

Court fees in civil litigation: practical guidance

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Dixon v Radley House Partnership and Mr Christopher Reading and Others
[2016] EWHC 2511 (TCC), Stuart-Smith J (17 October 2016)

Outline

The case of Dixon is of importance to civil litigation practitioners.

It considers:

1. The circumstances in which the calculation and payment of court fees and the drafting of Claim Forms can render proceedings in civil proceedings invalid, a nullity or statute-barred under the Limitation Act 1980.
2. The consequences of failure to pay the appropriate court fees.

The case underlines the importance of:

1. Careful drafting of the Claim Form, causes of action and remedies.
2. Careful pleading of value of the claim, and calculation and payment of the court fee.
3. The potentially nuclear consequences to litigants and their legal representatives of getting it wrong.
4. Not pleading misconceived amendments with no real prospects of success.

This article considers:

1. The case: the facts, the arguments and the decision in Dixon.
2. Practical guidance for civil practitioners and litigants.

The case

Facts

The Claimants (Employer) engaged various professionals in connection with building works. The Claimants alleged defects in the works, in particular with the mechanical and electrical services, which caused losses to the Claimants, including the costs of remedial works.

The Claimants brought proceedings against their Architect (Radley House Partnership, “RHP”, D1) and the Mechanical & Electrical Engineer (Mr Christopher Reading and Chris Reading & Associates, “CRA”, D2 and D3).

The Claimants issued 3 claim forms: 1 against RHP on 7 November 2013, and 2 against CRA on 14 March 2014 (design allegations) and 18 March 2015 (inspection allegations).

The proceedings were subsequently and by agreement consolidated and transferred to the London TCC. The Defendants served detailed and substantive defences, and made extensive requests for further information and evidence.

After expiry of the alleged limitation periods on the claims, the Defendants applied to amend their Defences to plead limitation to all claims on the basis that the Claimants had failed to pay the appropriate court fees on issuing the proceedings. The Defendants effectively sought to bring an end to the proceedings. The Claimants resisted the applications to amend.

Arguments

The basis of the Defendants' plea was that the ultimately pleaded values in Particulars of Claim, served 4 months after issue of the Claim Forms, exceeded the statements of value in the Claim Forms.

The Defendants argued that the proceedings had not been "brought", for the purposes of the Limitation Act 1980 and, in consequence, that the proceedings were a nullity.

The Defendants sought to rely on Lewis v Ward Hadaway [2016] 4 W.L.R. 6, a case in which solicitors deliberately underpaid court fees in abuse of process. The Defendants, however, did not and do not allege abuse of process by the Claimants in Dixon.

The Claimants argued that:

1. There could not be a limitation defence to proceedings which, on the Defendants' case, had not been brought at all and which were a nullity.
 - a. A limitation defence could only be sought to be advanced to bar a remedy on otherwise validly issued proceedings which had been brought.
 - b. The logical conclusions of the Defendants' contentions were that the proceedings had not been brought at all and that a limitation defence, if any, would be pleaded in response to a newly issued claim.
2. In cases not involving abuse of process (this case), the authorities, properly interpreted, did not support the Defendants' contention.
3. Lewis was not applicable. That case concerned abuse of process and there was no allegation by the Defendants of abuse of process in this case.
4. Instead, the authorities as a whole needed to be considered, including:
 - a. Barnes v St Helens MBC [2007] 1 W.L.R. 879.
 - b. Page v Hewetts [2012] EWCA Civ 805 (CA) and [2013] EHC 2845 (Ch) (Hildyard J on remission).

- c. Lewis v Ward Hadaway [2016] 4 W.L.R. 6.
 - d. Bhatti v Asghar [2016] EWHC 1049 (QB).
 - e. Glenluce v Watermota [2016] EWHC 1807 (TCC).
 - f. Lifestyle Equities v Sportsdirect [2016] EWHC 2092 (Ch).
 - g. Obiter: University of Brighton v Dovehouse [2014] EWHC 940 (TCC) and TMT Asia v BHP [2016] EWHC 287 (Ch),
5. The claims had been “brought” for the purposes of the Limitation Act 1980. They had all been issued by the Court.
- a. Two of the claims were “brought” on dates earlier than the issue date as they were brought to the Court Office with requests to issue and appropriate fees.
 - b. The “appropriate” fee was, in cases not involving abuse of process, to be interpreted by reference to the value stated in the Claim Form and the fee payable for the relevant fee-scale bracket stated; and which had been paid.
6. The authorities, properly interpreted, did not support an argument that, in absent abuse of process, payment of an (allegedly) inappropriate fee on issuing proceedings:
- a. Would not stop time running for limitation purposes, i.e. would not mean that the claims had not been “brought”.
 - b. Would mean that no proceedings had been validly brought at all, i.e. the claims purportedly issued were in fact a nullity.
7. The Defendants’ applications were misconceived and had no real prospect of success.
8. In any event, even if the Defendants’ proposed amendments had any real prospect of success and even if the appropriate court fees had not been paid:
- a. The matter was properly remediable. The claims had all been issued. Additional court fees could be paid, if required, even after expiry of the primary limitation period. See Glenluce and Lifestyle, above.
 - b. The Defendants’ conduct and their applications were an abuse of process.
 - c. The Defendants had encouraged, participated in and positively affirmed the validity and value of the proceedings. The parties had conducted the proceedings for several years, with:
 - i. Post-issue pre-action protocol correspondence and meeting.
 - ii. Exchange of detailed statements of case, with no point being taken by the Defendants in their Defences.
 - iii. Requests for information, documents and evidence by the Defendants.
 - iv. Exchange by the Claimants of detailed expert evidence.
 - v. Agreed consolidation of the proceedings and transfer to the London TCC (with an agree value exceeding £250,000.00).

- d. The Defendants did not apply to amend or raise this limitation point or deficiency in the regularity of proceedings until after expiry of all alleged limitation periods, on 4 April 2016. The Defendants then waited until 30 June and 8 July 2016 to make the applications, after initial correspondence in which the Claimants rejected the amendments as misconceived, after the Defendants seemed no longer to pursue the point and Claimants had served the Reply.
- e. The Claimants contended the applications were a trap to bring a premature end to meritorious proceedings, and were contrary to the overriding objective.

Decision

The Court:

1. Dismissed the Defendants' applications as being misconceived and having no real prospect of success. See [60] and [67].
2. Held that the central tenet of the Defendants' argument was misconceived. Payment of the alleged inappropriate fees did not, as the Defendants argued, fail to stop time running for limitation on the claims which had been issued by the Court and where abuse of process was not in issue (as was the case here). See [23], [60] and [67].
3. Dismissed the Defendants' contention that the Claimants had not paid the appropriate court fees. The Claimants had paid the appropriate court fees. See [64] and [67].

Practical guidance

There have been a number of authorities, noted above, which have given rise to attempts by Defendants to defeat claims on grounds of payment of a court fee which is not "appropriate".

This is an area of practical importance to all litigants, Claimants and Defendants, which is sometimes overlooked and/or misunderstood.

The key practical points are:

1. In cases not involving abuse of process (deliberate underpayment of court fees to avoid or defer payment of fees otherwise due):
 - a. The key is the issue of proceedings by the Court. The date of issue will be the date on which the proceedings are "brought" for the Limitation Act 1980.
 - b. As to the time *from* issue of the Claim Form: the claim has been brought as the Court has issued it. Absent abuse of process, this is so whether or not a Claimant knows or ought to know that the claim it is bringing or will bring in the future is one for which the Court could (and under the Fees regime should) demand a higher fee: [57].

- c. As to the time *before* issue of the claim:
 - i. If the Claim Form is issued on a date later than the date on which it was in fact delivered to the Court Office, the Claimant will have to establish that it delivered to the Court Office on the date alleged the Claim Form, with a request to issue, and the “appropriate” fee.
 - ii. See Barnes, above, and CPR PD 7A, para 5.1.
 - d. The “appropriate” fee is the fee required by the relevant statutory order on court fees, which is to be determined by reference to the fee scale bracket in the relevant statutory order for the claim or claims articulated in the claim form (and, if issued simultaneously, the Particulars of Claim). See [55].
 - e. In the absence of abusive behaviour, it is not to be determined by reference to claims which are articulated later, whether or not the later claims are ones which the Claimant hoped or even intended to bring later at the time of issuing proceedings. See [55].
 - f. If proceedings are issued, the Court can direct and permit payment of a top-up or further fee to cure an error or underpayment of the court fee. See [56].
 - g. It is both conventional and proper for the Claimant to protect itself by including general words which, it hopes, will be sufficient to be a vehicle for the further claims or quantification if they can subsequently be pleaded. If and when the further claims or quantification can be pleaded, further fees may become properly payable. See [53].
2. In cases involving abuse of process in payment of the court fee:
 - a. Payment of an abusive court fee will not be an appropriate fee to establish that proceedings were brought on a date prior to their date of issue, e.g. if delivered to the Court Office but not issued until a subsequently.
 - b. Where a party engages in abusive behaviour, a range of responses are open to the Court, up to and including striking out a case altogether. See [56].
 3. A Claimant will bear the risk of the Court refusing or failing to issue a Claim Form, when delivered to the Court Office, or at all, if the appropriate fee is not paid.
 - a. If the Court does issue the Claim Form, notwithstanding failure to pay the appropriate fee, that is simply good fortune for the Claimant. It is not validation of the fee as being correct. It does not prevent the Court from requiring payment of further fees. See [52].
 - b. If the Court refuses or fails to issue the Claim Form by reason of the inappropriate fee, the risk is with the Claimants.

4. Particular risks arise in calculating Court Fees and in drafting Claim Forms. The potential consequences are substantial, if got wrong. The risks and pitfalls include:
 - a. The scope, nature and extent of the claims articulated.
 - b. Whether the Claim Form is wide enough to encompass the intended claims and an amended claim subsequently brought. If the amended claim were raised outside of expiry of the primary limitation period, whether it would be a new claim and arise out of the same or substantially the same facts as pleaded in the original claim form. See section 35 of the Limitation Act 1980 and, e.g. Co-operative Group v Birse Developments [2013] EWCA Civ 474.
 - c. Where there are unspecified sums claimed, and claims for monetary and non-monetary relief. Further or additional court fees may be payable.
 - d. The case law and legal classification of remedies and causes of actions are not straightforward and must be considered with care to avoid deficiencies in drafting and in issuing proceedings, within time or at all.
5. Defendants should consider the date and circumstances of issue of claims and the court fees paid.
6. The threshold is not high for obtaining permission to amend statements of case: real prospect of success in fact and law of the amended pleading.
7. The questions of whether to agree or resist amendments, make and resist applications, and how best strategically to approach litigation, carry substantive, tactical and costs consequences. Misconceived applications and arguments should not be made.
8. It is important that the Claim Form and statements of case are drafted appropriately and the appropriate court fee calculated and paid. If not, the consequences for litigants and their legal representatives can be severe, particularly if the Court refuses or fails to issue a Claim Form, at all, or on the day expected or required by the Claimant for limitation purposes.

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Tom Owen appeared for the Claimants in successfully resisting the applications.

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