

Bond Pearce

Personal attendance

Client: Royal Mail Group PLC Sub Postmaster Litigation

Matter: Mr Lee Castleton

Matter no: 348035.134

Attending:

Name: Stephen Dilley

Location:

Date: 23 October 2006

Start time:

Units:

Attendance note of CMC before Master Turner

Present:

Richard Morgan (RM), Counsel for Claimant/Part 20 Defendant
Stephen Dilley (SD), Solicitor Bond Pearce
Thomas Bourne (TB), trainee solicitor Bond Pearce
Alexander Gould (AG), Counsel for Defendant/Part 20 Claimant
Mark Turner (MT), Solicitor for the Defendant/Part 20 Claimant, Rowe Cohen Solicitors.

Submissions for Post Office

RM explained that the first procedural point to deal with was that on 9 November 2005 judgement was entered against Mr Castleton. This was sealed on 10 November 2005. We consented to set that aside but it had not been formally done before. This is at page 32 of the bundle. It had been entered by mistake.

The second is RM explaining that on 13 March 2006 the Court had given procedural directions. For example, experts in the trial window. Disclosure lists were exchanged at the appropriate time, but then inspection dragged on. The trial is due to commence in a window starting on 4 December with a 5 day estimate. Counsel thought that it would probably take 7 to 10 days and his enquiries with the Queen's Bench Division had indicated that they could accommodate this.

Master Turner said that the Post Office was trying to path the way for there to be no criticism from the clerk of the lists. If the Post Office transferred, and the parties would not have the certainty of a trial that they currently have.

RM explained that the action is on the accounts. He had made enquiries with the Central and London County Court Chancery List and the indications are that a trial could be held there in April or May 2007. Master Turner said that in his view it should stay in the High Court and that it could be dealt with by a Chancery deputy Judge.

RM then referred to the directions previously made by Master Fontain at page 35 of the CMC bundle. He said that we were still have difficulties getting inspection of documents disclosed from Mr Castleton, which he would come back to.

He then referred to the second Consent Order that was lodged at page 37 of the CMC. Master Fontain amended this and returned it. On 7 September it was provided to Rowe Cohen solicitors, but it has not been returned by them. This making a criticism of this.

He then referred to the Order in draft at page 63 of the CMC bundle. Going through that Order paragraph by paragraph:

1. The judgement of 9 November 2005 be set aside;
2. (Old paragraph 1) RM explaining that the Defendant/Part 20 Claimant has agreed in writing to the amendments to the particulars of claim and the reply to the defence to counter-claim;
3. (Old paragraph 2) the Defendant to have permission to make consequential amendments to his defence and counter-claim by 4pm on Monday 6 November 2006 and the Claimant to have permission to make any further consequential amendments to its amended defence and counter-claim by 4pm on Monday 13 November 2006;
4. (Old paragraph 3) any further disclosure by exchange of list by 4pm on Monday 20 November 2006 with inspection 7 days thereafter;
5. (Old paragraph 4) the Claimant do pay to the Defendant its costs consequential upon the said amendments permitted in the paragraph 1 (now paragraph 2) of the report, such to be assessed on the standard basis if not agreed;

RM would come back to this.

6. (New paragraph 7) by no later than Monday 30 October 2006, the Defendant do either produce for inspection a documents list in schedule 1 and 2;

Or provide Witness Statement explaining the Defendant's position in respect of those documents, not produced for inspection. We should explain that the schedule at page 65 – this had the 6 items in that Mr Castleton has been unable to produce inspection of. We have been told that item F was being copied, that A to B were in existence and cannot be found and that C to E may not be in existence and are being looked for. Our understanding was that items A to B according to Mr Castleton were not different to the documents now disclosed in C to E and his solicitors were going to take instructions upon to record what Mr Castleton says about them and put that in evidence. Turning to the trial date, RM said that we would like to try to keep the December trial date. The Defendants have indicated they will be in a position to exchange Witness Statements of fact by Friday 10 November 2006 at 4pm. RM explained that the Defendants had also said that they agreed to sequential exchange, but for proportionality, the only accounts they had instructed their expert to look at were one week of trading in the relevant period. He apparently looked at week 42 (the relevant weeks 48 to 51). The Defendant wanted an accountancy expert to look at week 42 and wanted until 4pm on 10 November to disclose that. The Defendant did not yet know if it would assist his case, but he hopes that it would. We do not know if we will have difficulty addressing that report. The Claimant is therefore in a difficult situation because we had hoped to exchange expert evidence by 13 October 2006. We now know that there was no substantial expert's report – just one week. We suggest that there be a further case management conference on 17 November 2006 to see where we were going before trial.

In open discussions, we have accepted that the Defendant's expert evidence will be served on Friday 10 November 2006. The consequences are difficult to anticipate, for example:

- a) There may be serious issues in which case we would like to adjourn the trial;
- b) Mr Castleton's position may be misconceived; or
- c) Parties may wish to seek ADR if there are issues to be discussed.

However without a trial date, things will drag on. The Claimant seeks recovery of approximately £25,000. The counter-claim on its best case is £250,000, but it is a contract with a three month notice period without cause so we consider it is unlikely that the Defendant can recover more than £12,500. The accountancy experts would be about £62,000 each on preliminary indications. The IT expert could be about £100,000 to review the entire system. That is part of the justification for sequential exchange. The Defendant says there are problems, but has not been able to particularise them. We want the Defendant to have an opportunity to establish that, but that has to be the end of the case, even with the Post Office's means. We need to keep the case on track for a December trial.

Master Turner indicated that he would be free on 15 or 16 November 2006 for a CMC, but was committed to a hearing on a different case at 10am that day which would last all morning. He was in the Law Society giving a lecture in the afternoon. He was there between 4pm and 6pm or 9am to 10am.

RM indicated that we could agree something. Matthew Turner said that we could make an Order in relation to paragraph 8 or leave it fluid to negotiate. RM indicated that we would ask for there to be a CMC.

At this point AG said that on the question of a CMC, as the parties respective solicitors were in Manchester and Plymouth, he asked for it to take place by telephone and Master Turner indicated that he agreed this.

Submissions for Mr Castleton

AG said that Mr Castleton's submission is that the trial cannot be effective as listed. It is necessary to rehearse the history. This is not a high value claim. The value of the counter-claim is a matter that AG would address within the next 14 days. It is open to question whether this is properly a matter of the High Court or not. It is not a particularly high value claim, and the question of costs is particularly significant. The Master had heard about the costs of the accountancy by two experts. They are significant sums in excess of the value of the claim. Mr Castleton has only been spending costs where it has been necessary to keep these in proportion for the sums in dispute. Disclosure was made in May. It was reasonably extensive. Rather than ask for everything at one go, Mr Castleton reviewed the list to identify the documents he really needed. That took place in mid June. They were provided swiftly. The next stage was for Mr Castleton to consider the disclosure having inspected documents himself to see if he maintained that he had any problems with the functioning of the computer system. He remains convinced of that, but so far as the legal team is concerned, they advise Mr Castleton that this needs to be made good by independent expert evidence. For the Court to be satisfied we therefore wanted an expert.

The documents have been with their expert for a considerable period. He was instructed at the end of July, simply to look at one week only as a starting point in the hope that that would be neutral and un-contentious. Both sides were content with that. There appears to be confusion, because this was the week looked at initially followed by substantial loss of £1,000. However the Post Office says that there was a 60p loss that week.

The expert seeking to report on whether there were substantial losses opposed to being minimal losses. Reporting is on whether the losses were real or elusory. The weeks may be more helpful to Mr Castleton, but for proportionality it seemed very sensible to instruct the expert to look at one week. That is now complete. The experts asked for additional documents and was provided them in relatively short order. Mr Castleton's expert is away this week on half term. His report may be made available next week, but 10 November is a realistic date. Mr Castleton said that prior to today, the agreed time for exchange of experts should be 13 October, so we are now 10 days from when that was due. On the assumption that the report is available on 10 November, that would allow 3 weeks to the start of trial assuming it started on 4 December.

There would be only 3 weeks for the Claimant to deal with and report upon Mr Castleton's expert report. That report may or may not be favourable to the Claimant. The Claimant may need to call evidence in response. If the Claimant took the VAT view, or the report was unhelpful, but Mr Castleton remained of the view that other weeks might assist him, in any case, Mr Castleton would say that given sequential exchange, this would necessitate vacation of the trial. That puts the value ?? that this is appropriate ?? to vacate and transfer it to the Central London County Court and to give directions to take this as far as possible.

?? in correspondence at the beginning of September. It appeared that it remained the Claimant's position up until Friday. This was not something that Mr Castleton thought was contentious. The Claimant has changed ?? in the last working ?? so assumingly now wishing to push on ahead to trial.

Master Turner asked whether the parties could get certainty of a Central London County Court list and within a reasonable prospect of time. AG said that the indications were that there would be a period of delay of 4 to 5 months, but this matter had been afoot since June of 2005.

Master Turner asked how much time Mr Castleton wanted for the exercise for example another month or longer?

AG said that Mr Castleton sought until 10 November to serve an accountancy expert report for week 42. It was now hoped that that report would prompt the Claimant to have their own report produced in response it would take them time to obtain this. The parties may even then be having discussions or maybe irreconcilable.

At this point the Court rose and adjourned for lunch.

After the lunch break AG came back and confirmed that he was available on 16 November 2006. There were two short points he wanted to address:

1. He referred the Court to paragraph 2 of the 12 September letter from Bond Pearce together with Rowe Cohen's letter dated 14 September in response. He said that it should not be a surprise to the Claimant that Mr Castleton was only ?? in week 42.
2. His second point was that in essence the Defendant was saying that he wants to be ready for a trial before December in a way that he will choose to be before the material was put before the Court for example weeks 43 onwards plus IT evidence to supplement that. Master could either take the view that it was of Mr Castleton's own making and keep the trial date, or that he should be allowed to call the evidence he needs.

Mr Turner said that he was going to make a ruling on week 42. He was concerned about costs and proportionality and why there was a small amount in issue. The claim was about £25,000 and the counter-claim was about £12,500. This does not call for the sides to spend £62,500 each on expert's accounts, especially where the Defendant has already spent £9,000 alone on week 42. He is therefore not minded to extend the time to allow more expert evidence to be taken. The Defendant has nailed his colours to the mast. He does not have power in any case to vacate the trial. He wants it held on 4 December and for the parties to get on with it. The clerks are ready to take it. If the parties need to vacate it, they need to apply to Mr Justice Edie.

Accordingly in relation to the remaining directions, he was going to order that:

(new paragraph 9) was going to order there to be a sequential exchange of experts reports, with the Defendant serving any expert evidence in the fields of accountancy by 4pm on Friday 10 November 2006, the Claimants serving any reports in answer by 5pm on Friday 24 November 2006 with discussion of experts of like disciplines to take place by no later than Wednesday 29 November 2006 and a signed agreed statement of areas of agreement and disagreement to be filed by no later than 4pm on Friday 1 December 2006.

New paragraph 10. The parties have permission to restore.

New paragraph 11. Save as provided for above, the costs be costs in the case.

Time engaged at hearing: Arriving at 11.55am at Court, after having met with Counsel, the hearing continued until 1pm when we adjourned for lunch and then continued from 1.55pm until 2pm.