

Claims against joint tortfeasors: who is liable?

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THR VANDEN DECISION:

1. The Court of Appeal has recently reconsidered the issue of when settling a claim against one defendant will bar a claimant from pursuing a different defendant who is jointly responsible for the claimant's loss: *Vanden Recycling Ltd. v Kras Recycling Ltd.* [2017] EWCA Civ 354.

3PB's ANALYSIS

2. Vanden Recycling Ltd. ("Vanden") brought claims against its former employee and two competitors in the recycling industry, of which Kras Recycling Ltd. ("Kras") was one. The claims included allegations that the employee had disclosed confidential and commercially sensitive information to the second and third defendants; and that the three defendants had conspired to use this confidential information to set up in competition. Vanden sought damages and injunctive relief.
3. Vanden's employee admitted liability with damages to be assessed. The second defendant reached a settlement agreement with Vanden which was recorded in a consent order. The second defendant agreed to pay Vanden the sum of £275,000 plus interest and costs in full and final settlement of Vanden's claims against it. This note focuses on the consequences of Vanden's settlement with the second defendant.

4. Kras applied for the claims against it to be struck out on three grounds, the only relevant one being that the consent order with the second defendant was a judgment by consent and its satisfaction extinguished all of Vanden's claims. At first instance, the High Court accepted Vanden's arguments and struck out all of the claims against Kras.
5. Vanden appealed on five grounds. The central issue and the subject of this note was the proper interpretation of the consent order with the second defendant.
6. The Court of Appeal partially allowed Vanden's appeal. Hamblen LJ restated the existing legal position that a satisfied judgment ordinarily bars claims against other tortfeasors who are liable for the same damage – *Jameson-v-CEGB (No. 1)* [2000] 1 AC 455. Whereas the satisfaction of a settlement agreement, rather than a judgment, will only bar claims against concurrently liable tortfeasors if the sum agreed and paid was intended to fix the full measure of the claimant's loss – *Heaton-v-Axa Equity & Law* [2015] UKHL 15.
7. The Court of Appeal concluded that the consent order with the second defendant should be treated as a judgment rather than a settlement agreement for these purposes. This conclusion was based on what the consent order achieved, rather than what it said, and the fact that the substance and effect of the

payment made pursuant to the consent order amounted to a final order.

8. The court found that the consent order only barred Vanden's claims in relation to the conspiracy claim, as this was a single claim for damages for conspiracy relating to a single conspiracy involving two or more of the defendants. If Kras was liable for damage for conspiracy, it was for the same conspiracy claim and the same damage as the second defendant. Whereas the other claims for breach of confidence and inducing breach of contract were pleaded individually against each of the three defendants and related to separate breaches from which different losses may flow.

IMPACT OF THE DECISION

9. When drafting a settlement agreement in a multi-party case, it is vital to consider its effect and to ensure that it does not amount to a judgment. Here, it was insufficient that the consent order specified that the claims were being settled in relation to the second defendant and referred to the claimant's intention to pursue the other defendants, because the effect of this order was to extinguish its conspiracy claim against Kras.

This article intends to state the law at the date indicated above. Although every effort is made to ensure accuracy, this article is not a substitute for legal advice.

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Nicole Bollard is a specialist Commercial and Property Law advising and representing clients in both contentious and non contentious matters.

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