IN THE COUNTY COURT AT MANSFIELD — Claim No. OWA02218

The Courthouse
Commercial Gate
Mansfield

Tuesday, 7th October 2014

Before:

DEPUTY DISTRICT JUDGE APTHORPE

Between:

MR. STEVEN GRETTON

Claimant

- v -

SANTANDER UK plc

Defendant

Costs Draftsperson for the Claimant: MS COLLINS
(instructed by Quality Solicitors Turner Law)

Counsel for the Defendant: MS E. SKITTRELL
(instructed by Squire Patton Boggs (UK) LLP)

JUDGMENT APPROVED BY THE COURT

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APROVED JUDGMENT

1. THE DEPUTY DISTRICT JUDGE: First of all, I would like to thank both parties' representatives for the helpful and detailed way in which they have presented their respective arguments.

2. I have been referred, obviously, to the *Denton* case and I have also considered CPR 3.9 which deals with relief from sanctions. This is the claimant's application for relief from sanctions. I think it is agreed by both parties that the relevant test is that set out in *Denton* and, therefore, that test requires me to look at whether or not the claimant's breach was significant or serious, whether there was a good reason for it and whether, taking those two points into account, relief should be granted in all the circumstances.

3. The evidence is set out in the claimant's application which was filed with the court on 10th September and this referred to the original court order of 30th May which required the claimant to file and serve a statement of costs by 4 pm on 22nd June. That document was subsequently filed with the court. It was not signed and I am told by Ms Collins that that document has still not been formally served on the defendant's solicitors.

4. The court then made an order on 11th July, requiring the claimant to comply with that previous order by 2 pm on 24th July. On 10th September the claimant made an application for relief from sanctions. As I have already indicated and as Ms Collins has admitted, the claimant has still not served the defendant with the statement of costs, whether signed or otherwise. As I have already indicated, providing an informal copy to the costs draftsman is not service under the Rules.

5. I have had regard to the persistent breaches of previous court orders, referred to in the statement of Mr Kelsall and in addition to the previous breaches in dealing with the original assessment process, bearing in mind that the original Tomlin order in this case was made on 30th May 2012, well over two years ago. In my view, and particularly taking into account the past history of breaches in this case, the breach by the claimant on this occasion is significant. I think the ordinary accepted definition of "significant" is, effectively, "worthy of attention or noteworthy in some way" and I think that this is plainly worthy of attention in the circumstances and I am urged by counsel to regard it as serious. Looking at the words of the order itself, I agree with counsel that the words were crystal clear and, as counsel has pointed out to me, it was an order of last resort. It was not the first order that was made; it was the second order. It was an unless order. Ms Collins accepted that there was no good reason for the breach. She refers to it as being caused by human error, so that is accepted: that there was no good or effective reason given.

6. The application filed by the claimant was dated 14th August, but it was not signed until 3rd September and was not actually filed with the court until 10th September. The fact that that application was filed so late, in my view is indicative of a general failure by the claimant to realise or recognise the importance of compliance with court orders. The statement should have been filed and served by 24th July. The application that was made to the court was not applied for until 10th September and it was not, in fact, served by the claimant at all. CPR 23.7(1) requires service as soon as practicable. It was not served at all by the claimant, but in fact, I understand, was served by the court. Therefore, in my view the claimant has not in any regard acted promptly here. In fact, I think my calculation was that they were just short of seven weeks late in making that

application. We have a situation, therefore, where the breach, in my view, is significant and it is serious. There is no good reason given. Should I grant relief in all the circumstances? I have had regard to the overriding objective and also CPR 3.9. It is important that the court rules are complied with so as to save expense, to deal proportionately with cases, to deal with them expeditiously and fairly, to allocate an appropriate share of the court's resources and also to enforce compliance with the rules, practice directions and orders of the court.

7. In my view, the claimant has acted in flagrant disregard of court deadlines and, specifically, the order of 11th July made by District Judge Wall on the defendant's application, in respect of which the claimant was ordered to pay the defendant's costs. In this case there has been an appalling catalogue of delay and I bear in mind again that the Tomlin order was made as far back as May 2012 and we still have not resolved the costs of this issue. The original case was settled for a figure of approximately £6,400 plus interest. The costs were agreed in August 2013 in the sum of £10,500 and yet I am told that the actual costs of assessment, which still remain in dispute, on the claimant's costs as at June of this year, were in excess of £6,500. This is plainly disproportionate and they are plainly additional costs which need not, and should not, have been incurred.

8. The question is: Should I grant the claimant one further indulgence? There has been failure to comply with the order of 30th May and failure to comply with the order of 11th July and that is set against a background of general delay and inaction by the claimant. The application for relief was defective as regards the signature and it was filed just short of seven weeks late. It is a fact that the substantive issue has been resolved, as have been the costs. This issue relates solely to the costs of the assessment and, therefore, I do not think it is a breach of the rules of justice or unfair in any way to the parties that I should make the order that I am about to make. The parties need to act proportionately; they need to save expense and they need to comply with court orders. In the circumstances, I do not grant relief from sanctions, despite Ms Collins' best endeavours and she has said all that could reasonably have been said on the claimant's behalf in this regard. In the circumstances, however, I am going to make the order sought by the defendant. I am going to assess the claimant's costs of the assessment at nil and I am going to direct that the claimant do pay the defendant's costs of the assessment. Also, unless anybody is going to argue strenuously to the contrary, it seems to me that the costs of this application should follow the event and the claimant should pay the defendant's costs of this application.

(End of Judgment.)

(Discussions followed regarding amount of costs, etc.)
