

When is a claim “brought” for the purpose of Limitation / Paying the Correct Court fee?

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Michelle Marhnam considers the recent decision of Dixon -v- Radley House Partnership [2016] EWHC 2411 (TCC), 17/10/2016.

Following the earlier decision of Mr John Male QC in Lewis v. Ward Hadaway [2015] EWHC 3503, many Claimant solicitors were concerned that a claim could be struck out as a consequence of failing to pay the correct issue fee and undoubtedly following this case there were numerous interlocutory applications being issued by both Claimant (for permission to amend and pay correct fee) and Defendant (making opportunistic applications for strike out on grounds of underpayment of a court fee). However, following the more recent case of Dixon -v- Radley House Partnership [2016] EWHC 2411 (TCC), 17/10/2016, it is likely that some of these issues have been laid to rest.

Prior case law has established that a claim is "brought" for limitation purposes (and so time stops running) when the claim form is delivered to the court office, accompanied by a request to issue and the appropriate fee. The issue for consideration in Dixon is what exactly is meant by "the appropriate fee".

In Dixon the Claimant had issued three separate claims for damages claiming breach of contract/negligence. Proceedings were issued and the claim form claimed damages in the sum of £35,894.78. The correct fee for this claim (£395) was paid. However the Particulars of Claim made various, much higher, claims for damages. The proceedings were subsequently and by agreement consolidated and transferred to the London TCC. 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 Claimant had failed to pay the appropriate court fees on issuing the proceedings. The Defendants argued, relying upon Lewis v. Ward Hadaway 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 Claimant opposed the application and argued that the Defendant’s application was misconceived. Mr Justice Stuart-Smith agreed with the Claimant and dismissed the Defendant’s application.

The relevant parts of the Judgment can be found at paragraph 55 in which Mr Justice Stuart Smith held that “the appropriate fee” for the purposes of the principle enunciated by the Court of Appeal in Page v Hewetts is the fee required by the relevant order which is to be determined by reference to the claim or claims articulated in the claim form (and, if issued simultaneously, the Particulars of Claim). 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.”

Mr Justice Stuart Smith emphasised that the payment of fees is a matter for the benefit of the Court and is very largely irrelevant to the opposing parties, noting that no actual prejudice had been caused by any underpayment of issue fees other than perhaps the Claimant had more money with which to fight the Defendants.

The key points from this case are:

1. that the question of whether the correct fee has been paid for the purpose of the issue of proceedings under the Limitation Act is to be assessed by reference to the claim set out on the claim form;
2. in the absence of abusive behaviour the later amendment or increase in value of the claims is not relevant to the issue of whether proceedings have been issued correctly. Justice Smith noting at paragraph 53 that it is 'both conventional and proper for the Claimant to protect himself by including general words which, he 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'.
3. It is essential, as has always been the case, to identify with sufficient clarity in proceedings when initially issued the likely further claims, otherwise any later amendment may be considered to involve a new claim after the end of the limitation period leaving the Claimant at risk of the Court refusing permission to amend the claim).

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14 November 2016

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