

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Claim No: HQ05X02706

BETWEEN:

POST OFFICE LIMITED

Claimant

-and-

LEE CASTLETON

Defendant

**CLAIMANT'S SKELETON
ON TRIAL TO BE HEARD
FROM MONDAY 4th DECEMBER 2006**

Introduction

1. This is the skeleton argument of the Claimant ("C") on the trial of the trial of this action listed to start on 4th December 2006. It is not known whether and if so when D, who appears in person, will lodge any skeleton on his behalf. A short chronology and list of abbreviations and names is attached to this document.

Background

2. In June 2003 D was appointed as sub-postmaster of the Marine Drive Branch at 14 South Marine Drive, Bridlington, Yorkshire (referred to as Marine Drive) under C's standard Post Office contract.
3. Under the terms of that contract, D was C's agent and was responsible for the safekeeping of its property and was obliged to account for such. He was also obliged to produce accounts and operate the branch in accordance with standard requirements.
4. The Marine Drive Branch was located within a retail shop and operated a computerised stock accounting system called Horizon that was connected to C's central computer system. All transactions on the Marine Drive Branch computer were logged onto C's central computer and D was obliged to check his own entries on the computer both daily

and weekly. At the end of each business week (a Wednesday) D was obliged to prepare and sign a document entitled "Cash Account (Final)" and send it to C.

5. D traded for several months without significant incident. However between January and March 2004 D recorded substantial losses in the Cash Accounts (Final) signed by him and submitted those to C. In the last Cash Account (Final) prepared and signed by him, being for week 51,¹ the week ending Wednesday 17th March 2004, D vouched an accumulated loss of £22,963.24 in the amounts due to C.
6. On 23rd March 2004 C attended at the Marine Drive Branch and an audit was carried out. That audit revealed that by that date there was a shortage of £25,758.75 cash.²
7. Whilst the audit was being completed on 23rd March 2004 the sub post office remained closed, but the terminal for National Lottery sales in the main part of Marine Drive was still open and sales to a value of £176 were made, whilst prizes to a value of £75.80 were paid out,³ giving a net balance received by D or his agents of £100.20 for which he has failed to account.
8. In the circumstances of these large unexplained shortages D was suspended by his retail line manager, Catherine Oglesby, on 23rd March 2004.
9. D requested a hearing with Catherine Oglesby in which he alleged that the shortages were occasioned by faults with the Horizon computer system, however he was unable to substantiate these allegations and he was subsequently dismissed.
10. He appealed that decision to John Jones and there was a hearing on 1st July 2004 at which D again alleged that the shortages were occasioned by faults with the Horizon computer system, however again he was unable to substantiate these allegations and his appeal was dismissed.

¹ C's business runs by reference to numbered weeks, with the year ending in 2004 having week 52 ending on 24th March 2004.

² As proved in paragraph 7 of the witness statement of Helen Rose.

³ As proved in paragraphs 12 and 13 of the Witness Statement of Michael Johnson.

The Claim

11. C claims £25,858.95 being monies received by the Defendant (“D”) as agent for C but for which he has failed to account. The Amended Claim appears at Bundle 1 tab 2.
12. D’s unparticularised defence is apparently that the losses are not real but are occasioned by problems with C’s computerized accounting system. The Amended Defence and Counterclaim appears at Bundle 1 tab 3.
13. C pleads an Amended Reply and Defence to Counterclaim which appears at Bundle 1 tab 4.

The Counterclaim

14. Since D alleges there were no “real” losses, he says his subsequent dismissal by C as a sub-postmaster was wrongful and (by recent amendment) he claims damages of £11,250 (reduced from £250,000).

The Issues

15. There are 3 main issues:

- (i) Does D owe C the amount of £25,758.75 found owing at the conclusion of the audit;
- (ii) Does D owe C the amount of £100.20, being the balance of the receipts and payments from the National Lottery terminal at the Marine Drive Branch for business transacted on 23rd March 2004;
- (iii) Did C wrongfully dismiss D, or was D in breach of contract such as to entitle C to terminate the agreement, or did C terminate the contract lawfully in any event?

Issue (i)

16. D admits both that there was an apparent shortfall in the account of the Marine Drive Post Office at 23rd March 2004 (£25,758.75) and that the audit conducted by C’s staff confirmed that there was a balance of £25,758.75 owing to C.⁴ On these facts, C is entitled to judgment in the amount of £25,758.75.

⁴ See paragraph 2 of his Amended Defence and Counterclaim.

17. D does not challenge specifically any of the figures in that audit, nor does he say how any calculation of the amount owing to C is said to be wrong or in what respect. He further admits that he personally produced, signed off on and submitted to the Claimant the Cash Accounts (Final).⁵
18. Despite this, D says (baldly) that “any apparent shortfall is entirely the product of problems with the Horizon computer and accounting system used by [C].” He goes on to say that “he will be able to demonstrate through a manual reconciliation of the figures contained within the daily balance snapshot documents created by [D] during the course of his tenure as sub-postmaster at Marine Drive Post Office”. Save to this extent, C does not know how D intends to make his case on this point on the evidence, if he is to be permitted to make any positive case.
19. Whilst these allegations are unparticularised, if they are to be allowed to be maintained then the burden of proof falls on D for these reasons:
- (i) First, as a matter of law, “he who asserts must prove” is a well remembered maxim;
 - (ii) Secondly, there is binding authority for the proposition that an agent who produces accounts for a principal which contain statements that money has been received is bound by those accounts unless he can show that the statements in the accounts were made unintentionally and by mistake (see Bayley J in *Shaw & Ors –v- Picton* (1825) 4 B & C 715, at 729 - 730,⁶ alluded to in similar terms in the speech of Lord Shaw and others in *Camillo Tank Steamship Co Limited v Alexandria Engineering Works* (1921) 38 Times LR 134, at 146 – 146).⁷
20. If (which is denied) D is able to show that the accounts should be re-opened, then C claims an entitlement to a formal account,⁸ for the purposes of which account the Court might wish to consider whether to adjourn the matter to a Master of the Chancery Division.

⁵ See paragraph 3 of his Amended Defence and Counterclaim.

⁶ This case is still cited as good authority in the leading texts on accounts.

⁷ 2 authorities are cited, *Shaw* as a specific dicta setting out the precise ambit of the test, and *Camillo Tank* in order to demonstrate the context of that dicta within the existence of the wider principle.

⁸ See paragraph 6 of the Amended Reply and Defence to Counterclaim.

Issue (ii)

21. C's claim in relation to the amount of £100.20 owed in relation to the sale of National Lottery tickets is pleaded in paragraph 11 of the Particulars of Claim. D's defence, set out in paragraphs 2 and 7D, is that he does not admit the facts, that he had no way of making the sales and he is not responsible for anything that took place on or after the day of his suspension. It is admitted by D (in paragraph 7F) that C has demanded this sum as part of C's overall claim but that D has not paid it.
22. The facts that C intends to prove are that on 23rd March 2004, whilst the sub-post office was closed whilst C's audit was being conducted, D or his assistants made sales of £176 and disbursed prizes of £75.80 from the National Lottery terminal in the main part of his shop, but that D never accounted to C for that balance.
23. C will rely on the evidence of Catherine Oglesby, and in particular her sketch of the premises showing the National Lottery terminal in the main part of D's shop, paragraph 11 of the evidence of Ruth Simpson to the effect that sales could be made when the sub-post office was shut, and paragraphs 12 and 13 of that of Michael Johnson proving the National Lottery records.
24. Set against a bare non-admission, C's version will be proved on the balance of probability.

Issue (iii)

25. D counterclaims that his contract as a sub-postmaster was wrongfully terminated as (on his case) the shortfalls were the product of C's Horizon computer system.⁹
26. C's case in defence is that it was entitled to terminate D's contract on the basis of the shortfalls, alternatively on the basis that he was in breach of clause 3 of section 22 of his contract, in that (on D's case) the figures produced by him were inaccurate.¹⁰
27. C is entitled to defeat the counterclaim on either basis.

Burden of Proof and Order of Cases

28. In these circumstances D bears the burden of proof on the majority of issues and should make any case and lead any evidence first, with C to answer that case once it is closed.

⁹ Amended Counterclaim paragraph 9.

¹⁰ Amended Reply and Defence to Counterclaim paragraph 11.

29. However, since D appears in person, C proposes (subject to the Court) to open the trial so as to ensure that Court time is used efficiently.

Authorities

30. I certify that the requirements of paragraph 8 of the *Practice Direction (Citation of Authorities)* [2001] 1 WLR 1001 have been complied with in respect of each authority cited.

Conclusion

31. C will invite the Court to give judgment on the claim in the full amount and to dismiss the counterclaim.

RICHARD MORGAN

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