

Stephen Dilley

From: Stephen Dilley
Sent: 23 November 2005 11:46
To: Tom Beezer
Cc: Bob Heckford
Subject: FW: Post Office -v- Lee Castleton

Tom,

In case Mandy doesn't go with Richard Morgan, I attach a report from another P.O case that David Craig of Devereux did FYI. The judgment is not helpful.

From: Rebecca Chappell
Sent: 14 November 2005 16:37
To: Stephen Dilley
Subject: RE: Post Office -v- Lee Castleton

Stephen

Please find the Lawtel summary of the relevant case below, in which judgment was given to the subpostmaster due to lack of original documentation.

As discussed, the cases I have worked on where the lack of evidence issue arose either settled (without entering into a substantial discussion on this point) or we got judgment based on the subpostmaster's weak defence.

Sorry I can't be of more help - good luck!

Rebecca

POST OFFICE COUNTERS LTD v TARLA MAHIDA (2003)

CA (Hale LJ, Kay LJ) 22/10/2003

CIVIL PROCEDURE - CIVIL EVIDENCE

DESTROYED EVIDENCE : SECONDARY EVIDENCE : RELIABILITY : ADMISSIBILITY :
POST OFFICES : SUB-POST MISTRESSES : DISCREPANCIES : SCHEDULES : ACCOUNTS :
RECOVERY OF SUMS : FAIRNESS : FAIR TRIALS : PRIMARY EVIDENCE : DEBTORS :
CREDITORS : CASE MANAGEMENT : DISCRETION : PROOF OF DEBT : CIVIL
PROCEDURE RULES 1998 SI 1998/3132 : CPR : CPR PART 31

Where a creditor was relying upon discrepancies in documents submitted by the debtor, and the debtor was requesting details of the claim, the creditor could not be said to have discharged the burden of proving the debt when it was responsible for destroying the primary evidence said to have proved that debt. That was a factor that should have weighed heavily in the judge's determination of whether the debt had been proved by the secondary evidence.

Appeal by the defendant ('M') from the decision of HH Judge Perry dated 31 October 2002, giving judgment in favour of the claimant ('P') and dismissing the counterclaim. M was employed as a sub-post mistress from 1988 until she was suspended in October 1994 and her contract terminated in

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1995. The grounds of the termination were that P had found discrepancies in M's claims for payments in respect of Department of Social Security ('DSS') payments that had been made by M. In September 1997 P issued these proceedings seeking recover of sums said to have been due which represented the discrepancies in the payments. M denied liability and counterclaimed for breach of contract. The judge found the claim made out and dismissed the counterclaim. By this appeal M claimed that she was denied a fair trial since the documentation relied upon by the judge was secondary evidence as to the alleged deficiencies. That evidence amounted to schedules drawn up by P which related to claim forms and receipts submitted by M when she had sought the payments. However, the actual documentation that was set out in those schedules was not adduced as evidence by P since it had either been destroyed by P or by the DSS in the usual course of document destruction. M argued that although the secondary evidence was admissible evidence, the judge was wrong to have admitted it or accept it as proving P's case. Accordingly, M argued that the judge should have exercised his discretion under CPR Part 31 and refused to admit the secondary evidence.

HELD: (1) There was no doubt that the secondary evidence was admissible evidence. The power contained in the Civil Procedure Rules 1998 SI 1998/3132 to exclude evidence, even if admissible, was principally a case management power designed to allow the court to stop cases getting out of hand. It would have been a harsh decision to have shut P out of its claim and the possibility of a defence to the counterclaim because of the non-existence of the original documents. Accordingly, the judge could not be said to have been plainly wrong in the exercise of his discretion to admit the evidence. (2) Nevertheless, there was a substantial unfairness in the process. M had requested sight of the original documents from a very early stage, but there were two key failures by P. Firstly, there was delay in P's response to M's request to see the documents, and secondly, P had failed to take proper care of the original documents which were the foundation of its claim. Those matters went to the weight accorded to the secondary evidence being admitted. (3) Whilst the judge could not be faulted for concluding that the secondary evidence entitled him to find that there had been an increased claim over a particular period, and that the evidence supported the dismissal of M's counterclaim, it was a separate issue as to whether the secondary evidence was of sufficient weight to prove the precise amount of debt that was said to have been due. Where a creditor was relying upon discrepancies in documents submitted by the debtor, and the debtor was requesting details of the claim, the creditor could not be said to have discharged the burden of proving the debt when it was responsible for destroying the primary evidence said to have proved the debt. That was a factor that should have weighed heavily in the judge's determination of whether the debt had been proved. (4) Whilst the secondary evidence did go some way, coupled with further evidence in the case, to prove some of the debt owed, it did not prove all of the claimed sums and accordingly the judge's order was substituted for one that only contained those sums proved. On that limited basis the appeal was allowed.

Appeal allowed.

David Craig instructed by Legal Services Royal Mail Group Plc for P. Mr J Kenny instructed by the Pro Bono Unit for M.

LTL 22/10/2003 EXTEMPORE : Times, October 31, 2003

Document No. AC9900565

From: Stephen Dilley
Sent: 14 November 2005 14:16
To: Rebecca Chappell
Subject: FW: Post Office -v- Lee Castleton

Rebecca,

30/11/2005

I understand you have had to mediate RM claims in the past and address a documentation problem. I have a similar problem with a case that I am running for them. Please could you give me a call this afternoon to discuss?

Many thanks.

Stephen Dilley
Solicitor
for and on behalf of Bond Pearce LLP

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From: Stephen Lister
Sent: 07 November 2005 10:42
To: Stephen Dilley
Cc: Tom Beezer
Subject: RE: Post Office -v- Lee Castleton

Thank you Stephen.

Lack of documentary evidence has been a problem for RM in the past and there is a history of findings against them on the basis that they could not prove their debt. If this case will effectively put the Horizon system on trial, I agree that RM should seek to mediate a settlement. Rebecca Chappell has successfully mediated RM claims in the past and you should speak to her as she has also had to address the problem of lack of documentation. She may have some suggestions.

I am copying this email to Tom Beezer as he is the client care partner for RM litigation.

Regards,
Stephen

From: Stephen Dilley
Sent: 07 November 2005 10:01
To: Stephen Lister
Subject: Post Office -v- Lee Castleton

Dear Stephen,

As you are the relationship partner for the Royal Mail, I thought it would be helpful to update you in relation to a case I am dealing with for them in case Mandy Talbot mentions it. I recently inherited this case from Denise Gammack when she left the firm, who in turn inherited it from Laura Peto in CMS.

Mr Castleton ("Mr C") was a subpostmaster from July 2003 to March 2004. The Post Office a claim against him for approximately £27,115.83 plus interest and costs in respect of net losses. The real issue is whether there has been any real shortfall, or whether the shortfall has really been generated by computer error. Mr Castleton believes the post offices' weekly snapshots are inaccurate. Mr C has a wrongful termination claim for up to £250,000 but those losses have not yet been particularised.

The claim has been issued, a defence and counterclaim served, and the case was stayed for settlement. Mr C has obtained 2 experts' reports which conclude that the P.O's Horizon computer 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.

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I have asked the P.O to produce some more documents to try to strengthen their claim, but they are struggling to do so. Given the nature of Mr Castleton's Defence, I suspect that the Court will draw adverse inferences against the Post Office if it is unable to produce relevant documents that could either help or hinder its case.

My view is either that we should obtain the documents to prove the claim is true, or take an early view that it is unlikely to succeed and seek an early settlement (which may even on a worst case scenario involve making a payment to Mr Castleton).

We take instructions from Cheryl Woodward, Agents Debt Team, Chesterfield but Mandy Talbot is copied in on emails. I spoke to Mandy last week to take instructions and her first question was why Bond Pearce had issued a claim when liability was unclear. I informed Mandy that my colleagues had expressed concern to Cheryl about issuing.

(There is an attendance note of a telecon between Laura and Richard Benton (Service Management Section) on file dated 20 April "LRB expressing concern that she would only want to issue if she was entirely satisfied there were no holes in the evidence which would make the claim fail" and letter from Laura to Cheryl dated 10 May stating "...although you have instructed me to issue proceedings, I am reluctant to do so with the knowledge that some vital evidence may be missing. In particular, some balance snapshots and documents for Week 51 and 52 are missing together with an audit trail. The debtor's solicitors claim that these documents are pivotal..." and email from Laura to Cheryl of 24 May "...it will damage the claim if we are unable to provide evidence pivotal to the claim." Laura was then told to issue a claim without this information.

Mandy's next comment was that Cheryl may not have had authority to tell Laura to issue a claim but I was able to tell Mandy that Cheryl had referred this question to her Managers before instruction Laura to proceed.

In any event, Mandy has instructed me to put forward an offer of mediation to try to settle the claim. In the meantime, she will try to obtain more info to support the P.O's claim.

If you have any further questions, please do not hesitate to contact me.

Kind regards.

Stephen Dilley
Solicitor
for and on behalf of Bond Pearce LLP

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