

**IN THE HIGH COURT OF JUSTICE
QUEENS BENCH DIVISION**

Claim No. HQ05X02706

BETWEEN:

POST OFFICE LIMITED

**Claimant/Part 20
Defendant**

- and -

LEE CASTLETON

**Defendant/Part
20 Claimant**

**BRIEF TO REPRESENT THE CLAIMANT AT THE HEARING TO SET ASIDE
DEFAULT JUDGMENT ON THE COUNTERCLAIM ON 27 JANUARY 2006 AND TO
ADVISE GENERALLY**

**Richard Morgan
Maitland Chambers
7 Stone Buildings
Lincoln's Inn
London WC2A 3SZ**

**Bond Pearce LLP
Ballard House
West Hoe Road
Plymouth
PL1 3AE**

Ref: SJD3/348035.134

29 November 2005

**IN THE HIGH COURT OF JUSTICE
QUEENS BENCH DIVISION**

Claim No. HQ05X02706

BETWEEN:

POST OFFICE LIMITED

**Claimant/Part 20
Defendant**

- and -

LEE CASTLETON

**Defendant/Part
20 Claimant**

1 Index

Counsel is sent copies of the following:-

Statements of Case

<u>Tab</u>	<u>Document</u>	<u>Date</u>
1	Claim Form	25 May 2005
2	Acknowledgement of Service	13 June 2005
3	Defence and Counterclaim	15 August 2005
4	Reply to Defence and Defence to Counterclaim	15 November 2005

Orders and Judgments

5	Order of Master Fontaine	4 October 2005
	Judgment for Claimant	9 November 2005 (sealed 10.11.2005)
	Judgment for Defendant	9 November 2005 (sealed 17.11.2005)

Notices

6	Notice of Issue	9 June 2005
	Notice that Acknowledgment of Service has been filed	14 June 2005
	Notice that a Counterclaim has been filed	5 September 2005
	Notice of the Allocation to the Multi-Track	14 September 2005
	Application Notice and draft Order	17 November 2005

Witness Statements

7	Witness Statement of Stephen John Dilley and Exhibit	18 November 2005
8	Draft Witness Statement and Exhibit of John Jones	Undated

Allocation Questionnaires

9	Claimant's Allocation Questionnaire	7 September 2005
10	Defendant's Allocation Questionnaire	6 September 2005

Defendant's Expert's reports

11	Expert's Report of Andrew Richardson of White & Hoggard Accountants	18 August 2005
12	Expert Report of Chris Hine of Bentley Jennison	23 September 2005

Correspondence

13	Correspondence – Interpartes	Various
14	Correspondence – Client	Various
15	Correspondence – Court	Various
16	Internal correspondence with DEG1	Various

2 Background

- 2.1 The Defendant, Lee Castleton, was a Sub-Postmaster at the branch of the Post Office at 14 South Marine Drive, [GRO] ("the Marine Drive Branch") from approximately 18 July 2003 to 23 March 2004. Mr Castleton accepts that the express terms of his contract for services included that he would be strictly responsible for the safe custody of cash and stock, was obliged to make good all losses caused through his own negligence, carelessness, or error and losses of any kind caused by his assistants and that his responsibility did not cease when he relinquished his appointment and that he remains obliged to make good any losses incurred during his term of office which subsequently came to light.
- 2.2 Between 18 July 2003 and 25 March 2004, net losses of £27,115.83 occurred at the Sub-Post Office. The Defendant's case is that any shortfall is entirely the fault of problems with Horizon Computer and Accounting System at the Marine Drive branch and that the Post Office wrongfully terminated his Sub-Postmaster Contract in respect of which he has suffered loss not exceeding £250,000.
- 2.3 The claim was issued in the Scarborough County Court (Tab 1) and the Court sent it to Mr Castleton by First Class Post on 10 June 2005 and therefore it was deemed to be served on 14 June. The Defence was due for service by 11 July (28 days later) but the Post Office agreed to a 28 days extension to allow Mr Castleton to serve the Defence on 15 August, accordingly, he had 62 days to file his Defence. His Defence and Counterclaim was served on 15 August (Tab 3)
- 2.4 On 6 September 2005, Mr Castleton sent his Allocation Questionnaire to Bond Pearce LLP which contained proposed directions that the Post Office be at liberty to serve a Reply to Defence and Defence to Counterclaim by 19 September, but also requested that there be a 1 month's stay to attempt to settle the claim (Tab 10).

- 2.5 The Scarborough County Court transferred the case to the Queen's Bench Division of the High Court and on 4 October 2005, Master Fontaine ordered there to be a stay for 1 month for settlement (Tab 5).
- 2.6 At the end of September 2005, Ms Gammack, solicitor at Bond Pearce LLP who had conduct of the claim from shortly after it was issued until the end of September left the firm and Mr Dilley of Bond Pearce LLP took over conduct of the file on 29 September. Regrettably, Ms Gammack did not explain to Mr Dilley either verbally or in writing when she handed over the file that:
- (a) She had failed to serve a Reply to Defence and Defence to Counterclaim within the usual time limit, or at all;
 - (b) A request for Judgment in Default had apparently been made on 7 September 2005, 23 days after the Defence and Counterclaim had been served;
 - (c) In a telephone conversation between Mr Turner of Rowe Cohen (solicitors for Mr Castleton) and Ms Gammack on 15 September 2004, Rowe Cohen allege that they informed her they had filed a Request for Judgment in default and Ms Gammack stated that there was an oversight in relation to the Reply to Defence and Defence to Counterclaim, that she had not been in the office at the time when the Allocation Questionnaire was despatched for filing and that she had assumed that whoever had dealt with it in her absence had forgotten to enclose the Reply to Defence and Defence to Counterclaim. However, Ms Gammack did not make an attendance note of that conversation although she has recorded a time entry on that day being a telephone call with Mr Castleton's solicitors in which the description simply states "Mark Turner from Rowe Cohen".
 - (d) Rowe Cohen state that in the telephone conversation on 15 September Ms Gammack asked whether Mr Castleton would be prepared to grant a retrospective extension of time for service of the Reply to Defence and Defence to Counterclaim and they said they would seek instructions but they did not envisage Mr Castleton would be prepared to do so, given the dilatory way (in his view) that the Post Office had treated his request for information and documentation.
- 2.7 When Mr Dilley took over the case, he made a point of asking Ms Gammack whether there was anything urgent to do on the file but she said there was not. The case was then stayed for a month to allow the parties to settle. During October, Mr Dilley started to read into the case and sought instructions

from the Post Office. Internally the matter was transferred from Cheryl Woodward at the Post Office's Chesterfield Office to Mandy Talbot at the London office.

- 2.8 On 31 October 2005 Mr Dilley had a telephone conversation with Mr Turner at Rowe Cohen. He wanted to know whether Instructing Solicitors had any instructions in the light of the two experts reports that Rowe Cohen had sent to Bond Pearce LLP on 30 September. Mr Dilley stated that he was awaiting instructions and would revert back to him. On the same date, Rowe Cohen solicitors wrote to Bond Pearce LLP stating that they had heard nothing from Bond Pearce LLP in relation to their 15 September letter, but hand wrote a PS on that letter which stated "We have now spoken since dictating this letter". This was a disarming comment because Rowe Cohen's 14 September letter sought confirmation as to whether a Defence to Counterclaim was filed and this point was not raised at all during the telephone conversation on 31 October. Mr Dilley believed that Rowe Cohen's letter had been superseded by the telephone conversation that they referred to (or otherwise, why insert the PS?).
- 2.9 On 10 November 2005, instructing solicitors received the Default Judgment against Mr Castleton for an amount to be decided (Tab 5). However, on 15 November, instructing solicitors received a copy of a letter from Mr Castleton's solicitors to the Court dated 14 November stating that they assumed that the Default Judgment had been generated as a result of their letter to the Court dated 4 November (Tab 13).
- 2.10 The Reply to Defence and Defence to Counterclaim was sent by fax and DX to the Court and Mr Castleton's solicitors on 15 November. Excluding the time for the stay (because that halts the proceedings for settlement), it was served within 67 days of service of the Defence to Counterclaim, which is just 4 days longer than it took the Defendant to file the Defence and Counterclaim. As the Reply was filed by fax probably after close of business, permission needs to be sought to file it out of time on 16 November.
- 2.11 On 17 November, the Court sealed a copy of the Default Judgment dated 9 November in favour of the Defendant on the Counterclaim. There is a technical argument that the Reply to Defence and Defence to Counterclaim was filed before the Default Judgment was sealed, but as the Default Judgment is dated 9 November, instructing solicitors believe that little will turn on this argument.

3 Application to Set Aside Default Judgment

3.1 Instructing solicitors have issued an Application to set aside the Default Judgment which will be heard on 27 January 2006 at 10.30 a.m. Instructing solicitors believe that the judgment in default on the Counterclaim should be set aside given that:

- (a) There is a good reason for the Post Office to be allowed to defend the Counterclaim in accordance with CPR 13.3 (b) because the Claim and Counterclaim are intertwined. It would be inconceivable if the Trial Judge finds that Mr Castleton has failed to account for over £27,000, but the Post Office nevertheless has to pay Mr Castleton damages for wrongful termination, because of the Default Judgment on the Counterclaim; and
- (b) There is a bona fide Defence to the Counterclaim that appears to, at a minimum, have a real prospect of success in accordance with CPR 13.3(a). This is set out in more detail at paragraph 16 pages 3 to 5 of the Witness Statement of Mr Dilley (Tab 7) and in the draft Witness Statement of Mr Jones (Tab 8).

The key points are as follows:

- (i) Fujitsu Services ("Fujitsu") examined the Horizon Computer System used by Mr Castleton at the time. Fujitsu were responsible for designing, implementing, and operating the Horizon System on behalf of the Post Office. They concluded that there was no evidence whatsoever of any system problem. Instructing Solicitors have asked Fujitsu to prepare a formal report (tab 14, letter dated 18 November 2005).
- (ii) There was a fair dismissal process: Mr Castleton was suspended on or about 23 March 2004 following large unexplained losses that had been reported over the preceding 12 weeks. An audit took place on 25 March 2004. On 26 April 2004, the Post Office wrote to Mr Castleton and asked him to explain why his contract should not be terminated summarily given that there was a shortage of £25,758.75 reported over the preceding 12 weeks. On 10 May 2004, Mr Castleton was interviewed and given an opportunity to explain why his contract for services should not be terminated. On 17 May 2004, Mr Castleton's contract was summarily terminated. Mr Castleton was given the opportunity to appeal which was dealt

with by a completely different person (Mr Jones) at the Post Office to the person who dealt with the dismissal. Mr Castleton's appeal was unsuccessful.

- (iii) Crucially, between weeks 42 and 49 the Marine Drive Branch ordered significantly more cash from the Post Office than had normally been the case. Mr Castleton stated at his appeal hearing that he felt that he only ordered what was required. Mr Jones who conducted the appeal informed Mr Castleton that for the entire period, the actual cash usage for transactions at the branch did not differ from week to week and that he only actually needed to order between £200,000 and £265,000 in cash. Instead, Mr Castleton had ordered £305,000 of which only £20,000 had been returned.

Mr Jones' analysis of the increases in cash ordered by the branch demonstrated that he did not need to order these excessive amounts of cash, because the extra cash was not required to service the transactions that were being performed. Significantly, the orders for extra cash were always in weeks where there was reported to be a significant loss at the branch. The Marine Drive Branch never ran out of cash. If the Horizon system had been incorrect and the cash shortfalls merely theoretical (i.e. computer generated, which is what Mr Castleton alleges), rather than actual, there would always have been sufficient cash in the Marine Drive Branch to meet its requirements and no need to order extra cash. It was only the ordering of the extra cash that ensured the branch was always able to remain trading. Mr Castleton was unable to explain why he needed actual additional cash or where that additional cash had gone if there was only a computer generated, theoretical shortfall.

- 3.3 Instructing solicitors will also seek to obtain Witness Statements from Helen Hollingworth, the inspector who carried out the audit at the Marine Drive Branch on 25 March 2004 and Catherine Oglesby, the Retail Line Manager who dealt with Mr Castleton's dismissal.

4 Disclosure

- 4.1 Mr Castleton's solicitors allege that the Post Office removed various documents from the Marine Drive branch when they carried out their audit. They state that amongst these documents were daily balance snapshots and that the Post

Office ought to produce these because they will show that the weekly cash accounts produced by Horizon are inaccurate.

- 4.2 Instructing Solicitors have asked the Post Office to supply all the documents that they have removed and whether they believe they would have removed the daily balance snapshots. Certainly, some daily balance snapshots were removed and have been supplied to Mr Castleton. Instructing Solicitors have recently received further documentation (not enclosed) from the Post Office which is being reviewed to ascertain whether these are duplicates of earlier documents or new documents.
- 4.3 Mr Castleton has obtained two "experts'" reports (Tabs 11 and 12) which conclude that the Post Office Horizon System, despite the suspense account entry, has failed to recognise the entry on the daily snapshot and that Mr Castleton's Defence "Appears to hold potential merit based on the limited documentation" they have so far reviewed. Mr Jones believes those reports have no credence because if there was a computer error, the Marine Drive branch will not have needed to have ordered and used extra cash.
- 4.4 Significantly, it is clear from both Mr Castleton's experts' reports that neither expert had been the majority of the documents that Bond Pearce LLP sent to Mr Castleton's solicitors as long ago as 16 February 2005. For example, Bond Pearce LLP sent to them 14 weeks worth of cash accounts, 12 weeks worth of Giro receipts and 12 weeks worth of declared cash receipts. Bentley Jennison state that they have only seen a cash account for 1 week i.e. week 49. It is interesting that Bentley Jennison were only given a tiny fraction of the receipts that the Post Office has disclosed to Mr Castleton. Unsurprisingly, his "experts" have asked for more information to be able to form a firmer view. This is a point we intend to raise with Mr Castleton's solicitors in correspondence, once we have bottomed out the position on the daily balance snapshots with the Post Office.

5 Brief and Instructions

- 5.1 Counsel is briefed to represent the Post Office at the Hearing to set aside Default Judgment on 27 January 2006.
- 5.2 Counsel is also instructed to assist and advise with the preparation for that Hearing and to comment on draft evidence of Mr Jones and any other evidence he believes would be appropriate.
- 5.3 Instructing solicitors would like to have an urgent telephone conference with Counsel once he has reviewed the papers to discuss the case.

- 5.4 Once Counsel had had an opportunity to review the papers, please could his Clerk contact our Mr Dilley, solicitor (Plymouth Office) on telephone number **GRO** or Mr Tom Beezer (Partner) on telephone number **GRO** **GRO** to arrange a convenient time for Counsel to discuss the matter in a telephone conference.

Claim No. HQ05X02706

**IN THE HIGH COURT OF JUSTICE
QUEENS BENCH DIVISION**

BETWEEN:

POST OFFICE LIMITED

**Claimant/Part 20
Defendant**

- and -

LEE CASTLETON

**Defendant/Part 20
Claimant**

**BRIEF TO REPRESENT THE
CLAIMANT AT THE HEARING TO SET
ASIDE DEFAULT JUDGMENT ON THE
COUNTERCLAIM ON 27 JANUARY
2006 AND TO ADVISE GENERALLY**

BOND PEARCE LLP

Ballard House
West Hoe Road
Plymouth PL1 3AE

GRO

DX 8251 Plymouth
Ref: SJD3.348035.134

**Solicitors for the Claimant/Part 20
Defendant**