

5 January 2006

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Our ref:
SJD3/ABG1/348035.134
Your ref:
MDT.113969

Dear Sirs

Without prejudice save as to costs offer pursuant to CPR Part 36
Post Office Limited -v- Mr L. Castleton

We refer to our unanswered without prejudice save as to costs letter dated 17 November.

We believe that our Application to set aside the Default Judgment on the Counterclaim will undoubtedly succeed at the Hearing on 9 February, not least because:

- a) The Claim and Counterclaim are intertwined. It would be inconceivable if the Trial Judge finds that Mr Castleton failed to account for over £27,000, but the Post Office has to pay Mr Castleton damages for wrongful termination, because of a Default Judgment on the Counterclaim. There needs to be a full Trial of the Claim and Counterclaim and the Trial Judge's discretion should not be fettered by a Default Judgment on the Counterclaim. There is therefore a good reason why the Post Office should be allowed to defend the Counterclaim in accordance with CPR 13.3(b); and
- b) If Mr Castleton is correct that the Horizon system was erroneously declaring entries in the account and that the losses were only computer generated and were theoretical (which is denied), then there would always have been sufficient cash in the Marine Drive branch to meet its requirements. However, Mr Castleton ordered extra cash which enabled the branch to continue to trade. Mr Jones dealt with Mr Castleton's appeal. His analysis of the increases in cash ordered by the branch demonstrated that the branch did not need to order excessive amounts of cash, because it was not required to service the transactions that were being actually performed. Significantly, the orders for extra cash were always in weeks where there were reported to be significant losses at the branch. Crucially, it was only the ordering of the extra cash that ensured that the branch was always able to remain trading. Additional cash would not have been needed if there was only a computer generated, theoretical shortfall. It is clear that the physical cash should have been there but was not. Accordingly, there is a bona fide Defence to the Counterclaim that appears to have a real prospect of success in accordance with CPR 13.3(a).

However, for the sake of commercial expediency, the Post Office is willing to accept payment from Mr Castleton of £24,750 in full and final settlement of both the Claim and Counterclaim, including interest and costs. Any payment is to be made in full and in cleared funds up to 21 days after acceptance of this offer. The Default Judgment on the Counterclaim would be set aside.

This offer is available and open for acceptance for 21 days from the date of this letter. Mr Castleton may only accept it after 21 days if the parties agree the liability for costs, or the Court gives permission.

If Mr Castleton achieves a worse result than this offer at trial, then we will ask the Court to order Mr Castleton to pay indemnity costs and interest on any sum of money (including costs) awarded to the Post Office at a rate not exceeding 10% above base rate, starting on the last date with which Mr Castleton could have accepted the offer without needing the Court's permission.

If Mr Castleton refuses to consent to the setting aside of the Default Judgment on the Counterclaim, then given that we have made a CPR Part 36 offer, we reserve the right at the Hearing on 9 February to ask the Court, if appropriate, either to make a Costs Order in the Post Office's favour, or to reserve costs of our Application to set aside Default Judgment.

Kindly acknowledge receipt. We await hearing from you.

Yours faithfully

Bond Pearce LLP