

25 April 2006

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Our ref:
SJD3/KAK2/348035.134
Your ref:
MDT.113969

Dear Sirs

Without prejudice save as to costs
Post Office Limited -v- Mr L Castleton

Thank you for your fax dated 20 April 2006. We have the following comments in response:

1. As long ago as 7 November 2005, we put forward an offer of mediation. Initially, you stated that Mr Castleton was only willing to mediate *after* disclosure of balance snap shots. We explained in detail in our 18 January fax why Mr Castleton's experts have made a fundamental error by assuming that a balance snap shot is the same thing as a final cash account and the consequently, a balance snap shot is not a useful tool for verifying whether cash was missing from the Marine Drive branch and will not be determinative of this dispute. You have never provided us with a detailed response to that fax and explained why you have perceive the balance snap shots to be determinative.
2. In your 27 February letter, you stated that even though disclosure had not taken place, Mr Castleton was willing to consider mediation *before* disclosure. Accordingly, on 6 March we sent to you directions which included a stay for mediation to take place before disclosure. You approved those directions and the Court sealed the Directions Order on 9 March. If you preferred to mediate after disclosure, you could have raised this at the time so that provision could be made in the directions.
3. During the stay period, we went to considerable effort to find a capable and available mediator and venues. Now that the stay is virtually at an end, you have completely changed your position and stated that you do not want to mediate until *after* disclosure.
4. Your change of position is particularly bizarre given the vast amount of disclosure that has already taken place. For example we have sent you:
 - (a) 14 weeks worth of cash accounts (week 39 to 52), 12 weeks of giro accounts (weeks 39 to 50) and 12 weeks of declared cash receipts (weeks 39 to 50) and a copy of the final audit.
 - (b) Witness statements for three Post Office employees which explains the Post Office's case in great detail.
 - (c) The 243 page Exhibit to Ms Oglesby's statement which includes:
 - i. correspondence between Ms Oglesby and Mr Castleton
 - ii. an the e-mail from NBSC explaining that they had looked at cash account information sent to them by Mr Castleton and were unable to find any errors;
 - iii. an e-mail from HSH which stated that "there is no evidence whatsoever of any system problem" and that they had investigated; and
 - iv. copies of NBSC and HSH call logs, the test office snap shots ran by Ms Oglesby with Greg Booth and information about system failure.
 - (d) The 38 page Exhibit to the Witness Statement of John Jones' witness statement which includes:

- i. copies of the correspondence between Mr Castleton and John Jones;
- ii. John Jones' daily transactional analysis from daily and weekly balance snap shots and the cash accounts of weeks 46, 47 and 50; and
- iii. Mr Jones appeal note. The exhibits to his statement total 38 pages.

(e) The 65 page Exhibit to Helen Rose's witness statement which includes both the hand written and typed audit (coming to 65 pages).

In view of the above disclosure, you already have more than ample information upon which to form a commercial view about settlement.

5. It is clear that you have not used the disclosure we have provided. For example, you only sent to your experts accounting information for just one week i.e 49, being the cash account, balance snap shot dated 27 February 2004, final balance dated 4 March 2004 and suspense account dated 3 March 2004. It is disingenuous for you to ask us for disclosure of balance snap shots (upon which nothing will return, for the reasons explained in our 18 January fax), given that you appear to have withheld the vast majority of more useful documents we gave to you from your experts White and Hoggard and Bentley Jennison.
6. In terms of financial documents, we anticipate that our disclosure list will include items such as cash accounts, giro depositing withdraw receipts, declared cash receipts, final balance, miscellaneous transaction, sales reports and transaction logs. By their very nature, we do not anticipate that they will mean much to you, until your accountancy expert has had an opportunity to analyse them. Accordingly, we do not think you will be in a significantly more informed position immediately after disclosure alone.
7. The costs involved pursuing this matter to trial, given the number of witnesses and experts, will be significant and will certainly significantly exceed the amount in dispute. The longer you wait to mediate, the more costs both parties will incur and given the financial stakes will be higher, we anticipate that it may well prove harder to settle. We say this particularly for the benefit of your client, because we believe that the Post Office has a very strong case. If Mr Castleton reaches the same conclusion very late in the day, he may regret not mediating earlier.
8. We have serious concerns about the merits of Mr Castleton's defence and counterclaim. For example, you have failed to properly answer any of the CPR Part 18 Request dealing with clarification of whether Mr Castleton claims losses beyond a three month notice period, to provide documents to evidence the diminution in the capital value of the premises and the loss of profits claimed. Despite your failure to provide detail and documents, the Post Office is prepared to mediate before seeing them.
9. If parties could never meaningfully mediate until after disclosure, then CPR 44.5(3a)(ii) would not say that the Court must have regard to the conduct of all parties including efforts made before and during the proceedings in order to resolve the dispute and there would never be any cases that settled before the disclosure stage.
10. You state that "there is no realistic prospect of a compromise being reached." That seems to prejudge the outcome of the mediation. We refer you to the comments of Lord Justice Ward in **McMillan Williams v Range [2004]** who concluded "... the lesson to be learnt from the [mediation] process is that the true bottom line is never known until the mediation is concluded, and usually successfully..."
11. You have mentioned venue costs as being a concern. To help to alleviate the venue costs, we can in principle offer this firm's London office for the mediation (subject to availability and to the mediator being happy with this).

If Mr Castleton defers mediation until later in the case, we will certainly be drawing this letter to your attention at that time on the question of costs.

It appears that your client wishes to be "seen" to be considering mediation, without actually getting on with it. In the circumstances, we invite you to seriously reconsider your position.

We await hearing from you.

Yours faithfully

Bond Pearce LLP