DOLMANS INSURANCE BULLETIN

Welcome to the August 2021 edition of the Dolmans Insurance Bulletin

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If there are any items you would like us to examine, or if you would like to include a comment on these pages, please e-mail the editor,
Justin Harris, Partner, at **justinh@dolmans.co.uk**

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REPORT ON

Section 41 of the Highways Act 1980 - Defendant's Duty to Maintain and Other Issues

TM v Caerphilly County Borough Council

The duty to maintain highways under Section 41 of the Highways Act 1980 is well recognised. However, this duty does not extend to improvement of the highway. This argument, along with several other more usual arguments, was considered by the Court in the case of *TM v Caerphilly County Borough Council*, in which Dolmans represented the Defendant Authority.

Background and Allegations

The Claimant alleged that he was *"proceeding"* down a street (under the Defendant Authority's ownership and control), when he felt his foot come into contact with the edge of a concrete slab that caused him to trip and fall. The Claimant's alleged accident had occurred several years prior to Trial, when he was a minor. However, he was no longer a minor at the time of the Trial.

The Claimant alleged that the Defendant Authority was negligent and/or in breach of Section 41 of the Highways Act 1980.

The Defendant Authority argued from the outset that the concrete slab, which had previously formed the base for a grit bin and/or bench, was not part of the adopted highway and was located on a grass verge just off the footway that was a highway maintainable at the public expense.

The Defendant Authority raised several inconsistencies regarding the mechanics of the Claimant's alleged accident and the Claimant was put to strict proof as to factual causation. However, it was evident that the outcome would effectively depend upon the arguments regarding the location of the concrete slab, the extent of the Defendant Authority's duty and whether it was dangerous.

Extent of the Adopted Highway - Claimant's Arguments

The Claimant argued that the concrete slab bordered, if not intruded upon, the adopted highway and that it was entirely possible that a person proceeding properly along the adopted footway may come into contact with the concrete slab. The Claimant also argued that the boundary of the adopted highway was not clear, that the Defendant Authority was responsible for the concrete slab anyway and that it had the ability and authority to remove the concrete slab as it was removed following the Claimant's alleged accident. It was also argued that the grit bin and/or bench that had previously been placed on the concrete slab were both public goods for which the Defendant Authority was responsible.

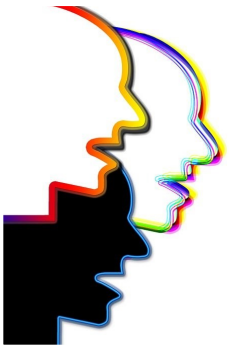
The Claimant also argued that the highway does not merely constitute that which is made of tarmac, asphalt, paving slabs, etc, and that a grass verge is as much part of the highway as is a road between the kerbstones, although it was accepted that they do not have to be maintained to the same standard as the metaled highway.

The Claimant sought to rely upon the decision in *West Sussex County Council v Russell [2010] EWCA Civ 71* where liability against a Highway Authority had been found for failure to remedy defects in the height of a verge, and upon *Rider v Rider [1973] 1 QB 505* which referred to the condition of the verge where it bordered the road.

The Claimant submitted that, at the least, the concrete slab constituted a defect in the verge bordering the footway.

Extent of the Adopted Highway - Defendant's Arguments

The Court was asked to consider the nature and character of the highway adjacent to the concrete slab and reference was made by the Defendant Authority to various Google Street View images from September 2009 and May 2016.



The Defendant Authority was able to adduce a plan indicating the extent of the adopted highway and argued that the concrete slab was not on the adopted highway, but was positioned on the adjoining grass verge.

The Defendant Authority reminded the Court that it is for the Claimant to prove that the alleged accident occurred on a highway maintainable at the public expense. It was argued that the Claimant had failed to do so and that the Defendant Authority had provided evidence to indicate that the concrete slab was not part of the adopted Highway.

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REPORT ON

Section 41 – Duty to Maintain

In the event that the Court was persuaded that the concrete slab was part of the adopted highway, the Defendant Authority argued that Section 41 of the Highways Act 1980 related to maintenance, whereas the concrete slab had not arisen due to a failure to maintain. Effectively, the Defendant Authority argued that the Claimant was suggesting that the highway should have been improved, rather than maintained.

The Defendant Authority relied upon several cases in support of its arguments as follows:

- *Gorringe (by her Litigation Friend Todd) v Calderdale Metropolitan Borough Council [2004] UKHL 15* in which it was held that a Highway Authority does not have a legal duty to a Claimant to improve the highway, only to maintain the existing highway.

- *Thompson v Hampshire CC [2004] EWCA Civ 1016* and *Gorringe (by her Litigation Friend Todd) v Calderdale Metropolitan Borough Council [2004] UKHL 15* in which it was held that there is no legal duty to a Claimant to fence a previously unfenced highway.

- *Thompson v Hampshire CC [2004] EWCA Civ 1016* in which it was held that a Highway Authority is not responsible in law for a highway's layout. It's duty is to maintain the existing lay out.

- The duty under Section 41 of the Highways Act 1980 did not extend to adding road signs or markings per *Goodes v East Sussex [2000] 1 WLR 1356* (a pre-Section 41A snow and ice case), but one which underlines that the duty is to maintain the fabric of the existing road.

It was not alleged that the concrete slab had deteriorated or broken. The Claimant merely complained about a difference in height between the concrete slab and the adjoining footway. The Defendant Authority argued that there is no duty to make a highway flush with the surrounding land and that such a duty would cause unlimited problems. Even if the concrete slab was part of the adopted highway, it was argued that there is no legal duty to level existing differences in height of highways. Instead, it was argued that the duty extends to addressing differences in height that arise from a duty to maintain.

Dangerousness – Claimant's Stance

The Claimant referred again to the decision in *Rider v Rider [1973] 1 QB 505* when quoting Sachs LJ who had stated that the Authority's statutory duty was *"… reasonably to maintain and repair the highway so that it is free of danger to all users who use that highway in the way normally to be expected of them … Motorists who thus use the highway, and to whom a duty is owed, are not to be expected by the Authority all to be model drivers. Drivers in general are liable to make mistakes, including some rated as negligent by the Courts, without being merely for that reason stigmatised as unreasonable or abnormal drivers … The Highway Authority must provide not merely for model drivers, but for the normal run of drivers to be found on their highways, and that includes those who make the mistakes which experience and common sense teaches are likely to occur."*

The Claimant submitted that the same logic applies to pedestrians' use of the footway and that it is entirely foreseeable to imagine a pedestrian, such as a child in this particular matter, 'cutting the corner' and crossing the path of the concrete slab.

The Claimant argued that the Defendant Authority appeared to have predicated its assessment of dangerousness on the assumption that the model pedestrian would proceed along the highway at a leisurely pace.

The Claimant reiterated the allegation that the concrete slab was dangerous as it was partly obscured by grass and that the concrete slab would have previously been more apparent when the grit bin and/or bench were in situ, there was no signage to warn of the concrete slab and that the height of the concrete slab exceeded the Defendant Authority's intervention level for the adjoining footway.

Dangerousness – Defendant's Stance

The various 'tests' for dangerousness were considered in the July 2021 edition of Dolmans' Insurance Bulletin (*KI v Monmouthshire County Council*) and the case authorities referred to therein were as applicable and relied upon in the current matter, including the following:

- *Meggs v Liverpool Corporation [1968] 1 WLR 689* in which it was held that *"everyone must take into account the fact there may be unevenness here and there."*
- *Littler v Liverpool Corporation [1968] 2 All ER 343* where it was stated that *"a highway is not to be criticised by the standards of a bowling green."*
- *James & Thomas v Preseli Pembrokeshire District Council (1993) PIQR P114* in which it was maintained that *"the test of dangerousness is one of reasonable foresight of harm, but in drawing the inference of dangerousness the Court must not draw too high a standard."*
- *Dean & Chapter of Rochester Cathedral v Debell [2016] EWCA Civ 1094* in which the Court of Appeal summarised highways' and occupiers' case law in assessing the dangerousness or otherwise of a cathedral precinct, finding that *"The authorities suggest that ultimately it is the test of reasonable foreseeability, but recognising the particular meaning which that concept has in this context. The risk is reasonably foreseeable only where there is a real source of danger which a reasonable person would recognise as obliging the occupier to take remedial action. A visitor is reasonably safe notwithstanding that there may be visible minor defects on the road which carry a foreseeable risk of causing an accident and injury."*

The Defendant Authority argued it was not sufficient to show the Claimant fell in order to prove dangerousness, nor is it sufficient to prove the presence of a defect or defects elsewhere.

In concluding its arguments as to dangerousness, the Defendant Authority also maintained that the Claimant's measurements were inadequate, that there were no previous complaints and/or accidents relating to the concrete slab, that there was a footway available on the opposite side of the road, that the grassed area upon which the slab was situated did not form an access point for other areas and that the concrete slab was removed following the Claimant's alleged accident merely as a goodwill gesture.

REPORT ON

Judgment

The Trial Judge found the Claimant to be an honest witness and that the concrete slab had been the cause of the Claimant's alleged accident.

The Trial Judge emphasised that the Claimant's claim was being pursued under the Highways Act 1980 and not the Occupiers' Liability Act 1957. In addition, negligence was alleged, but not nuisance, and the burden of proof was upon the Claimant.

It was held, however, that the Claimant had not produced any evidence to dispel the Defendant Authority's argument throughout that the concrete slab was not part of the adopted highway and not a highway maintainable at the public expense.

In addition, the Trial Judge held that there was no danger present that would have placed a duty upon the Defendant Authority under the Highways Act 1980 and there was no reasonable prospect of any such danger. The Trial Judge referred, in particular, to the lack of any previous complaints and/or accidents.

The Claimant's claim was, therefore, dismissed and the Trial Judge went further stating that the claim would have failed even if brought under other heads, presumably such as the Occupiers' Liability Act 1957.

Conclusion

On the face of it, this matter appears to be a relatively straightforward highways tripping case. However, several interesting arguments arose, notably the extent of the Defendant Authority's duty under Section 41 of the Highways Act 1980.

With a carefully pleaded Defence that emphasised the Defendant Authority's stance from the outset, together with appropriate documentary evidence and supportive witness evidence, the Defendant Authority was able to persuade the Trial Judge that the concrete slab was not on the adopted highway and was not dangerous in any event. However, had the Claimant pleaded breach of the Occupiers' Liability Act 1957, the Trial Judge was satisfied that the Claimant's claim would even have failed in those circumstances.

This particular matter proceeded as a split trial on liability only as the Claimant's medical evidence was incomplete. Had the Claimant been successful, it was envisaged that additional medical evidence would have been adduced at a later stage, increasing the potential value of the Claimant's claim and possibly reallocation to the Multi Track. As such, the dismissal of the Claimant's claim resulted in a substantial saving for the Defendant Authority, not only in respect of the Claimant's damages and costs incurred to Trial, but also the future increase in damages and costs, had liability been found in the Claimant's favour.

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RECENT CASE UPDATES

Fatal Accidents Act 1976 - Financial Dependency

Paramount Shopfitting Company Limited v Rix [2021] EWCA Civ 1172

The High Court decision in this case was reported upon in the September 2020 edition of Dolmans' Insurance Bulletin.

The Claimant's husband, 'R', died of mesothelioma contracted from his exposure to asbestos while working for the Defendant, 'D'. After leaving D's employment, R had built up a successful business in which he and the Claimant, 'C', each held 40% of the shares with their two sons each holding 10%. R took a salary and a dividend. C did not work for the business, but was a Director and took a salary and a dividend as a tax efficient way of taking money out of the business. C inherited R's shareholding. The sons took over the business after R's death and the business became more profitable.

C made a financial dependency claim. C's primary contention as regards quantification was that her financial dependency should be calculated by reference to her share of the annual income which she and R would have received from the business had R lived ("Basis 1"). An alternative contention was that C's financial dependency should be quantified by reference to the annual value of R's services to the business as Managing Director, calculated by reference to the cost of employing a replacement ("Basis 2"). D denied that there was any claim for financial dependency because the business had been more profitable after R's death than before. D submitted that C's interest in the business was akin to capital or an income producing asset which negated any claim for financial dependency and that her salary and dividends did not count towards any dependency because they were her own income.

The Judge at first instance found that C had suffered a loss of financial dependency quantified on Basis 1.

D appealed on the following grounds:

(1) The Judge erred in treating all of the profits generated by the company which had accrued to C and R (and would have been expected to do so had R lived) as providing the basis for the calculation of a loss of dependency suffered by C without regard to whether those profits survived R's death and continued to accrue to C.

(2) The Judge erred in law in treating C's entitlement to a share of the profits of the company based on her own shareholding in the company as if it had belonged to the deceased.

(3) The Judge erred in law in confining the credit for surviving income to rental income from commercial property owned by C and, when received, her state pension, and failing to take account of C's surviving income in the form of a share of profits in the company based on C's own shareholding in that company and her Director's salary.

The Court of Appeal dismissed the appeal.

RECENT CASE UPDATES

In relation to ground 1, in cases such as this it was critical to distinguish between the loss of the income derived from the services of the deceased and the loss of income derived from the capital asset.

If what was lost was a capital asset inherited by the dependant and it was an asset which was generating income for the dependant prior to the deceased's death, then no loss has resulted from his death following the inheritance. If, however, what the dependant had lost was not income derived from a capital asset but the contribution of the deceased as the Manager of the business and family assets, the flair, skill, expertise and energy in the wealth creating project upon which the deceased was engaged in his life and which, had he lived, he would be continued to be engaged upon, that was the real loss which can be valued in money's worth. The loss for the dependant relates to the contribution or services of the deceased in creating wealth. Income is only derived from capital if it is identifiable as having been received without the labour and services of the deceased. On the facts of this case, there was no identifiable element of the profits which was not touched by the management of R. The Judge concluded that the company was not a "*money generating beast*" which would generate money regardless of who was in charge of it. It followed that the loss of C, for the purpose of the Fatal Accident Acts 1976, was the loss of the income generated by R's services to the business, irrespective of the fact that the business employs or owns the capital assets. That being so, there could be no sound objection to Basis 1 which seeks to establish the income derived from the deceased's services.

There are other cases where Basis 2 would be appropriate, but each case has to turn on its own facts.

It was logical to treat the whole of the profit available to C and R as earned income and, therefore, part of the financial dependency. The profit available for distribution was a direct product of R's management of the company.

The value of the dependency is to be assessed at the date of death. The fact that the company had thrived since R's death was irrelevant for the purpose of the calculation of C's dependency. The Court commented that, as observed in previous cases, there will be cases in which the valuation of the loss of dependency is greater than any financial loss sustained, that is what Parliament decided.

As regards ground 2, the Judge's approach in looking at the practical reality in relation to financial dependence - not the corporate, financial or tax structures that are used in family arrangements - was correct. The Judge identified the reality in the present case as being that the salary and dividends which C received were the result of her husband's work in the company - none of it represented her own earnings for work done. In those circumstances, the Judge correctly found that the salary and dividends should be included in the loss of dependency.

On ground 3, given the findings of the Court, namely that the income of C and R, in the form of salary, dividends and profits generated by the company, was wholly attributable to R's endeavours and earning capacity, no portion or percentage of C's post death income could be independent of the deceased and unaffected by his death. It followed that there could be no deduction of monies received from the company by C post death.

RECENT CASE UPDATES

Fixed Costs - Portal - Part 36 Offers - Contract

Jimenez v Esure Services Limited
[2021] WL 03292267 SCCO

The Claimant was injured in a road traffic accident and a claim was submitted to the Road Traffic Accident Portal by way of a Claim Notification Form. Liability was admitted and the claim for damages in respect of his vehicle damage settled reasonably quickly. The only matter outstanding was the claim for damages relating to the injuries he sustained. A medical report was obtained which recommended that a psychological report be obtained. The Claimant sought an interim payment of £1,000 to fund a psychological report. That request was made at the end of Stage One. There was no request for a stay, pursuant to paragraph 7.12 of the Pre-Action Protocol for Low Value Personal Injury Claims in RTA ("the Protocol").

The Defendant did not respond to the request for an interim payment and the Claimant gave notice that the matter had exited the portal. A psychological report was obtained. Proceedings were then issued under Part 7.

Following the issue of proceedings, the Defendant made a Part 36 Offer to settle the matter in the sum of £5,350. In response to that offer, the Claimant wrote: *"We assume, from the terms of your letter, that our client's [sic] costs will be dealt with on post portal fixed costs basis and reasonable disbursements. If this is not correct, then please return to us in the next 3 days"*. The Claimant subsequently sought to characterise this as being a counteroffer (namely, an offer to accept £5,350 plus costs calculated in accordance with CPR 45.29C).

The Defendant did not respond. Accordingly, the Claimant then wrote to the Defendant accepting the offer to pay damages of £5,350 *"on the basis that (the Claimant's) post issue fixed costs and reasonable disbursements were paid in addition"*.

The Defendant subsequently sent a cheque in settlement for the damages, but disputed the costs recoverability sought by the Claimant.

The issue on assessment was whether there was a concluded compromise that fixed the costs to those allowable under CPR r.45.26C (claimed at £8,246.40). The Defendant argued that the Claimant was entitled to recover only fixed costs and disbursements in accordance with CPR 45.15 and 45.19 (a sum of £1,776).

The Court was also required to determine whether the Claimant had acted unreasonably in exiting the Portal and whether the amount of the Claimant's profit costs should be determined by reference to the damages that were inclusive or exclusive of vehicle related damages.

RECENT CASE UPDATES

Contractual Position – Part 36 Offer

The Court held that there is no provision within Part 36 for unilateral conditions or qualifications to be attached to offers. The Claimant was estopped from arguing that there was a contractual non-Part 36 agreement regarding costs. The notion that a counteroffer was accepted by the Defendant sending a cheque did not find favour with the Judge.

The Protocol

In relation to interim payments, the Protocol is set out in a procedurally chronological way. 7.12 ought to be read in conjunction with 7.13 onwards. If a Claimant wishes to benefit from the provisions of paragraphs 7.12 to 7.22 and be paid an interim, he or she must first obtain a stay under 7.12. The Claimant did not do this and unreasonably exited the process.

It was also held that it was unreasonable to seek an interim payment to fund a single medical report and that interim payments are for damages, not costs.

Vehicle Related Damages

As it was decided that the matter had settled by way of a Part 36 Offer, the value of the fixed costs was to be calculated by reference to the amount of the offer which had been accepted. The vehicle related damages, which were settled previously, were, therefore, excluded from the calculation.

The Claimant's costs were, therefore, reduced from £8,246.41 to £1,776.00 and the Claimant was ordered to pay the Defendant's costs of the assessment proceedings.

Fundamental Dishonesty - s.57 Criminal Justice and Courts Act 2015

Michael v (1) IE & D Hurdford Limited (t/a Rainbow)
(2) The National Farmers Union Mutual Insurance Society Limited
[2021] EWHC 2318 (QB)

The Claimant, 'C', was involved in a road traffic accident when a vehicle driven by an employee of the First Defendant drove into the back of C's vehicle. Liability was accepted. The Second Defendant insurers paid C £4,200, representing the value of C's vehicle less £500 salvage as assessed by an engineer instructed by C's Solicitors. At Trial, C claimed for credit hire, physiotherapy costs and personal injury damages. C had been debarred from relying on impecuniosity in his credit hire claim for failure to comply with a Disclosure Order.

RECENT CASE UPDATES

At Trial, dishonesty was at the heart of the Defendants', 'D', case. C was awarded total damages of £3,624.18 comprising £3,000 general damages, £524.18 for hire charges (against a claim for £7,728 for credit hire) and £100 for one physiotherapy session (against a claim for 8 physiotherapy sessions at £100 each supported by what appeared to be physiotherapy treatment notes, an invoice and C's Witness Statement, although C conceded in cross-examination that he only attended one session). In cross-examination, C also referred to having a second job (which had not been referred to in his Witness Statement), stated that he had given credit card statements and other documents which were missing from his Disclosure Statement to his Solicitors and admitted that he had sold his vehicle for £1,000 cash.

D applied for the dismissal of C's claim pursuant to s.57(1)(b) of the Criminal Justice and Courts Act 2015 on the grounds that C had been fundamentally dishonest. The Judge rejected the Application on the grounds that the Act required that C be dishonest (as opposed to 'the claim'). The Judge found that C did not know, or understand, the basis of the claim his Solicitors had advanced on his behalf and he could not conclude that C was dishonest. D appealed, submitting that the Judge was wrong not to have found that C was fundamentally dishonest.

The Appeal Judge found that the Trial Judge was entitled to conclude from C's oral evidence that he was not dishonest. In cross-examination, it was readily apparent that C was unfamiliar with the contents of his Statement and, as various matters were put to him, gave what the Trial Judge concluded was a true account. C 'happily volunteered' information that was detrimental to his Special Damages claim. C had not been asked to waive legal professional privilege and there was no evidence before the Court as to what advice C had been given about signing documents, such as his Witness Statement. The Trial Judge was entitled to conclude that if there had been dishonesty, it was not on the part of C.

It was also relevant to note that the troubling aspects of the claim - physiotherapy and credit hire - would not be paid to C but to C's Solicitors for settlement of the purported invoices. It was too bold a submission to assert that an inaccurate pleading or defective Disclosure Statement was synonymous with C's fundamental dishonesty. If D considered potential dishonesty lay with C's Solicitors, then their attention was better directed at the Solicitor's Firm. There had been no exploration in evidence of potential complicity or collusion of C with their Solicitor. Whether or not the Trial Judge suspected that parts of the claim were dishonest, the Trial Judge was perfectly entitled to conclude that C was not and D's Application was correctly dismissed.

RECENT CASE UPDATES

Service of the Claim Form - Electronic Service - Relief from Sanctions

LSREF 3 Tiger Falkirk Limited & Another v Paragon Building Consultancy Limited [2021] EWHC 2063 (TCC)

The Claimants' claim related to a defective/negligent construction claim. The Defendant provided a Vendor's Survey Report in respect of a shopping centre and the car park associated with it which was said to be structurally defective. The Claimants brought a claim in respect of negligence/breach of warranty by the Defendant in respect of the report which they relied upon. The value of the claim was £10 million.

There was an extensive period of investigation into the problems with the car park over a number of years. The Claimants, through their Solicitors, embarked upon a lengthy process of dialogue in respect of this. An initial letter, sent to the Defendant's registered office, was responded to by a Firm of Solicitors and, thereafter, the Defendant was represented by these Solicitors, who had confirmed in writing that they were so instructed to act on behalf of the Defendant.

The vast majority of communication between the Solicitors in the case was performed by e-mail. Due to the Covid-19 pandemic, the following wording appeared on the e-mails sent by the Defendant's Solicitors: *"Covid-19 outbreak: During the ongoing disruption to working arrangements and until further notice, service of Claim Forms, Application Notices and all other Court documents and contractual notices should be made only by e-mail: all other correspondence should likewise be sent via e-mail …"*. Nowhere in the correspondence passing between the parties, however, were the Defendant's Solicitors asked if they were instructed to accept service, nor did they volunteer that they were so instructed or authorised. CPR 6.6 (1)(b) was not, therefore, complied with.

An extension of time was agreed for the time for service of the Claim Form and the Particulars of Claim. The claim was served on the last day of service, via e-mail, upon the Solicitors who had been corresponding on behalf of the Defendant. Service was disputed by the Defendant, who applied to set service aside. The Claimants made a cross application to extend time and/or permit alternative service and/or grant relief from sanction.

It was agreed by the parties that the limitation period in respect of the Claimants' claim had now expired. Accordingly, were resolution of the issues concerning service of the Applications be in the Defendant's favour, then any action by the Claimants would be time-barred.

Failure to Serve Properly

The Judge found that service on the Defendant's Solicitors was not good service. There had been an agreement to extend time for service, but the making of that agreement did not represent a statement that the Defendant's Solicitors were authorised to accept service.

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Service Via E-mail

The Judge resolved the first part of this issue in the Claimants' favour. The standard footer in the Defendant's Solicitor's e-mails was sufficient to satisfy the requirements of paragraph 4.1 of PD 6A.

However, the Claimants had failed to comply with the whole Practice Direction. Paragraph 4.2 of PD 6A uses mandatory wording: *"That party must first ask the party who is to be served whether there are any limitations …"*. That was not done. Whether the failure to comply with paragraph 4.2, however, was sufficient to invalidate service was not relevant because the more fundamental issue was whether there had been express authority for the proceedings to be served on the Defendant's Solicitors.

The Need for Express Authority to Serve on a Solicitor

The Judge found that the Defendant's Solicitors did not have express authority to accept service. The Claimants' arguments that authority could be implied from a course of conduct was rejected. There had been no notification under CPR Part 6.7(1)(b).

A Solicitor does not generally have implied authority to accept service and if a Solicitor accepts service without express authority, he or she is in breach of his professional duty to his client; *Personal Management Solutions Limited v Gee 7 Group Limited [2016] EWHC 891 (Ch)*.

Application for an Extension/Relief from Sanctions

Having found in favour of the Defendant, the Court then considered the Claimants' Application for an extension of time/relief from sanctions.

The Claimants' relied upon CPR 6.15 (service of the Claim Form by an alternative method or at an alternative place) and CPR 6.16 (the power of the Court to dispense with service of the Claim Form).

The Claimants also relied upon the Court's discretion to award relief from sanctions under CPR 3.9 and CPR 3.10 (the general power of the Court to rectify matters where there has been an error of procedure). However, the Judge held that it was not necessary, or permissible, to consider these provisions because the relevant route for curing defective service was contained in CPR 6.15 and 6.16. If the Claimants could not succeed through those Parts of the CPR, they could not succeed through Part 3.10.

CPR 6.15 provides *"Where it appears to the Court that there is a good reason to authorise service by a method or at a place not otherwise permitted by this Part, the Court may make an Order permitting service by an alternative method or at an alternative place"*.

Whether there was *"good reason"* had to be considered against all of the facts of the case, but the most important facts were considered to be that the Claimants had Solicitors acting for them throughout and they had been involved for a period of years in correspondence with the Defendant's Solicitors. However, that alone did not change the method or place of proper service, which remained as required under the rules. Although the Defendant knew of the existence and content of the Claim Form, and whilst this "critical factor" was in favour of the Claimants, it was also not sufficient of itself to constitute a good reason under CPR 6.15.

The Claimants did not take reasonable steps to effect service in accordance with the rules. The rules were broadly ignored, in particular, in relation to the very important point concerning the party upon whom the Claim Form had to be served and whether the Defendant's Solicitors had authority to accept service. The steps taken by the Claimant's Solicitors were very last minute and did not address a crucial and important question as to who was authorised to accept service.

The Claimants had lost their ability to proceed with the claim without it being time-barred purely and simply because on the last day of service of the Claim Form (and after that date had been extended three times) it was not served in accordance with the rules. There was nothing in the facts of the matter to justify any balancing exercise being resolved in the Claimants' favour as a matter of discretion. The Claimants' Solicitors had brought the situation upon themselves. Acting in this way was not something that the Court would indulge lightly; *Barton v Wright Hassal [2018] UKSC 12*.

There was no good reason on the facts of the case to grant the Claimants' Applications under CPR 6.15 and 6.16. There were no exceptional circumstances.

In relation to the Application for relief from sanctions, it was held that no sanction had been imposed on the Claimants by the Court, nor had they failed to comply with a Court Order. There had been a failure to effect service, which is the originating process by which the Court's jurisdiction over the dispute is commenced. Part 3.9 was held not to be the appropriate route for the Claimants to remedy the situation in which they found themselves; *Piepenbrock v Associated Newspapers Ltd & Others [2020] EWHC 1708 (QB)*.

The Claimants' Applications were dismissed.

The Claim Form was not validly served and was set aside.

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- Flooding and drainage – duties and powers of Highway Authorities for drainage and flooding under the Highways Act 1980. Consideration of case law relating to the civil liabilities of the Highway Authority in respect of highway waters
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- Housing disrepair claims
- Industrial disease for Defendants
- The Jackson Reforms (to include : costs budgeting; disclosure of funding arrangements; disclosure of medical records; non party costs orders; part 36/Calderbank offers; qualified one way costs shifting (QWOCS); strikeout/fundamental dishonesty/fraud; 10% increase in General Damages)
- Liability of Local Education Authority for accidents involving children
- Ministry of Justice reforms
- Pre-action protocol in relation to occupational disease claims – overview and tactics
- Public liability claims update

If you would like any further information in relation to any of our training seminars, or wish to have an informal chat regarding any of the above, please contact our Training Partner, **Melanie Standley** at **melanies@dolmans.co.uk**