

Rochester v Ingham House Ltd

Queen's Bench Division

04 February 2019

Case Analysis

Where Reported

[2019] 2 WLUK 25;

Case Digest

Subject: Civil procedure **Other related subjects:** Defamation

Keywords: Delay; Relief from sanctions; Slander

Summary: The court granted the defendant in a slander claim relief from sanctions and a retrospective extension of time for filing and serving its amended defence in circumstances where the delay in service of its amended defence had been minimal and had not caused the claimant any prejudice or disruption.

Abstract: The defendant company, in a claim for libel, slander and malicious falsehood, applied for relief from sanctions and a retrospective extension of time for filing and serving its amended defence.

The defendant had filed and served its amended defence at 4.50pm on 18 January 2019, 50 minutes after the time provided for by a master's order of 9 January 2019. Amongst the issues in dispute between the parties were defamatory meaning, serious reputational harm, financial loss and the defences of truth and qualified privilege. The claim was the subject of cross-applications for strike out and summary judgment, which had been heard by a judge on 5 December 2018. The judge determined that the claimant had pleaded defamatory meanings in relation to the statements complained of. The defendant was given until 21 December 2018 to file its amended defence. It was ordered that the claimant's pleadings as to meaning should be contained within the defendant's amended defence to take account of her status as a litigant in person, and an expedited judgment was ordered for the defendant's use in setting out those meanings. In the event the judgment was not received until 15 January 2019.

The claimant submitted that there had been enough delay and that the court should be tough on any failure to comply with an order. The defendant contended that the breach was one of only 50 minutes, which had not had any impact on court dates or on the progress of litigation, and that the claimant had not been able to identify any prejudice or disruption caused by it. It argued that the necessary judgment had not become available until three days prior to the extension of time and that the unusual step of ordering that the claimant's pleadings as to meaning should be contained in the amended defence had been deemed necessary by the judge, and would enable the case to continue efficiently if it was allowed by the instant court as it would narrow the issues in dispute and clarify its case as to harm, financial loss, truth and qualified privilege.

Held: Application granted.

The court's approach to relief from sanctions under [CPR r.3.9](#) was as set out in [Denton v TH White Ltd \[2014\] EWCA Civ 906](#), [\[2014\] 1 W.L.R. 3926](#), [\[2014\] 7 WLUK 202](#) in that the court had to assess the

seriousness or significance of the breach and the reasons why the default had occurred and then evaluate all the circumstances of the case. The court would also seek to discourage opportunism by the non-defaulting party, *Denton* applied. Neither party had been responsible for the problems getting the transcript or for the ensuing delay. The lateness of the transcript meant that the defendant had not easily been able to comply with the order on time. The fact that the amended defence had not been sent by email until 4.50pm on the day, instead of by 4pm as required, was that it was deemed as having been served the following day. However, there had been compliance with the order, albeit late. The instant court had to assess the seriousness and significance of the breach, in this case the failure to comply with the court's directions timeously. The seriousness of the breach was limited to the fact that the defendant had served its defence 50 minutes late. In relation to the reasons for breach, it was true that with hindsight the defendant could have noted down the judge's extempore reasons without having to wait for the approved transcript. It could then have sent the judge a written version of what it understood the claimant's defamatory meanings to be, for him to confirm. Equally however, the defendant had anticipated at that stage that an expedited transcript would be available and it could not have known that it would not be received until 15 January 2019. In all the circumstances, the question as to whether the defendant's application should be allowed was at the court's discretion. The instant court regarded the refusal of permission to allow relief as a significant and disproportionate sanction in the light of the fact that the service had only been 50 minutes late and had not caused the claimant any prejudice. In all the circumstances, the court granted the application for relief from sanctions and allowed the late service of the amended defence on the basis that the defendant would pay the costs of the instant hearing and of the claimant's attendance including her travel and her time.

Judge: Nicklin J

Counsel: For the claimant: In person. For the defendant: Beth Grossman.

Related Cases

Rochester v Ingham House Ltd

[\[2018\] EWHC 3599 \(QB\)](#); [\[2018\] 12 WLUK 71](#); QBD; 05 December 2018

Rochester v Ingham House Ltd

[\[2019\] 2 WLUK 25](#); QBD; 04 February 2019

Significant Cases Cited

Denton v TH White Ltd

[\[2014\] EWCA Civ 906](#); [\[2014\] 1 W.L.R. 3926](#); [\[2015\] 1 All E.R. 880](#); [\[2014\] 7 WLUK 202](#); [\[2014\] C.P. Rep. 40](#); [\[2014\] B.L.R. 547](#); [154 Con. L.R. 1](#); [\[2014\] 4 Costs L.R. 752](#); [\[2014\] C.I.L.L. 3568](#); [\(2014\) 164\(7614\) N.L.J. 17](#); CA (Civ Div); 04 July 2014

All Cases Cited

Denton v TH White Ltd

[\[2014\] EWCA Civ 906](#); [\[2014\] 1 W.L.R. 3926](#); [\[2015\] 1 All E.R. 880](#); [\[2014\] 7 WLUK 202](#); [\[2014\] C.P. Rep. 40](#); [\[2014\] B.L.R. 547](#); [154 Con. L.R. 1](#); [\[2014\] 4 Costs L.R. 752](#); [\[2014\] C.I.L.L. 3568](#); [\(2014\) 164\(7614\) N.L.J. 17](#); CA (Civ Div); 04 July 2014

Significant Legislation Cited [CPR r.3.9](#)

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