

Legally Blonde

News & Case Law Update

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Wickes building Supplies v Blair [2019] EWCA Civ 1934

Liability was admitted and the claim proceeded within the Portal. The Claimant served their evidence later than what was permitted by the rules. The trial Judge disregarded that evidence and determined quantum without it. The Claimant argued that the claim should have been dismissed which would allow the Claimant to start again in Part 7. On appeal the Circuit Judge agreed. However, the Court of Appeal restored the original decision of the District Judge that the Court can continue to deal with the matter in stage 3 and ignore the late evidence.

Timothy Francis Lage Hayes v (1) Graham Butters (2) Carol Linda Hayes (2019)

The Claimant was given permission to amend their Particulars of Claim and did so within the limitation period. He did however fail to pay an increased Court issue fee. He later filed a schedule of loss which far exceeded the original claim and as such the Defendant sought to have the claim invalidated due to being statute barred at this stage. The Court found that the Claimant did not intend to increase their claim at the time of filing the amended pleadings and therefore failure to pay the correct fee did not invalidate the claim.

Nash & Anor v 4MA Limited & Anor (2019)

The Defendant alleged that the pleadings failed to bring any cause of action against them and they applied to strike the claim out. Rather than doing so, the Court gave permission for the Claimant to amend their pleadings to allege causation and breaches against the Defendant.

Stoney v Allianz Insurance PLC (Liverpool County Court)

A Claimant is entitled to claim for a Court remission fee if they are unable to afford the cost of issuing proceedings. If the Claimant could have applied for a Court fee remission, but did not, and goes on to be successful, is the Defendant liable for the Court fee? In this case the Court decided that the Defendant was not.

Cook v Malcolm Nicholls Limited (Coventry County Court)

In contrast in this case the Court held that the Defendant was liable to pay the Court fee even though the Claimant would have been entitled to a fee remission.

Oliver Morley v Royal Bank of Scotland PLC [2019] EWCH 2865

The Claimant was unable to obtain full witness statements from 2 senior employees. The Claimant had not actually requested statements from the witnesses, but the Court found that if a request had been made it would have been refused. Therefore, the Claimant was granted permission to rely upon witness summaries at trial. It therefore followed that the witnesses could be summonsed to give evidence at trial.

RXK (a child) v Hampshire Hospitals NHS foundation trust [2019] EWCH 2751 (QB)

The Claimant suffered serious injuries, and the Defendant hospital trust admitted liability. The Claimant's award for damages would not be finalised for some time. The Claimant made an

Application for an interim payment on account of costs. In order to be successful, the Claimant had to provide all relevant information the Court needed to enable it to take into account the factors in CPR 44.4(4) in determining the Application.

Mansur Haider v DSM demolition ltd [2019] EWCH 2712 (QB)

The Claimants claim for damages was dismissed but the Court did not find the Claimant fundamentally dishonest. The Claimant appealed the decision on liability and the Defendant cross appealed on the decision that the Claimant was not fundamentally dishonest. The decision was upheld with regard to the dismissal of the claim but on appeal the Court also found the Claimant fundamentally dishonest. It is worth noting that the element of fundamental dishonesty didn't arise out of the accident itself,



rather the production of credit cards and bank statements.

Global Assets Advisory Services Ltd & Anor v Grandlane Developments Ltd & Ors [2019] EWCA Civ 1764

The Claimant accepted the Defendant's Part 36 offer within time and the Defendants were liable for their costs. The Claimant made a request for an interim payment on costs, but the trial Judge declined. On appeal it was held that the Court had power to order an interim payment in circumstances where a Claimant has accepted a part 36 offer in time.

Philip Aldred v Master Tyreese Sulay Alieu Cham [2019] EWCA Civ 1780

A child was awarded damages following a road traffic accident. As part of the cost order the child was able to recover Counsels advice on the merits of a settlement. The Defendant appealed against the decision and it was held that Counsels advice was not a disbursement "reasonably incurred due to a particular feature of the dispute". Being a child was a characteristic of the Claimant not a characteristic of the dispute and was therefore not recoverable under the fixed cost regime.

EUI Ltd v Stephen Olayinka (2019)

The Claimant made a personal injury claim following a road traffic accident. He stated to the medical expert that he had no previous existing symptoms prior to the accident. He also alleged that he had to give up work following the accident. It transpired that prior to the accident the Claimant has already agreed reduced hours, and the Claimant had given 14 days-notice of early

termination of employment. Further it transpired that the Claimant did have pre-existing symptoms. The claim was held to be fundamentally dishonest. He was sentenced to 3 months imprisonment for contempt of court.

Andrea Brown (appellant) v (1) Commissioner of Police of the Metropolis (2) Chief Constable of Greater Manchester & equality & Human Rights Commission [2019] EWCA Civ 1724

The Claimant brought a claim arising out of the wrongful misuse of the private information held about her. She claimed damages for misfeasance and personal injury. She succeeded at trial for the misuse of private data but failed on the other aspects of her claim. The award was less than a Part 36 offer, so she was awarded 70% of her costs and she was ordered to pay the Defendant's costs thereafter. However, the Claimant relied on QOCS protection therefore the adverse costs could only be limited to her award in damages. The Defendant appealed and was successful on the basis that it was a mixed claim and fell within an exception of CPR 44.16 (2)(b) which provided that cost orders could be enforced in full where a claim was made for the benefit of the Claimant.

Andreas Michael v Eleanor Lilliton (2019) EWCH 2716 (QB)

The Defendant was in breach of an Unless Order and as such, the defence and counterclaim was struck out. The Defendant applied for relief from sanction and it was refused. On appeal, relief was granted. While the breach of the order was significant it was near the bottom of the range of seriousness. It did not prevent the litigation being conducted efficiently at proportionate cost. Also, the breach of the Unless Order did not involve an underlying breach of a rule or court order.

Scott Dover v Finsbury Food Group PLC (2019)

A claim was brought in the Portal under the Pre-Action protocol for low value personal injury (EL & PL) claim. The Defendant failed to provide a response, so the claim exited the portal. The Defendant objected to Counsels advice obtained after the claim exited the portal. It was held on appeal that Counsels fee, reasonably incurred after the matter exited the portal was recoverable as a disbursement under CPR45 Section III A. It would have been perverse to allow Counsels fee for advice of the matter if it was in the portal but disallow it once it had fallen out.

Samantha Mustard v (1) Jamie Flower (2) Stephen Flower (3) Direct line Insurance {2019} EWCH 2623

The Claimant suffered injury following a road traffic accident. Causation of the injuries were disputed. The Claimant was told to covertly record her examination by the Defendant's medical experts. She did not record the examination by her own expert. The Claimant resisted an application to exclude the evidence under the Data Protection Act. She also resisted an Application made by the Defendant that the Claimant's Part 35 questions to the Defendant's medical expert was extensive and unnecessary. The recordings were admitted as evidence, but the Part 35 questions were deemed wholly disproportionate, not for the purpose of clarification and amounted to cross examination.

Gregor Fiskens Ltd v Barnard Carl (2019)

The Defendant applied to reamend his defence and counterclaim and add new parties to proceedings and to vacate the trial which was due to start the following week. The application was refused as the



amendment could have been pleaded sooner and the delay was unexplained.

Alafco Irish Aircraft Leasing Sixteen Ltd v Hong Kong Airlines Ltd (2019)

The Claimant sought costs on an indemnity basis following successful summary Judgement application against the Defendant. The Claimant sought the costs on an indemnity basis due to the Defendant's conduct putting the Claimant to considerable expense and the reference to all reasonable costs being paid created a contractual entitlement to indemnity costs. The Court was not persuaded on the conduct argument, but its contractual rights meant that it was entitled to indemnity costs.

Badejo v Cranston (2019)

The Claimant failed to pay the Court trial fee by the specified date and the claim was automatically struck out. The Claimant made an Application for relief from sanctions. The Judge refused the Application. On appeal it was held that the Judge had misdirected himself and when considering the third test as set out in Denton and had failed to consider proportionality. The appeal was allowed.

Bhaloo v Fiat Chrysler Automobiles Uk Ltd (2019)

The Defendant applied for permission to rely on expert medical evidence and to amend its defence if the expert evidence was permitted. Granting the Application would lose the trial date when the

Defendant could have acted much sooner. Further the Claimant's life expectancy was also limited which had a factor in the decision.

Ho v Adolkun [2019] EWCA Civ 1988

A personal injury claim subject to fixed recoverable costs was settled in the sum of £30, 000. The day after making the offer it was agreed that the matter be transferred from the fast track to the multi-track, but re-allocation did not take place as the matter settled. If the matter was in the multi-track the Claimant would be entitled to costs incurred.

On appeal it was held that fixed costs apply. It was noted that Defendants wish to make a Part 36 offer on the basis that the fixed costs regime would apply would be well advised to refer in the offer to CPR 36.20 and not CPR 36.13, and to omit reference to the costs being "assessed", or assessment on a "standard basis" in any offer letter or consent order drawn up following acceptance of an offer.

Liverpool Victoria Insurance Co Ltd v Hall (2019)

Following a road traffic accident, the Claimant's claim was dismissed, and the Claimant was held to be fundamentally dishonest. The Defendant applied for the committal for the contempt of Court of the respondent for making false statements. The Claimant was absent for the Application, but the Court adjourned the sentencing so that the Claimant had one final opportunity to seek advice and have the opportunity to make representations given that a custodial sentence was probable.

Mitchell v Preci 548 Ltd (2019)

The deceased died in 2015 and his 84-year-old widow brought a claim for personal injury. Expert

reports were exchanged and there was a material dispute in the contents. The expert could not attend trial and therefore the Defendant made an Application to vacate. The Application was heard two days before the trial. The Application was refused as there was a delay in making the Application and the Claimant's would be seriously prejudiced if the trial did not proceed as planned.

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