Issue fees and abuse of process - Richard Lewis & Ors v Ward Hadaway (A Firm) [2015] EWHC 3503 (Ch)

The combination of the Jackson reforms to litigation funding in 2013 and the MOJ’s substantial increase in Court fees in March 2015, have put Claimants under greater financial pressure when commencing proceedings. Accordingly, some Claimants have understated the true value of their claims in order to reduce or defer payment of the sizeable Court issue fees now due. This may be a false economy. In Lewis & Ors the High Court ruled that deliberately understating claim values to reduce issue fees is an abuse of process - which had dire consequences for a number of Claimants.

Background to judgment

Thirty one Claimants, with claims for alleged professional negligence, issued claim forms at Court as statutory limitation periods were close to expiry. In order to reduce the amount of Court fees payable at the time of issue, allegedly due to funding issues, the pleaded claims had substantially lower values (e.g. limited to £300) than those claimed in Pre-Action Protocol letters of claim (e.g. hundreds of thousands of pounds).

Prior to service of proceedings, the Claimants’ amended their claim forms to substantially increase the value of their pleaded claims and they then paid the balance of the appropriate Court fees for their larger claims. The Defendant, a firm of solicitors, applied to strike out all of the claims on the grounds of abuse of process by the Claimants, for commencing proceedings without paying the appropriate Court fees. Alternatively, the Defendant sought summary judgment on the grounds that the appropriate Court fees had not been paid before expiry of the relevant limitation periods in a number of claims.
Judgment

The Court agreed that the Claimants’ actions were an abuse of process. The Claimants and their solicitors had deliberately underestimated the value of their claims, which deprived the Court of fees due at the outset and generated additional costs and administrative work for the Court. The Claimants’ solicitors had acted similarly in previous cases in which District Judges had expressed their disapproval of this practice. However, in *Lewis & Ors* the High Court considered it was disproportionate to strike out the Claimants’ claims in the circumstances.

The Court then turned to the Defendant’s application for summary judgment. The Court referred to various authorities, including *Page v Hewetts Solicitors*. The Court decided that as the underpayment of Court fees was an abuse of process, claims were only “brought” for the purposes of the Limitation Act 1980 when the appropriate (full) fee was paid. Therefore, in the interim the limitation periods had continued to run and on those facts the Court found that eleven claims were time barred.

Comment

Solicitors’ insurers will be disappointed to see yet more problems arising out of disbursement funding issues. Tactically the case is however very useful for all claims that are already being defended and where the Claimant has paid the wrong Court fee, deliberately or otherwise. Existing cases and especially those issued at the end of a limitation period should be checked in this regard.

For further information please contact:

**Ed Anderson**  
Partner  
T: +44 (0) 20 7469 0433  
E: e.anderson@beale-law.com

**Sean Brennan**  
Associate  
T: +44 (0) 20 7469 0430  
E: s.brennan@beale-law.com

January 2016