Solicitors’ negligence when sending a trainee to Court to assist counsel

In the recent case of Dunhill v (1) W Brook & co (2) Crossley [2016] EWHC 165 (QB) the Court considered the negligence of a firm of solicitors and counsel for settling at an undervalue.

In 1999 the Claimant was hit by a motorbike when crossing the road resulting in head and leg injuries. The Claimant pursued damages against the motorcyclist for £50,000. At trial, the Claimant was advised by counsel (the second defendant) to accept a settlement offer as her main witness did not attend court and in counsel’s view prospects for success in litigation were bleak. Counsel therefore recommended accepting a full and final settlement for £12,500. The trial was attended by a trainee from the first defendant who was unable to advise the Claimant and followed counsel’s advice.

In 2006 the Claimant reopened the litigation on the basis that due to her injuries she lacked the required mental capacity to consent to a settlement. This matter reached the Supreme Court in 2014 which revived the case and allowed the matter to proceed to trial. The value of her claim was thought to be over £2,000,000. In 2015, the court awarded the Claimant 55% of her personal injury claim. The Claimant then pursued the Defendants for negligent conduct during the litigation, negligent advice, taking instructions from a client without mental capacity and advising to settle far below the value of her claim.

On the facts of the case, counsel was held to not be negligent in advising the Claimant to settle. Counsel was held to have correctly analysed the evidence provided and the Claimant’s chances of success. It was also not impossible that had the case gone to trial that day the award would have been 75% less than the amount claimed.
The Court then considered the relationship between solicitors and barristers with regard to liability. It was accepted that if counsel was found not to be negligent then the solicitors who act on counsel’s advice would also not be negligent. However, a solicitor has to exercise their own independent judgement if he believes the counsel to be “obviously or glaringly wrong”.

The solicitor that attended the trial with counsel was a trainee who was six months into his training contract; in the Court’s view he should not have been sent. Despite being a trainee, the first defendant charged his time as a qualified solicitor. The Court found that should counsel have been found to be negligent in his advice then the first defendants would also have been negligent in sending a trainee to court as the trainee, through no fault of his own, would not have been able to detect counsel’s error.

This is a welcomed decision for solicitors and barristers involved in trial settlements and settlements generally. In order to mitigate a claim for an under-settlement, legal advisors should carry out a measured consideration of the legal and factual aspects and ensure that the client is fully informed. The Court considered counsel’s preparation for trial and found that he took proper steps to prepare and gave his advice on the basis of the evidence he had before him. Solicitors should not blindly follow counsel’s advice when advising a client and need to show that they have also considered all the facts. If their analysis differs from counsel this should be raised with them.

Additionally, this case highlighted that firms will be found negligent to send trainees to act in matters where they lack experience. This is of course difficult as trainees need exposure to different matters and tasks to develop during their training but clients will be reluctant to pay for the attendance of both a qualified fee earner and a trainee.

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