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Message

From: Jane MacLeod [GRO]
on behalf of Jane MacLeod [GRO]
Sent: 04/02/2018 14:31:35
To: Tim Parker [GRO]; Ken McCall [GRO]; Carla Stent [GRO]; Tim Franklin [GRO]; virginia.holmes.t21 [GRO]; Callard, Richard - UKGI [GRO]
CC: Tom Cooper [GRO]; Paula Vennells [GRO]; Alisdair Cameron [GRO]
Subject: Postmaster Group Litigation - SUBJECT TO LEGAL PRIVILEGE - DO NOT FORWARD

All

As flagged at the Board last Monday, there was a further procedural hearing on Friday morning. For reasons to do with Court scheduling, we had less time than expected and accordingly there will now be a further hearing at the end of February. Nevertheless we were pleased with the outcome of the hearing:

1. Disclosure

- The Court (Mr Justice Fraser) granted the orders for disclosure in the terms that we sought and made clear that while Freeths may seek further disclosure, any such request must be a properly focussed request, rather than a 'fishing expedition' at our expense.
- In adopting this course, the Judge seemed to indicate that his approach to contractual construction was more likely to follow the orthodox/conventional approach to contract law which we have been advancing, which limits the evidence that the court can consider when construing a contract.

2. Issues of Fact

- The Judge also ordered the parties to set out between now and early April the issues of fact required for the November 2018 trial. This was a "win" for us in that we have been requesting this from Freeths for some time.

3. March 2019 Trial and Beyond

- The March 2019 hearing has not been vacated, despite both side's barristers explaining the difficulties with it.
- The judge wishes the parties to use the hearing to address Horizon related issues, however these will not relate to any individual's claim. We are considering the implications of this, but on first impression consider it positive given that it should focus on objective aspects of Horizon (e.g. the technical basis on which it records and stores transaction data), rather than subjective matters (e.g. user experience and support).
- A March 2019 trial will however create significant administrative challenges for the parties, as the preparations for the two, large trials will overlap.

4. Security for Costs

- There was no discussion about security for costs due to the constrained time.

5. Next Steps

- A further hearing will be held on 22 February 2018 which will consider:
    - the Horizon issues which could go to trial in March 2019 and any loose ends with disclosure.
    - the timetable for the Lead Claimants' trial, which the Judge wants to schedule for Autumn 2019.
- The hearing could also consider timetabling for the security for costs application, assuming it is filed by 22 February 2018. We propose to advise Therium and Freeths this week of our intention to see k security for costs.

As also discussed at the Board we will schedule a series of sub-Committee meetings to coincide with the key upcoming decision points, and ensure that the Committee is apprised of, and supportive of the strategy.

Please let me know if you have any questions,

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Kind regards,

Jane

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Mobile number: GRO

From: Jane MacLeod
Sent: 02 February 2018 18:37
To: 'Paula Vennells' GRO ; Alisdair Cameron GRO
Cc: Mark R Davies GRO Melanie Corfield GRO ; Rodric Williams GRO Mark Underwood GRO
Subject: Postmaster Group Litigation - SUBJECT TO LEGAL PRIVILEGE - DO NOT FORWARD

Paula, Al

Set out below is a summary of the outcome of this morning's CMC. I attended the hearing as I wanted to see for myself what the judge was like and how our 'new' 2nd QC – David Cavendar, performed. My view was that we 'won' in that we achieved the orders we sought (more limited disclosure ahead of the November hearing), and the judge was pretty clear that the applicants needed to be reasonable in their approach to the litigation. I thought David performed well – although the conventions of the Court proceedings meant that he was responding to arguments, rather than taking the lead.

Overall, the judge was balanced and not minded to entertain the 'fishing expedition' approach adopted by the QC for the applicants. The judge is very keen to move the proceedings along as quickly as possible – he made it very plain to both parties that he expected at least one hearing on substantive matters in March 2019 (which will be extremely challenging), and ideally a further hearing in Autumn 2019.

There were no criticisms of Post Office, although I have no doubt that the headlines will be 'PO is ordered to disclose documents'. Mark and Mel are on standby for any press coverage.

Due to time constraints (we didn't get as much Court time as had been indicated) there will be a further hearing in late February on disclosure and other (material) procedural matters. We also believe that we should proceed with the application for security for costs – and this is even more important given the requirement for a second hearing in March, and possibly a third in late 2019. The estimate of £9m for costs flagged to the Board assumes this 2nd hearing.

Please let me know if you would like to discuss. I will send a slightly modified version of this note (and the summary below) to the Board later tonight.

Kind regards,

Jane

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Mobile number: GRO

From: Rodric Williams
Sent: 02 February 2018 15:36
To: Jane MacLeod GRO; Thomas P Moran GRO
Cc: Mark Underwood GRO; Andrew Parsons GRO
Subject: Postmaster Group Litigation - Disclosure CMC Skeleton Arguments - SUBJECT TO LEGAL PRIVILEGE - DO NOT FORWARD

Jane, Tom,

I summarise below this morning's Case Management Conference (CMC) before Mr Justice Fraser (MJF):

1. **Disclosure**
- MJF preferred our approach to disclosure, making it clear that Freeths will need to make a properly focussed request if they want to go beyond the disclosure we offered to provide.
- To mix metaphors, this should prevent Freeths going on a fishing expedition, at our expense, in search of a "smoking gun".
- In adopting this course, MJF seemed to prefer the orthodox/conventional approach to contract law that we had been advancing, which limits the evidence that the court can consider when construing a contract.

2. **Issues of Fact**
- MJF also ordering the parties to set out between now and early April the issues of fact required for the November 2018 trial.
- This was a "win" for us. Freeths has consistently refused to do this since we first asked for it in November 2017 (indeed, we were criticised for asking for it in the Claimants' Skeleton Argument) but will now have to articulate the factual basis on which they base the claim, rather than continue to rely on their "generic" pleadings.

3. **March 2019 Trial and Beyond**
- The March 2019 hearing has *not* been vacated, despite both side's barristers explaining the difficulties with it.
- Instead, MJF directed the parties to agree the Horizon issues in the case which can be tried in March 2019. He made it clear that he would choose the issues if the parties did not.
- MJF also made it clear that these issues could not relate to any individual's claim.
- We are considering the implications of this, but on first impression consider it positive given that it should focus on objective aspects of Horizon (e.g. the technical basis on which it records and stores transaction data), rather than subjective matters (e.g. user experience and support).
- A March 2019 trial will however create significant administrative challenges for the parties, as the preparations for the two, large trials will overlap.

4. **Security for Costs**
- There was no discussion about security for costs at the CMC.

5. **Next Steps**
- The CMC was adjourned, to come back before MJF on 22 February 2018.
- That hearing will consider the Horizon issues which could go to trial in March 2019 and any loose ends with disclosure.
- The hearing is also likely to consider a timetable for the Lead Claimants' trial, which MJF wants to schedule for Autumn 2019.

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- The hearing could also consider timetabling for the security for costs application, assuming it is filed by 22 February 2018.

6. Overall Impressions

- The hearing today went well for us.
- MJF recognises that this is large and complex litigation, but is committed to moving it forward at pace, hence his insistence on keeping the March 2019 trial dates, and foreshadowing further hearing time in Autumn 2019.

Please let me know if you require anything further.
Kind regards, Rod

2017 Winner of the Global Postal Award for Customer Experience

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