

Stephen Dilley

From: Tom Beezer
Sent: 21 August 2006 16:39
To: mandy.talbot; **GRO**
Cc: Stephen Dilley
Subject: Castleton
Attachments: eCopy scanned document.pdf

Mandy

As we discussed last week I am writing to update you on certain points that came out of my discussions on the Castleton case with Richard Morgan of Maitland Chambers.

Overview

Richard Morgan believed the case to be one with a good chance of success but he did warn that was dependent upon the accountancy evidence stacking up in our favour (I return to this below) and also upon an acceptance of the costs in taking this matter to trial. We have discussed costs before. I also return to this point below.

A further point made by Richard Morgan was that we should endeavour to move the main area of focus in the case away from the Horizon system if possible. Richard suggested a method to do that would be to prove (if possible) the physical cash losses at the Marine Drive branch by reference to all the other documentation created around the transactions, not simply by reference to what was in fact recorded on the Horizon system. So for example when a cheque is deposited there is (as I understand it) a counterfoil filled out which is sent off daily by the sub-postmaster, with all cheques eventually ending up at EDS. If the Horizon system was later found not to match the physical remittances an error notice is generated. One of the issues in this case is that there were few error notices generated suggesting that the physical remittances did match the Horizon inputs. Clearly, to attempt to look into such matters in the level of detail likely to be required will be costly and time consuming.

Amendment of the Particulars of Claim

Richard Morgan would like to make some few minor amendments to our particulars of claim. Currently they are drafted to plead your claim on a breach of contract basis (i.e. the sub-postmaster's obligation to make good the losses as contained his contract). Richard would like to go on to also include a plea that the sub-postmaster is your agent and therefore has a duty to account to you for all losses in any event. This is not a major amendment and Castleton's lawyers already acknowledge he is an agent. Any consequential amendments will, therefore, be limited. The reason for the amendment is to put the case at its strongest and I suggest that such an amendment be made. I would be grateful for your view on this.

Fujitsu

In this matter Fujitsu are clearly going to play a role. I understand that Fujitsu are currently looking at the matters raised in a letter of 25 July 2006 from Castleton's lawyers (copy enclosed for ease of reference). One of the pivotal issues in this matter will be the arithmetic used throughout and I would like to know the answer from Fujitsu as soon as possible to the points raised by Castleton's lawyers. Is there any pressure you can bring to bear upon Fujitsu to cause them to answer this letter in the near future? I would be most grateful if you would consider this.

One other point raised by Richard was the integrity of the Fujitsu product generally. Just to confirm, I understand that Royal Mail/Post Office know of no issues with the Fujitsu system and are confident that it operates correctly. Please discuss this with me if you have a different

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view.

Which Court?

You may recall that Castleton's lawyers had this matter transferred from a local court to the High Court in London. Richard is strongly of the view that it is possible a High Court judge may take an adverse view that this matter is before him given that, initially at least, it is a claim for between £25,000 - £27,000. Richard feels that we should write to Castleton's lawyers and suggest that given the nature of the claims the matter should be transferred to the Central London County Court - Chancery Division. Richard has a high level of faith in the judges there. Even by making the suggestion we buy ourselves a level of protection if the matter is ever raised by a High Court judge. At that point we could then at least assert we had asked for the matter to be transferred to a more appropriate forum but Castleton's lawyers refused. I would be grateful for your view on this.

Length of Trial /Costs

With the likely number of witnesses that may be needed to cover all the various aspects of the business conducted at the Marine Drive Post Office together with the need for expert witnesses, Richard considers that this matter will take between 7 to 10 days of court time. The previous estimate was 5 days. This will clearly have an impact on costs going forward. I know that historically Stephen has produced for you a schedule of costs that was shown to Castleton's lawyers. That schedule totalled approximately £223,000 including VAT and disbursements. At the time that schedule was prepared it was felt to be realistic but at the higher end of what the matter may cost (for the purposes of demonstrating to Castleton's lawyers what they may be facing). Having reconsidered the matter, and in the light of the complex nature of the evidence that will need to be gathered (both of fact and expert) and the extended current estimate for the trial I believe the costs estimate to be certainly possible and perhaps even light. A better view on this will be achievable in the course of the next few weeks as the nature of the evidence Stephen is able to gather becomes clearer. I will have Stephen update you on this aspect of this matter in the near future.

Counsel also raised the issue of the possibility of costs capping – i.e. the court asserting that costs only up to a certain level should be awarded. This could come up as an issue if the judge takes a view on proportionality (i.e. costs verses level of claim). There are, of course, argument that can be deployed to try to counter this issue – should it in fact come up – but I thought it worth raising here.

As we discussed (and apologies for raising this matter again - I know you are aware of this advice - but I raise it here for the sake of completeness), the costs of pursuing this claim will significantly exceed what is at stake. Accordingly, even if you win, the P.O will almost certainly not make a net gain as your costs will be assessed and possibly capped and the irrecoverable costs may well exceed the value of the monetary claim. In any event, you may well find it difficult to enforce any judgment because of Mr Castleton's asset position which is unclear. Accordingly the purpose of pursuing this claim now is not to make a net financial recovery, but to defend the Horizon system and hopefully send a clear message to other subpostmasters that the P.O will take a firm line and to deter others from raising similar allegations.

Summary

The above, I believe, covers the main issues of substance that were discussed. I have not sought to record all the detail of all the matters covered. Once you have had the chance to consider the above I would grateful if you could give me a call or drop me an email so we can move this matter forward as swiftly as possible.

Kind regards

Tom Beezer
For and on behalf of Bond Pearce LLP

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