Reduced fees; reduced duties

Professional negligence claims against solicitors – is it now easier to defend solicitors who charge modest fees and complete all work that could reasonably be expected of them?

The Court of Appeal in *Thomas v Hugh James Ford Simey Solicitors* recently found that a firm of solicitors, when acting in high volume, fixed costs schemes for low value personal injury cases, are not expected to advise on heads of claim which they are instructed not to pursue by clients. The decision is one that will be welcomed by solicitors operating under fixed recoverable costs regimes and may be significant in light of Lord Justice Jackson’s proposals to extend the fixed recoverable costs regime.

The facts

In March 2000 the claimant instructed the defendant to act as his solicitors in a claim for vibration white finger (VWF). The claimant had a meeting with the defendant and submitted to a medical examination. His medical examination supported a claim for both general and special damages.

In January 2001 the claimant was offered £10,373 in respect of general damages. The defendant subsequently explained what a claim for special damages could entail and that this could include a claim for loss of amenity (for example; being unable to perform domestic tasks). The claimant then attended the defendant’s office to discuss special damages. Although the claimant needed assistance around the home, he paid friends in cash to assist him. As he was unable to provide evidence to support any claim for special damages, he decided not to pursue it. The claimant also stated that he was “not too bothered at all” about special damages. He therefore accepted the offer of general damages only.

In 2008 another firm of solicitors advised the claimant that he had a valid claim for special damages and that his claim for VWF had been settled at an undervalue. The claimant then brought a claim against the defendant alleging that they gave inadequate advice about the possible claim for special damages.
in respect of his loss of amenity. The defendant denied liability and the judge at first instance dismissed the claim. The claimant appealed.

Court of Appeal

The Court of Appeal, dismissing the Claimant’s appeal, placed emphasis on the fact that the claimant was an intelligent man who knew his own mind and that the defendant had personally met with the claimant to explore the issue of special damages (Raley Solicitors v Barnaby [2014] EWCA Civ 686 and Procter v Raleys Solicitors [2015] EWCA Civ 400 distinguished). It was the claimant’s decision not to pursue a claim for special damages and therefore the quantification of special damages and the availability of an interim payment was not relevant. Lord Justice Jackson stated that if a client instructs his solicitor that he does not wish to pursue a particular head of claim and that he does not have evidence to support it; the solicitor is not necessarily under a duty to challenge that decision.

It was significant that this was a modest claim which the defendant solicitors were running under a fixed costs regime. The court recognised the need to adopt a realistic standard when assessing the performance of solicitors conducting litigation under a high volume, low cost commoditised scheme. Such schemes may be the only practicable way of facilitating access to justice in such cases at proportionate costs. There must be a sensible limit on what solicitors can reasonably be expected to do in such cases. Solicitors must still exercise reasonable skill and care in advising clients and pursuing claims, but cannot be expected to pursue avenues of enquiry which the client has closed down. It was held that the Defendants had not breached their duty.

Conclusion

This decision may mean that it may prove easier to defend a claim against solicitors charging modest fees where they have done all that could reasonably be expected of them for that fee. This is particularly so when a face to face client meeting has taken place to discuss the issues which form part of the claim against the solicitor.

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