

Stephen Dilley

From: Stephen Dilley
Sent: 17 November 2006 17:52
To: 'mandy.talbot'; GRO
Cc: Tom Beezer; 'Richard Morgan'
Subject: FW: VERY URGENT: Post Office -v- Castleton

Dear Mandy,

Please see Mr Castleton's solicitors email below. Apparently Castleton's doctor says he does have the mental capacity to give instructions to his solicitors, but in any event Mr Castleton has now said he doesn't want them to sign the Tomlin Order. This is in some ways astonishing, given that Castleton put forward the settlement offer in the first place and I can only conclude that he's totally lost the plot. I am told he is on anti-depressants and suspect he is close to breakdown. I am due to speak to Castleton's solicitor again on Monday when the position may change (but he doubts it) and will update you further, then. In the meantime, we are preparing full speed for trial.

It doesn't sound as though Castleton is going to produce an expert report. Given that BDO have already read into the case thoroughly, they might as well top off their work with a summary report so at least we have something to use if we want it and I have accordingly instructed them to prepare a draft report for our review. I trust this is in order.

Mandy, in the past some of the P.O's Chesterfield witnesses have expressed a reluctance to give evidence at trial e.g Wendy Smith and Ken Crawley. They are not main witnesses and I am hoping that Mr Castleton's solicitors agree not to call them. However, it wouldn't surprise me if they cannot get any further sense out of Castleton and that they come off the Court record shortly. Do you want me to witness summons any of our witnesses to try to ensure their attendance?

Let's touch base on Monday.

Kind regards.

Stephen Dilley
Solicitor
for and on behalf of Bond Pearce LLP

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Main office phone: GRO

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www.bondpearce.com

-----Original Message-----

From: M.Turner; GRO
Sent: 17 November 2006 16:07
To: Stephen Dilley
Subject: RE: VERY URGENT: Post Office -v- Castleton

Without prejudice

Dear Mr Dilley,

I have now been able to speak with Mr Castleton and with his GP.

Mr Castleton has now instructed me that he does not want me to sign the draft Tomlin Order reflecting the agreement which we had reached in principle.

We are not in a position to serve our witness evidence in tonight's DX. As things stand, I do not have instructions to serve the Bentley Jennison report in relation to the Week 42 transactional data. I can add nothing further to that at this stage.

I will revert to you on Monday morning.

Mark Turner

Solicitor
Commercial Group

Howe Cohen Solicitors

T: **GRO**
F:

-----Original Message-----

From: Stephen Dilley **GRO**
Sent: 17 November 2006 15:55
To: Mark Turner
Subject: RE: VERY URGENT: Post Office -v- Castleton
Importance: High

Without prejudice save as to costs

Dear Mr Turner,

I have tried on several occasions unsuccessfully to speak to you this afternoon and have left messages.

Given that you stated that Mr Castleton's GP was going to visit him at 12.30pm/1pm today, I had hoped that by now you would be able to confirm whether you had instructions to sign the Tomlin Order. I wish to know whether to put our statements in today's DX. Please can you give me a call when you get this email to confirm the up to date position?

I look forward to hearing from you.

Stephen Dilley
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-----Original Message-----

From: Stephen Dilley
Sent: 17 November 2006 11:30
To: 'M.Turner' **GRO**
Subject: VERY URGENT: Post Office -v- Castleton
Importance: High

Without prejudice save as to costs

Dear Mr Turner,

Thanks for your email of today. We have since spoken. I am sorry to hear that Mr Castleton is unwell.

As confirmed in my email of 10 November, our Counsel's brief fee would only not be incurred on Monday 13 November, strictly provided that a final settlement order is agreed within the next few days. Those few days have now passed. You have not been able to supply a signed order and therefore as you appreciated when we spoke, we are unable to stand down Counsel.

You made an offer in your letter dated 10 November which has been accepted with some minor changes and agreement on the appropriate wording of the letters. That is now enshrined in the Tomlin Order I emailed you on 10 November, an amended copy of which was sent on 15 November. Is Mr Castleton seeking to resile from that?

If he is now once again seeking to defend the claim, on what basis will he do so? You are out of time to serve the Amended Defence and your expert's report.

We have agreed to speak again once you have spoken to Mr Castleton's GP this morning and I look forward to hearing from you as a matter of urgency. As you will appreciate, significant further costs are now going to be incurred getting this on to trial and therefore it is in all parties interests that the settlement is now finalised without further delay.

Yours sincerely,

Stephen Dilley
Solicitor
for and on behalf of Bond Pearce LLP
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-----Original Message-----

From: M.Turner [REDACTED] GRO
Sent: 17 November 2006 10:41
To: Stephen Dilley
Subject: RE: Post Office -v- Castleton

Without prejudice

Dear Mr Dilley

I refer to your voicemail message left yesterday evening.

I tried to speak to my client yesterday but was again unable to do so.

I am now endeavouring to speak to his GP directly as a matter of urgency to find out what the position is regarding his medical condition and whether or not it can properly be said to impair his ability to provide me with instructions.

I am very conscious of the issue of your counsel's brief fee and the need to conclude this matter at the very earliest opportunity. I will hopefully be able to revert to you later today.

Regards,

Mark Turner
Solicitor
Commercial Group

Rowe Cohen Solicitors

T: [REDACTED] GRO
F: [REDACTED]

-----Original Message-----

From: Stephen Dilley [REDACTED] GRO
Sent: 15 November 2006 16:08
To: Mark Turner
Subject: Post Office -v- Castleton

Without prejudice

Dear Mr Turner,

Thanks for your email of today.

I attach a signed, amended Tomlin Order (3 hard copies to follow by DX) and can confirm that to settle this today, the P.O is willing in principle to agree to:

1. The "no dishonesty" suggested wording you put forward in your email below. This is now incorporated into the Tomlin Order.
2. The suggested wording of the Mr Castleton's letter to the P.O withdrawing his allegations about Horizon that you put forward on 14 November which states:

"I, Mr Lee Castleton, the former subpostmaster at Marine Drive Post Office, Bridlington, fully and unreservedly withdraw the allegations I have made about the operation of the Horizon system. I undertake not to repeat those

allegations and/or make any further allegations about the Horizon system and/or its functioning."

This too has been incorporated into the Tomlin Order.

3. Your suggested amendment to the wording of the Tomlin Order i.e the insertion of the words "except as otherwise previously ordered by the court" to preserve the costs order being made on the way. I have inserted this into paragraph 3.

I have inserted the dates when Mr Castleton's payment of the claim, interest and interim costs on account should be made as being Friday 8 December 2006. This is actually 23 days from today.

We have also calculated interest on the claim to 8 December 2006 (calculations attached). It is £3,917.42. This figure is incorporated into the Order at paragraph 2 of the Schedule.

Provided the Tomlin Order is acceptable to Mr Castleton, please sign, date and return the 3 hard copies as a matter of urgency, or alternatively, please confirm that you will now file them directly Court for approval and sealing and ask the Court to vacate the trial date.

I look forward to hearing from you as soon as possible.

Yours sincerely,

Stephen Dilley
Solicitor
for and on behalf of Bond Pearce LLP
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-----Original Message-----

From: M.Turner [redacted] GRO
Sent: 15 November 2006 14:27
To: Stephen Dilley
Subject: Post Office -v- Castleton

Without prejudice

Dear Mr Dilley

I refer to our conversation earlier today. As discussed, I am writing to you in relation to the proposed wording of the Tomlin Order to settle these proceedings and the two letters to pass between the parties even though I am currently without instructions in that regard for the reasons set out in my earlier e-mail. The proposals put forward in this e-mail are subject to revision when I am able to speak to my client and obtain his instructions and are put forward in the meantime at your request and in an effort to try to move matters along pending my receiving those instructions.

We sent to you yesterday a revised proposed form of wording in terms of the confirmation to be provided by my client of the withdrawal of his allegations in relation to Horizon. For the reasons I set out when we spoke, I think it is almost certain that my client will be unwilling to agree your original proposed form of wording. I shall give some further thought to whether there is an "intermediate" form of wording that may be acceptable to both parties but, as things stand, I do not think it is likely that my client will go so far as actively confirming that he accepts that the system functions correctly.

In terms of the letter to be sent by your client in relation to the "no dishonesty" issue, I would propose (without having had an opportunity to discuss with my client whether there is any particular form of wording that he would prefer) the following form of wording:

"The Post Office confirms that no allegation of dishonesty is or has been made against Mr Lee Castleton in claim number HQ 05 X 02706, arising from his tenure as sub-postmaster at Marine Drive Post Office, Bridlington. The claim brought by the Post Office was a claim for Mr Castleton to make good a shortfall showing in the accounts of the Marine Drive Post Office pursuant to his contractual obligations."

There is no particular magic to this form of words - the point is merely to convey that your client has not and does not assert in these proceedings that Mr Castleton has acted dishonestly. I am happy to discuss an alternative form of wording if you have an issue with that which is proposed, subject only to it making clear that particular point.

In relation to your draft Tomlin Order, the only comment I have is that paragraph 3 of the Order itself should insert (probably after "...and the Counterclaim") "except as otherwise previously ordered by the court". This specifically preserves the interim costs orders that have been made along the way.

As I indicated in my e-mail earlier, I shall endeavour to obtain instructions from my client on these points as soon as I possibly can.

Regards,

Mark Turner
Solicitor
Commercial Group

Rowe Cohen Solicitors

T: **GRO**
F:

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