

17/11 '05 15:38 FAX

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ROWE COHEN

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QUAY HOUSE, QUAY STREET, MANCHESTER. M3 3JE (DX 14352 MCR-1)

Direct dial telephone:

Direct dial fax ::

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GRO

m.turner

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**Fax****To:** Stephen Dilley - Bond Pearce**From:** Mark Turner**Fax:**

GRO

Pages: 4**Phone:****Date:** 17/11/05**Re:** The Post Office/Lee Castleton**CC:**☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

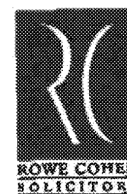
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Date: 17 November 2005
 Your ref: SJD3/FAC1/348035.134
 Our ref: MDT.113969
 Please ask for: Mark Turner
 Direct dial: **GRO**
 Direct fax:
 E-mail: m.turner@GRO



Bond Pearce
 Solicitors
 DX 8251
 PLYMOUTH

Dear Sirs

Post Office Limited -v- Castleton

We refer to your letter of yesterday and your fax received earlier today.

Disclosure

Prior to the issue of proceedings, we pressed your client to provide by way of voluntary pre-action disclosure various documents that, in our view, would assist in resolving this matter.

You did make available to us certain documentation under cover of your letter of 16 February. These documents consisted of a proportion of the papers removed by Cath Oglesby of your client from Marine Drive Post Office on the suspension of our client. Crucially, however, you did not return all of the documents that had been removed.

Most notably, you failed to return the complete set of daily snapshots. We have explained to you previously the pivotal importance of those documents and have repeatedly invited you to disclose to us the remainder which were not returned under cover of your letter of 16 February. We have also made available to you the preliminary report of Bentley Jennison, which confirms the importance of these documents and the need for their disclosure so as to be able to properly address the reason for the apparent shortfalls which form the basis of your client's claim.

To date, however, you have failed to address the reason for your client's inability or unwillingness to provide these documents, or at the very least the daily snapshots, in advance of formal standard disclosure, despite the fact that they could very well be determinative of the claim. Your responses have been bald assertions that your client is aware of its disclosure obligations, that it will abide by them in due course and that you awaited further substantive instructions in relation to our (repeated) requests.

We accept that the problems experienced by the sub-postmaster in Chelmsford who was referred to in the extract which we forwarded to you recently may not be related to our client's own problems. It does tend to support our client's assertion, however, that the Horizon system is not without its problems. This flies in the face of the blanket denial of any known problem with the Horizon system that your client has adopted to date, as well as its refusal to even countenance the possibility of such a fault.

Our purpose was merely to illustrate that our client's case is not an isolated one. Indeed, as we have previously explained, it is apparent from our client's own research and contact with other sub-postmasters that shortfalls of this kind and apparent problems with the Horizon system are not uncommon. Accordingly, we sought to put you on notice that we would require disclosure of documents in your client's possession that are relevant to these problems and to similar disputes with other sub-postmasters.

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G:MARKT ABBEY CASTLETON 171105 LETTER TO BOND PEARCE
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Reply and Defence to Counterclaim

The extension of time that your client afforded to our client for filing his Defence and Counterclaim followed an exchange of correspondence connected with the disclosure issues referred to above. As we made clear at the time, it was our view that proceedings had been issued prematurely without dealing fully with the request for pre-action disclosure. You agreed to the extension pending your taking further instructions in relation to our request for disclosure.

Your client's Reply to Defence and Defence to Counterclaim was due for service by 5 September, the last date for filing Allocation Questionnaires with the court. You provided us with a copy of your client's Allocation Questionnaire (dated 7 September) under cover of your letter dated 7 September. No statement of case was served under cover of that letter nor was any request received for any extension of time for service of a Reply and Defence. Had such an extension been sought, it would have been granted.

On 7 September, we spoke with a clerk at Scarborough County Court to enquire whether a Reply and Defence had been served. We were told that none had been received. Accordingly, we despatched Request for Judgment by Default later that day. We enclose a copy of the Request.

We then wrote to you on 14 September querying whether a Reply and Defence had been filed, given that the court had informed us that none had been received. The writer then received a voicemail message from Denise Gammack of your firm on 15 September asking him to telephone to discuss this matter.

He duly returned the call and, during the course of that conversation, Ms Gammack commented that there appeared to have been an oversight in relation to the Reply and Defence, that she had not been in the office at the time when the Allocation Questionnaire was despatched for filing and that she assumed that whoever had dealt with it in her absence had forgotten to enclose the Reply and Defence.

Ms Gammack asked whether our client would be prepared to grant a retrospective extension of time for service of the Reply and Defence. We said that we would need to seek instructions but that but that we did not envisage that our client would be prepared to do so, not least given the dilatory way in which (at least in his view) your client had dealt with our own requests for information and documentation. We indicated that we had, in any event, already filed a Request for Judgment.

The clear impression that the writer received from the conversation with Ms Gammack was that she had suddenly realised on receipt of our letter of 14 September that no Reply and Defence had been filed.

Rather tellingly in our view, there was then no attempt by your firm to serve a Reply and Defence immediately following that conversation. If it had been drafted and ready to serve, but had not been despatched to the court by oversight, it would be reasonable to assume that you would have addressed this immediately on becoming aware of the oversight. You did not. Nor did you make an application for a retrospective extension of time for service.

Indeed, no further correspondence was received from you until your letter of 7 November. Granted, the court did order a stay of proceedings for one month by its Order of 4 October. Nevertheless, there was a gap of some 3 weeks between your becoming aware that no Reply and Defence had been filed and the stay being imposed. That was, in our respectful view, ample time for you to make the appropriate application to the court for relief from sanction. Even once the stay was in place, you could have sought to serve a statement of case out of time and applied immediately upon its expiry for relief from sanction. You did not do so.

It appears that it was not until you received our letter of 14 November (enclosing a copy of a letter that we had sent to the court querying the form of the Judgment in Default Order dated 9 November) that you were stirred into action. Your client's Reply and Defence to Counterclaim (which we note is undated) was then received by us by fax under cover of your letter of 15 November. Please confirm when this document was actually drafted (as opposed to when it was signed).

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Judgment in default

Our request for judgment was lodged with Scarborough County Court on 7 September. For some reason, it was not processed prior to the transfer of proceedings to the Central Office.

On receipt of notice of transfer, we wrote to the court on 10 October to enquire whether it had been actioned following receipt at Central Office. We received a reply dated 12 October indicating that the Request had not been processed either before transfer or on receipt, and that as the claim had been stayed immediately on receipt it could not now be processed without an application being made to lift the stay.

We wrote to the court again on 3 November, following the expiry of the stay, asking for our client's Request for Judgment to now be processed. We assume that this prompted the (rather oddly worded) "Judgment for the Claimant" dated 9 November, listing this matter for a CMC on 6 December.

We wrote to the court on 14 November querying the wording of the Judgment, copying the letter to you for reference.

Your assertion that no judgment against your client has yet been processed is, with respect, somewhat disingenuous. What else could the Judgment dated 9 November be intended to mean? Our client filed his Defence and Counterclaim in time so quite obviously it could not be intended to actually mean that judgment had been taken against the Defendant, as indicated on the face of the order. The only reasonable interpretation of the Order of 9 November is that it is a typographical error on the part of the clerk who drew up the Order.

This is confirmed by a message left for the writer earlier today by Sahin, one of the clerks in the Judgments Section at the Central Office, presumably prompted by our letter of 14 November. He indicated that there had been an error on the face of the order of 9 November and that a revised Order would be despatched to the parties in tonight's post. Having now spoken with the court, it has confirmed that the revision is to make it clear that the judgment is in favour of the Defendant, in default of a Defence having been served to the Counterclaim.

In all the circumstances, our client is not prepared to consent to the judgment being set aside. Irrespective of whether your client has a reasonable prospect of succeeding in defending the counterclaim, it is clear that there has been considerable delay in applying for relief from sanction. That delay is, in our view, sufficient reason for the court to decline to exercise its discretion to set judgment aside.

Thank you for the reference to *Coll -v- Tatum*. That case differs to these proceedings in that our client's Request for Judgment was processed (and without a hearing being required) before the purported service of your client's Reply and Defence. We shall leave the Master to determine any application your client might choose to make and to assess whether your client can bring itself within the ambit of the court's decision in *Coll -v- Tatum*.

Finally, you refer in paragraph 2 to our client's position *viz a viz* mediation being at odds with having already applied for judgment in default. We cannot agree. Even if the counterclaim was to proceed straight to a hearing to deal with quantum, it would still require further time and cost to resolve it, which mediation may assist in avoiding. In any event, your client's own claim would still need to proceed. We see nothing misleading in our correspondence relating to mediation nor inconsistent with our client having previously sought (and obtained) judgment in default.

Yours faithfully

GRO

ROWE COHEN