012

Judgment

Lord Justice Longmore:

Introduction

1. This is an appeal against what the respondents say is a case management decision of Briggs J, dated 4th May 2012, adding a corporate third and an individual fourth defendant to the present intellectual property proceedings, which are claims for breach of copyright and misuse of confidential information and unfair competition. The judge himself granted permission to appeal his decision saying that there was a real prospect of success in relation to the true construction of Section 5 of Council Regulation No 44/2001 (“the Regulation”). His decision is now reported at [2012] FSR 34.
2. The first claimant (“Alfa Laval”) is a Swedish company and the second claimant a Polish company. I shall refer to this company as “WSK”. They make and sell marine separators, which separate oil and water when they get combined on board ships. The individual fourth defendant (“Mr Jasikowski”) was an employee of WSK at all material times until 31st December 2005.
3. The main question is whether the claims for breach of copyright and misuse of confidential information against Mr Jasikowski are “matters relating to [his] individual contract of employment”, within Article 18.1 of the Regulation. If so, the employer may, according to Article 20.1, bring proceedings only in the court of the member state of the European Union in which Mr Jasikowski is domiciled namely Poland. The judge, sensibly following earlier authority at first instance, held that the advantage conferred by Article 20.1 on a defendant employee should be confined to cases where the defendant’s status as an employee was “legally relevant”. He then held that Mr Jasikowski’s status as an employee was legally irrelevant to the claims against him which were claims that he was a party to a common design to misuse the claimants’ intellectual property and held, further, that Article 20.1 did not apply so as to prevent the invocation of English jurisdiction pursuant to Article 6.1 of the Regulation. The question is whether that was correct.

The Alleged Facts

4. I can take these from the judgment. In 2005, immediately before the happening of the matters complained of, the second defendant Mr Pacy was the owner, or at least leading light in the management, of the first defendant Separator Spares International Ltd (“SSI”), a company incorporated in England and carrying on business from trading premises in the Isle of Wight. Its business consisted of (or included) the procuring and marketing of spare parts for Alfa Laval separators. Mr Jasikowski, domiciled in Poland, was an employee of WSK at its premises in Poland. WSK was, or had been, a significant supplier of spare parts for Alfa Laval separators to SSI.
5. During the course of 2005 Mr Pacy and Mr Jasikowski together devised a plan to go into business together for the purpose of supplying spare parts for Alfa Laval separators in competition with the claimants. They recognised that spare parts could be designed and manufactured by reverse engineering (that is from the obtaining, study, and, in effect, copying of spare parts emanating from the claimants), but decided that spare parts could for the most part be made both more cheaply and to a higher quality by obtaining Alfa Laval’s own design drawings, and using those

drawings for the purpose of manufacturing such spare parts. Since they entertained no expectation that the claimants would make those drawings available on attractive terms, if at all, Mr Pacy and Mr Jasikowski resolved to obtain them covertly and unlawfully, by bribing a WSK employee in its drawings office (referred to in the proceedings as Mr X since his identity has never been revealed) to make copies of the drawings available, usually in electronic form, to Mr Jasikowski, with a view to his transmitting them to Mr Pacy at SSI's premises in the Isle of Wight. There it was planned that the drawings would be copied and re-branded so as to appear to be SSI drawings, before being used in commissioning sub-contractors in various locations around the world to manufacture and supply spare parts to SSI's order.

6. It was also part of Mr Pacy's and Mr Jasikowski's original plan that they should set up a corporate quasi-partnership between them in Poland, initially to act as SSI's Polish distributor of spare parts for Alfa Laval separators, receiving therefore the economic benefit of those parts having been manufactured to Alfa Laval drawings, rather than by reverse engineering. The plan involved Mr Jasikowski resigning from his employment with WSK, before establishing the proposed third defendant ("SSIP") as his and Mr Pacy's corporate joint venture vehicle in Poland, at the beginning of 2006. Their scheme necessarily involved keeping secret from the claimants the obtaining, copying and rebranding of their design drawings and, of course, the bribing of Mr X for that purpose.
7. Mr Pacy and Mr Jasikowski's scheme was duly implemented by them, SSI and SSIP. Mr Pacy provided to Mr Jasikowski the funds (or the bulk of the funds) necessary to bribe Mr X, who copied and supplied, mainly in electronic form, Alfa Laval design drawings from WSK's drawings office in Poland to Mr Jasikowski. He transmitted them by various mainly electronic means to SSI and Mr Pacy in England, where they were copied, rebranded as SSI drawings and used as the basis for SSI's subsequent obtaining from sub-contractors all around the world of marine separator spare parts, for the purpose of mounting a business in competition with the claimants' own spare parts business. SSIP was established at the beginning of 2006, following Mr Jasikowski's resignation from WSK. It acted initially as SSI's sales agent in Poland but, in due course, the claimants say that it obtained its own copies of the claimants' design drawings (whether or not rebranded) and also received direct supplies of spare parts from sub-contractors initially engaged by SSI. The illegitimate competitive advantage constituted by the covert use of the claimants' design drawings was in due course supplemented by the covert obtaining and use of additional "non-drawing confidential information" obtained by Mr Jasikowski, consisting of lists of component suppliers to WSK, costings of such components, and information recorded by employees of WSK concerning visits to customers in, for example, Italy.
8. Although the competition of SSI and SSIP in the marine separator spare parts business was apparent to the claimants, they remained unaware of the covert obtaining of their design drawings and other confidential information until they found out about it in two stages. The first was that by April 2006 WSK had discovered that another of its employees, a Mr Fasuga, had made non-drawing confidential information available to Mr Jasikowski for use by SSIP. Although its enquiries suggested that some drawings had been supplied to Mr Jasikowski, they did not (on the claimants' evidence) include drawings sufficient to enable parts to be

manufactured, nor was the link with Mr Pacy and SSI in the illicit obtaining and using of the claimants' design drawings discovered or even suspected at that time.

9. The second stage occurred in late 2007, when a whistleblower within SSI tipped-off Alfa Laval that its drawings were being copied and rebranded as SSI drawings at its premises in England. This led, in April 2008, to the obtaining and execution of a search order at SSI's premises in the Isle of Wight the result of which, despite Mr Pacy's endeavours to frustrate the process, was the discovery of large numbers of Alfa Laval drawings, many rebranded as SSI drawings, together with records of electronic communications between Mr Pacy and Mr Jasikowski recording their planning of the scheme and evidence of the manner in which Alfa Laval's drawings had been obtained by Mr Jasikowski and transmitted to Mr Pacy and SSI. Much of the detail of the claimants' case derives from the materials obtained upon the execution of that search order.

The Litigation

10. Proceedings were issued against SSI on 15th April 2008 and, no later than on reading a disclosure affidavit by Mr Pacy sworn on 18th May, the claimants became fully cognizant of their potential case against Mr Jasikowski. In June 2008 SSI went into administration. Mr Pacy was added as a second defendant in November and, in December, served a one paragraph defence asserting that he had acted merely as a director of SSI throughout, but advancing no other defence or challenge to the claimants' factual case. In April 2009 Mr Pacy received a suspended sentence of committal for breach of the search order. In May SSI was placed into creditors' voluntary liquidation.
11. In March 2010 Mr Pacy's suspension from committal was lifted and he received, and began to serve, a six month prison sentence for contempt. In July the claimants settled with SSI. Nothing of note occurred in the litigation from then until the making of the application to add SSIP and Mr Jasikowski as the third and fourth defendants in July 2011. In the meantime Mr Jasikowski had continued to operate a competing spare parts business for Alfa Laval separators through SSIP, and in due course Mr Pacy re-established himself in that business by incorporating Separator Spares International (UK) ("SSIUK"), again from premises in the Isle of Wight. The judge inferred that the resumption of this litigation from what he called the relative torpor into which it had fallen by 2011 was occasioned by a perception on the part of the claimants that their conduct of the litigation thus far had not put a permanent end to what they continued to regard as the unlawful and unfair competition in the spare parts business which had been facilitated by the obtaining of their design drawings and other confidential information.
12. The claimants' case is that Mr Jasikowski and SSIP have since 2005 continued to make unlawful use of their design drawings and other confidential information to this date. The Polish proposed defendants do not suggest that the facts alleged by the claimants cannot, if Section 5 of the Regulation is inapplicable, properly form the basis of permission to join them as parties and to amend the Particulars of Claim appropriately.

Causes of Action

13. The claimants sought to pursue their claim against the Polish respondents by three causes of action, two pursuant to English law and one pursuant to Polish law. The English law causes of action are breach of copyright and misuse of confidential information. The Polish law cause of action consists of acts of unfair competition contrary to Articles 11 and 23 of the Polish Act on Combating Unfair Competition of 1993 (the “ACUC”). Earlier formulations included additional claims against the Polish respondents, for example for breach of Polish copyright and, in relation to Mr Jasikowski, breach of his contract of employment with WSK. Those have been abandoned, no doubt partly because the claimants recognised that the English court would be likely decline jurisdiction in relation to them under the Regulation.

Jurisdiction against Mr Jasikowski; Section 5 of the Regulation

14. Mr Jasikowski submits that because he was a former employee of WSK, the courts of Poland have exclusive jurisdiction over the claim against him, pursuant to Section 5 of the Regulation, since he is domiciled there.
15. Recital 13 to the Regulation provides that:

“In relation to insurance, consumer contracts and employment, the weaker party should be protected by rules of jurisdiction more favourable to his interests than the general rules provide for.”

Section 5 of the Regulation is headed “Jurisdiction over individual contracts of employment”. Article 18.1 provides that:

“In matters relating to individual contracts of employment, jurisdiction shall be determined by this Section, without prejudice to Article 4 and point 5 of Article 5.”

Article 20.1 provides that:

“An employer may bring proceedings only in the courts of the Member States in which the employee is domiciled.”

16. It was common ground that in claims to which Section 5 (including Articles 18 and 20) applies, no recourse may be had to Articles 5.3 or 6.1, upon which, in the alternative, the claimants’ case for English jurisdiction against the Polish respondents is based: see Glaxo Smith Kline v Rouard (Case 462/06) [2008] 1CR 1375 at 1388 paras 27-31. It was also common ground that Article 20.1 applies, in a proper case, even where the employee’s employment has ceased before proceedings are begun.
17. The first English case to which we were referred and which considered Section 5 and Article 20.1 is Swithenbank Foods Ltd v Bowers [2002] 2 All ER (Comm) 974. In that case, the claimant sued nine defendants, eight of whom had been its employees, for conspiracy to induce breach of contract and (in relation to the eight former employees) for breach of fiduciary duty arising from their contracts of employment. HHJ McGonigal sitting in the Mercantile Court in Leeds held that Section 5 applied to the breach of duty claim, but not to the conspiracy claim. At paragraph 24 he said

that the advantage conferred by Section 5 should be confined to cases where the defendant's status as an employee is legally relevant, and that:

“The contract of employment is relevant, and there is a matter relating to an individual contract of employment, only if the employer is seeking to rely on that contract of employment in order to bring his claim against the employee.”

At paragraph 25 he said that he could see no justification of policy for conspirators, or any tortfeasors, who are employees of the claimant being given jurisdictional advantages not enjoyed by conspirators or other tortfeasors who are not employees of the claimant. At paragraph 26 he concluded that the phrase in Article 18 “in matters relating to individual contracts of employment” only referred to claims which were made under individual contracts of employment. This was the case which Briggs J followed in reaching his decision that Article 20.1 did not apply.

18. HHJ McGonigal expressed his conclusion in the following way:-

“[24] The policy behind section 5 is based on the probability that the employer is financially stronger than the employee. Therefore, if one or other of them has to take proceedings in a foreign court, it should be the employer who has to bear the additional cost and inconvenience involved to ensure, so far as practicable, that the parties are on an equal footing so far as jurisdiction is concerned. The advantage is given to the employee as a member of a class, namely employees, and that advantage should be confined to cases where his status as an employee is legally relevant. Section 5 should not be construed as conferring jurisdictional advantages on a poor defendant sued by a rich claimant if they happen to be employee and employer. The reference to “individual contracts of employment”, rather than to the employment relationship generally, indicates that what is relevant is the contract of employment rather than the relationship generally. The contract of employment is relevant, and there is a matter relating to an individual contract of employment, only if the employer is seeking to rely on that contract of employment in order to bring his claim against the employee.

[25] I can see no justification of policy for conspirators, or any other tortfeasors, who are employees of the claimant being given jurisdictional advantages not enjoyed by conspirators or other tortfeasors who are not employees of the claimant. I accept Mr Jory's submission that section 5 is limited to claims in contract. Article 5 of the Brussels Regulation draws a distinction between “matters relating to a contract” and “matters relating to tort” and the heading of section 5 is “Jurisdiction over individual contracts of employment”.

[26] Accordingly, in my view the phrase “in matters relating to individual contracts of employment” effectively means “where

claims are made under individual contracts of employment”. If a claimant brings to the court a claim against a defendant who is or was his employee which is made independently of the contract of employment, prima facie he should be permitted to bring it in that court if the court would have jurisdiction over that claim if the defendant was not the claimant’s employer. If an employer sought to dress up a claim under an employment contract as one not made under such a contract no doubt the courts would be astute to prevent him. But that is not this case. To interpret the phrase in this way provides a clear test and leads to high predictability regarding jurisdiction.”

19. There are, with respect, difficulties about these paragraphs. The first is the use of the words “legally relevant” in para 24. It is not immediately obvious what that phrase means but Judge McGonigal explains it three sentences later in para 24:-

“The contract of employment is relevant, and there is a matter relating to an individual contract of employment only if the employer is seeking to rely on that contract of employment in order to bring his claim against the employer” (emphasis added).

In other words it comes down to a matter of pleading. If the employer can frame a claim without relying on the contract of employment, any such claim need not be brought in the country of the employee’s domicile.

20. This is made even clearer in para 26 where Judge McGonigal says (logically enough in his own terms) that in his view the phrase “in matters relating to individual contracts of employment” effectively meant

“where claims are made under individual contracts of employment.”

If by that the learned mercantile judge is drawing a distinction between claims made “under” the contract and claims “arising out of” or “in connection with” the contract, that is a distinction which has become impermissible at any rate as a matter of English law since Fiona Trust and Holding Corp v Privalov [2007] Bus L.R. 1719.

21. Briggs J in the present case (para 31) thought that the concept of “legal relevance” did not mean that Section 5 and Article 20.1 were necessarily confined to claims “under the employment contract”. This shows that Briggs J was himself aware of some difficulty with Judge McGonigal’s formulation, but he (Briggs J) did not feel able to dispense with the concept of “legal relevance” completely. If, however, the concept of “legal relevance” does not mean that a claim which can be formulated without relying on the contract of employment is not caught by Article 20.1, it is unclear, to me at any rate, what the concept of “legal relevance” does mean.
22. That it does so mean is confirmed by Judge McGonigal’s acceptance of Mr Jory’s submission that Section 5 is limited to claims in contract. He explains that Article 5 of the Regulation draws a distinction between “matters relating to a contract” and “matters relating to tort”. So it does. But I do not think it follows that Article 20.1

applies only to claims which are expressly formulated in contract and cannot apply if an agile pleader can plead his case in tort or restitution or some other way.

23. The artificiality of Judge McGonigal's approach is aptly demonstrated by the pleadings in this very case. When Alfa Laval's General Counsel formulated the company's Particulars of Claim it was, naturally enough, full of allegations about Mr Jasikowski's contract of employment and his breaches of it. It is only by careful and intricate amendment of the Particulars of Claim that a claim in tort for breach of copyright and for misuse of confidential information has been able to emerge. These pleaders' "games" are somewhat inevitable if Judge McGonigal's construction of Section 5 is correct.
24. For these reasons I find it impossible to accept Judge McGonigal's "legal relevance" as the appropriate test to apply to claims brought by an employer against an employee pursuant to Section 5. It is much better to stick with the actual words of Article 18.1 and ask oneself the question

"Do the claims made against an employee relate to the individual's contract of employment?"

25. This is a broad test which should be comparatively easy to apply. The Chancellor indicated in argument that (without proposing a test of any kind) it might in many cases be helpful to ask whether the acts complained of by the employer constitute breaches of contract by the employee. If so, the claims would be likely to "relate" to the contract of employment. If not, not.
26. It is clear that the allegations in the present case do, if substantiated, amount to breaches of Mr Jasikowski's contract of employment. The misuse of confidential information is actually dealt with in the Employees Handbook which is part of the contract of employment made between WSK and Mr Jasikowski.
27. This contract provided in clause 4 that the employee was obliged to comply with the internal rules of employment and internal orders. The evidence was that this was a reference to WSK's "Employment Regulations" which in General Provision No. 6 set out the basic duties of an employee including:-

"5. Care for the good of [WSK], protect its property and keep secret information whose disclosure could expose [WSK] to a possible loss."

For good measure General Provision No. 25 provided:-

"It is also not permitted to remove from [WSK] objects and documents intended for official use without authorisation from the authorised head of departments or a permit for the use of materials."

No doubt these provisions only make explicit what would anyway be implicit in Mr Jasikowski's contract of employment as part of his implied obligation of fidelity to his employer.

28. If the facts alleged are proved, the misuse of confidential information and the breach of copyright would be breaches of these provisions. It cannot, in my judgment, be right that merely because the claims for such misuse and breaches can also be framed in tort or delict that Article 20.1 does not apply. To so hold would be to emasculate it.
29. Mr Baldwin QC for Alfa Laval submitted that Article 20.1 amounted to a provision for a special jurisdiction and therefore had to be narrowly construed. He cited para 28 of Glaxo Smith Kline v Rouard for this proposition. The question in that case was whether Article 6(1) of the Regulation (the terms of which are set out below) could be invoked against an employer or whether Section 5 of the Regulation dealing with employment prevailed. The European Court of Justice concluded that Article 6(1) was a rule of special jurisdiction because it enabled proceedings to be brought against a defendant in a country other than his domicile. It was that provision which had to be strictly construed so as not to prevail over the rule of jurisdiction in employment case contained in Section 5 of the Regulation. Even if (which I doubt) Section 5 does in general contain rules of special jurisdiction which have to be strictly construed, Article 20.1 does not require a strict construction since, in cases brought against an employee, it provides for the normal rule that a defendant must be sued when he is domiciled.
30. Mr Baldwin also submitted that Article 20.1 only applied where the employee was sued qua employee and not in a case where wrongs were committed to which the employment of the employee was merely incidental. He supported the judge's conclusion (para 31) that the substance of the claim would be the same whether the opportunity to bribe Mr X occurred while they were working at WSK's premises or during shared leisure activities.
31. Insofar as this constitutes a test for the application of Article 20.1, I do not regard it as any more helpful than the test of "legal relevance" and I would reject it for similar reasons. In one sense any employee who acts in breach of contract is not acting qua employee but it is in just those circumstances that the employer will be suing the employee in the first place. Moreover, on any fair view of the matter, an employee's duties do not subsist only if he is actually on his employer's premises. If the plot between Mr Jasikowski and Mr X (his fellow employee) was hatched during a tennis match, the plot relates to Mr Jasikowski's individual contract of employment just as much as it would if hatched in the company canteen.
32. It must follow that to the extent that subsequent cases at first instance have followed Briggs J's decision in this case, (e.g. CEF v Munday [2012] FSR 35 and Sibir Energy Ltd v Tchigirinski & ors [2012] EWHC 1844) they should no longer be considered authoritative.
33. For these reasons (and in respectful disagreement with the judge) I would hold that Mr Jasikowski can only be sued in Poland and that his joinder in England on the basis of Article 6(1) cannot be supported. That joinder will, therefore, have to be set aside.
34. That still leaves the question whether the joinder of SSIP alone can be supported pursuant to Article 6(1). The judge thought that, once it was decided that Article 20.1 did not apply to Mr Jasikowski it was expedient to allow proceedings against both SSIP and Mr Jasikowski to be joined to the proceedings against Mr Pacy. But he did

not exercise any separate discretion on the basis that he might be wrong about Mr Jasikowski and it is therefore up to this court to exercise the appropriate discretion.

Article 6.1

35. Article 6.1 of the Judgment Regulation provides that a person domiciled in a Member State may also be sued:

“Where he is one of a number of defendants, in the courts for the place where any one of them is domiciled, provided the claims are so closely connected that it is expedient to hear and to determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.”

The judgment of the Court of Justice (Third Chamber) in Painer v Standard Verlags GmbH & ors (C – 145/10) contains, at paragraphs 74 to 84, a useful summary of the jurisprudence on Article 6.1. In particular, it is clear that the invocation of this exception to the requirement to sue a defendant where he is domiciled does not require it to be shown that the case against him and the other defendants has the same legal basis, if there is a sufficiently close factual connection between those claims to give rise to a sufficient risk of irreconcilable judgments if pursued in separate Member States.

36. For myself, however, I cannot see that it would be expedient for proceedings against SSIP to be joined to what is effectively a dormant case against Mr Pacy when any proceedings against Mr Jasikowski have to take place in Poland. Joining SSIP in England will not avoid the risk of irreconcilable judgments because that risk will exist in any event once proceedings against Mr Jasikowski are begun in Poland. It is true that there are no current proceedings against Mr Jasikowski in Poland, but Alfa Laval have not said that they will not proceed against Mr Jasikowski there; on the contrary they have at all times expressly reserved their right to do so.
37. The fact that some of the acts complained of as against SSIP may have taken place in England or have had consequences in England does not make any difference to this conclusion since on any view much of the activity also took place in Poland.

Limitation

38. The appellants had a further ground of appeal in relation to the judge’s decision in para 38 of his judgment that they had no arguable answer to a case of deliberate concealment sufficient to postpone the running of the six year limitation period until 2008 when the search order was executed. Since, however, the proceedings against both appellants will have to be set aside, that argument has become academic and I need say no more about it.

Conclusion

39. I would therefore allow this appeal and set aside the order of the judge joining the appellants as third and fourth defendants.

Lord Justice Davis:

40. I agree that the appeal should be allowed for the reasons given by Longmore LJ. I add a few observations of my own on the Article 18 point.
41. The difficulty in the approach of the judge and of Judge McGonigal before him, as it seems to me with all respect, is that in effect it substitutes for the task of interpretation required (namely, to construe the phrase “In matters relating to individual contracts of employment” as contained in Article 18.1) a different task of interpretation: namely, to construe “legally relevant”. But what does “legally relevant”, for this purpose, mean?
42. Mr Baldwin, in his initial oral submissions, frankly stated that he was minded to acknowledge that there was difficulty in determining the ambit of “legal relevance” if that was the sole test for this purpose. His initial submission was that whatever way one looked at it there was no connection of *any* kind, whether legal or factual, between the contract of employment of Mr Jasikowski and the claims advanced by the claimants in the latest amended Particulars of Claim. But Mr Jasikowski’s status as employee was directly and substantially material in point of fact to the claim advanced: it is wholly artificial to say otherwise. I simply do not accept Mr Baldwin’s submission that Mr Jasikowski’s status as employee (until December 2005) was “merely an incidental part of the story”.
43. On that basis, Mr Baldwin necessarily had to retreat to seeking to uphold the “legal relevance” test as proposed by the judge. For the purpose of his argument, he therefore focused on the actual pleading of the amended Particulars of Claim. But I do not see that that approach is either required or justified by the wording of Article 18.1 itself. It is true that in the *GlaxoSmithKline* case it is indicated that rules of special jurisdiction are to be interpreted strictly. But that does not require ignoring the evident purpose behind the Council Regulation as exemplified in recital (13). Nor does it require giving Article 18.1 itself an interpretative gloss significantly more restrictive than the actual language connotes. “Relating to”, in the context of Article 18.1, are broad and unqualified words of nexus and do not require artificial limitation, even though it may be accepted that the nexus must be material.
44. Mr Baldwin’s argument, and the judge’s approach, has the consequence in effect of requiring the meaning and application of Article 18.1 to be looked at through the prism of English law. Thus it was that Mr Baldwin repeatedly emphasised – had to emphasise – that no element of the amended Particulars of Claim, setting out the causes of action pleaded and remedies claimed, involved as a matter of law reliance on Mr Jasikowski’s contract of employment: precisely why, of course, the amended Particulars of Claim were skilfully drafted as they were. But it is to be apprehended that not all member states have the strict pleading requirements generally applicable under the law of England and Wales, and in my view it is necessary to have regard to the substance of the matter in each case. These provisions in the Council Regulation have their own autonomy and are not, in my view, to be interpreted parochially in a way designed to accord with the strict pleading requirements of the law of an individual member state.
45. Once the conclusion is reached – as, in my judgment, in the present case it has to be – that Article 18.1 and Article 20.1 here apply then it seems to me that effectively also has the consequences with regard to the other grounds of appeal which Longmore LJ has set out.

The Chancellor:

46. I agree that this appeal should be allowed for the reasons given by Longmore LJ. I also agree with the order he proposes and the further comments of Davis LJ.