

Tom Beezer

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 be 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

21/08/2006

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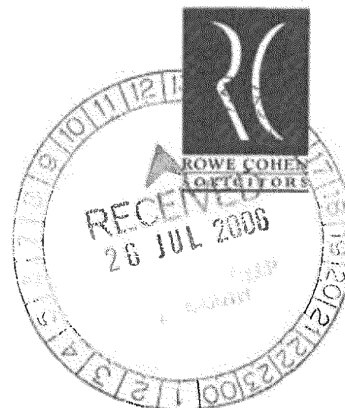
Firmwide number:

My direct line:

Southampton office fax:

DX: 38517 Southampton

Date: 25 July 2006
 Your ref: SJD3/FAC1/348035.134
 Our ref: MDT.113969
 Please ask for: Mark Turner
 Direct dial: **GRO**
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Dear Sirs

Post Office Limited -v- Mr L Castleton

Following disclosure, our client has been reviewing the transaction logs disclosed by your client. We understand from paragraph 2(c) that these documents constitute a full audit trail. By that, we understand that these logs are intended to show an item-by-item statement of all transactions carried out at Marine Drive Post Office for the particular days shown in the logs.

Mr Castleton has carried out a manual reconciliation of all transactions recorded in the log for Week 42. Since this is a time-consuming exercise, we have for the time being limited the analysis to that week, although in light of what we say below we envisage that it will be necessary for each of the following weeks in which it is alleged shortfalls arose. Week 42 was chosen for this initial analysis as it was the first week in which an apparent discrepancy arose and therefore the starting figures going into Week 42 are undisputed and provide an uncontentious benchmark against which to judge the movements during Week 42.

Mr Castleton's analysis of the transaction logs for Week 42, and a comparison with the cash accounts for that week appears to show a number of inconsistencies. According to the final cash account generated at Marine Drive Post Office for Week 42, total receipts of £176,291.15 were paid in during the course of Week 42. The end figure carried over from Week 41 was £54,170.49. As a consequence, it can be seen that, apparently, £122,120.66 was received during Week 42. However, a manual reconciliation of the figures contained in the transaction log for this week gives a figure for monies received of £125,013.90, an apparent difference of £2,893.24.

Similarly, an analysis of the figures relating to payments (i.e. monies leaving Marine Drive Post Office during Week 42) also shows a discrepancy. The figure for stock carried over from Week 41 was £92,374.74. If this is deducted from £176,291.15, this leaves a figure of £83,916.41 in respect of payments made. Again, however, a manual reconciliation of all of the transactions showing in the transaction log gives a figure of £83,707.07. This difference is not allocated in the Week 42 cash accounts.

It would further appear that there is £1,706.64 in unallocated cash shown as being paid out of Marine Drive Post Office. The computer system then seems during the end-of-week balancing to have offset this unallocated cash against the £2,893.24 figure, along with some further giro bank transactions, and produced an apparent cash shortfall figure of £1,103.13. This is of course the figure that our client was required to make good.

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 INVESTOR IN PEOPLE

Our client has not been able to reconstruct precisely how Horizon arrived at the figure of £1,103.13. He surmises that the system has sought to offset the £1,706.64 and other unallocated giro bank transactions against the £2,893.24 figure set out above. We would invite your client to undertake its own analysis of the transaction logs and provide an explanation for how that figure has been derived, in order that this discrepancy can be explained and any possible flaw in our client's methodology in carrying out the manual reconciliation brought to light as quickly as possible.

This represents an analysis of the figures at their most basic level. Mr Castleton's findings seem on the face of it to be entirely consistent with his assertion since this dispute first arose, namely that the figures provided by the Horizon computer system are incorrect. At the very least, it raises question marks about how a system that relies in essence on double-entry book-keeping can give rise to such discrepancies.

Our client then proceeded to review the Week 42 transaction log in more detail. It would appear that a number of the transactions recorded are incomplete – that is to say, only one half of a given transaction has been recorded by Horizon, with no corresponding entry. Ordinarily, one would expect to see two “halves” of a transaction. For example, a sale of £10 worth of stamps would show a £10 reduction in stock and a corresponding £10 increase in cash. In a number of cases, the log shows apparent transactions with only one “half” having been recorded by Horizon, and no corresponding other “half” to balance it.

In practice, this cannot happen. We understand from Mr Castleton that the Horizon system is configured in such a way that in order to complete a transaction on screen a valid method of payment must be selected. As such, the system would not process a transaction unless there had been a corresponding second “half” (or, in the case of payments, a corresponding first “half”) to it.

The obvious inference to be drawn is that, if the system cannot be operated to only create half of a transaction, Horizon is not recording the apparently missing “half”. Again, this is consistent with our client's supposition that transactions have not been fully recorded (or recorded at all) as a result of problems in communication between the two computer nodes used at Marine Drive Post Office.

Our client's firm belief is that if half of a transaction were to be lost, the effect would only show in relation to cash because Horizon looks for everything and the remainder is cash. If the first “half” of a transaction were lost, it would show as having no effect on stock but would only be noticeable in terms of movement in the cash figure. This also rather begs the question of whether whole transactions can be “lost” (i.e. not recorded by Horizon) if it is possible to “lose” halves of transactions.

We appreciate that this is, of course, something that is going to have to be addressed in expert evidence. It will also be necessary to undertake the same reconciliation in relation to the other weeks in which losses apparently arose. However, at this stage, we would invite you to conduct your own analysis of the figures for Week 42 and consider these anomalies with your client, and then provide an explanation for them.

Yours faithfully

GRO

ROWE COHEN