

Pleadings and conflicts of interest

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3PB

Blower v GH Canfield LLP [2025] EWCA Civ 1627

Introduction

1. This recent Court of Appeal decision primarily deals with issues around pleading breach and causation in the context of a professional negligence claim. The claim arises from settlement advice that was provided by solicitors, allegedly in a situation where there were conflicts of interest.
2. The Court found that there was not a conflict of interest, partly because this had been pleaded narrowly, and there was no coherent case on causation.

Background

3. Mr Blower had been adjudged bankrupt in May 2014, following which his trustee in bankruptcy initiated proceedings against him and his family.
4. The claims brought by the trustee in bankruptcy included actions relating to an unsanctioned post-petition disposition of the bankrupt's property and various transactions at an undervalue. The claims had a total value in excess of £2 million.
5. GH Canfield LLP ("Canfield") acted for Mr Blower and his family.
6. In August 2015, a conference was held with Counsel during which Mr Blower gave instructions that a global settlement in relation to all of the matters relating to the Blower family should be agreed.
7. On 9 December 2015 a 12-hour mediation resulted in a global settlement whereby the family members agreed to pay the trustee in bankruptcy £1.5 million by 30 September 2016.

8. On 15 December 2015 Mr Blower told Canfield that he no longer wished to be bound by the settlement agreement and took particular issue with the charges that had been agreed to be placed over various properties as security.
9. The sum of £1.5 million was not paid to the trustee in bankruptcy on 30 September 2016. As a result, Mrs Blower stated that she was forced to sell a villa in Spain in order to raise money to go towards paying the £1.5 million.
10. Mrs Blower later alleged that Canfield had acted negligently in the conduct of the mediation and in advising settlement, and that this caused loss to her and her daughter. Mrs Blower alleged that, if Canfield had properly advised her, she would not have agreed to the settlement that was reached. She also alleged that there was a conflict of interest in Canfield acting for Mr Blower and other family members, specifically because she had claims against Mr Blower and the bankrupt estate. It was alleged that Mrs Blower's claim had a value of about £5 million.
11. At first instance, His Honour Judge Paul Matthews KC (sitting as a High Court judge) dismissed Mrs Blower's claim on the basis that Canfield had not been negligent, and even if negligence had been established, there was no coherently pleaded case on causation. The judge was not invited to consider a claim for damages on a loss of a chance basis.
12. Mrs Blower was granted permission to appeal on two principal grounds: (1) whether Canfield had acted under a conflict of interest in advising different family members including her bankrupt husband, and (2) whether the pleadings sufficiently articulated causation.

3PB analysis

Conflict of Interest

13. The Court of Appeal was invited to consider whether there was a conflict of interest in Canfield representing multiple clients with potentially divergent interests. It was reiterated that the trial judge had considered the conflict in the terms in which it had been pleaded and advanced at trial. The Court of Appeal was not persuaded that the judge had erred in his assessment. The pleadings on conflict were narrower than the arguments advanced on appeal, and there was no basis for concluding that the judge misapplied legal principles on conflicts.

14. The judge's unchallenged findings of fact that were relevant to this point were that the family trusted Mr Blower to negotiate the best deal, that neither Mrs Blower nor her daughter would have refused the settlement he negotiated, and that a reasonably competent litigation solicitor would have advised settlement on similar terms. As a result of these findings, even if there was a conflict of interest, it would not have made any difference to the outcome.
15. While acknowledging that solicitors must comply with the SRA Code of Conduct and should not act where conflicts arise, save in limited circumstances, the Court held that, given the narrow pleading and the family dynamics found by the judge, a conflict would have made no difference overall.

Causation and Pleading Requirements

16. The second core issue was whether the pleadings sufficiently articulated causation. The Court of Appeal endorsed the trial judge's finding that Mrs Blower had not set out a coherent case on causation, in that she had not particularised what would have happened if she had not entered into the settlement agreement on 9 December 2015. There were no pleadings as to whether Mrs Blower contended that she would have settled on more favourable terms and what those terms would have been, or whether she would have defended the claims at trial and what the outcome would have been.
17. The Court of Appeal noted that the judge had already afforded latitude by going beyond the strict pleadings, and that it would have been inappropriate to entertain a loss of chance argument on appeal where it had not been properly pleaded or pursued at trial. The key finding in terms of causation was that there were no circumstances in which Mrs Blower would have defied Mr Blower and refused to agree to the terms that he had negotiated. On that basis, the end result would have always been the same. The relevant findings of fact, together with the inadequate pleadings, made it impossible for the appeal to succeed.

Impact of the decision

18. This decision is a useful reminder that pleadings can be critical to the success of a claim, both in terms of breach and causation. It is insufficient to advance broad assertions that a client "would not have agreed a settlement" without articulating the specific counterfactual scenario and how that would have resulted in the claimant being in a better financial position.

19. Proper consideration always needs to be given to whether the claim is for the loss of a chance of obtaining a better outcome. Where the outcome is dependent on the hypothetical actions of third parties, the loss will usually be assessed on a loss of a chance basis, but it is vital that such pleadings are included in the claim. In this case, if it had been pleaded that Mrs Blower would have obtained a better settlement, had she been properly advised, the outcome was dependent on what Mr Blower and the trustee in bankruptcy would have agreed to, so that would have been a loss of a chance claim.
20. Conflicts of interest are often raised as the basis for professional negligence claims, but it is important to consider what the parties' interests were at the relevant times and whether they actually conflicted. Theoretical conflicts are often manufactured retrospectively, which are not supported by the contemporaneous documents. The evidence in this case highlighted that Mr and Mrs Blower had broadly the same interest, which was to pay as little as possible to the trustee in bankruptcy.
21. Professional indemnity insurers and solicitors facing negligence claims will no doubt be pleased that the Courts continue to take a strict approach to pleadings, and it seems likely that this case will be raised as a warning to claimants with speculative or vague claims.

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