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TWO SIDES,
ALL THE STORIES

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PROPERTY DISPUTES QUARTERLY UPDATE 03 18

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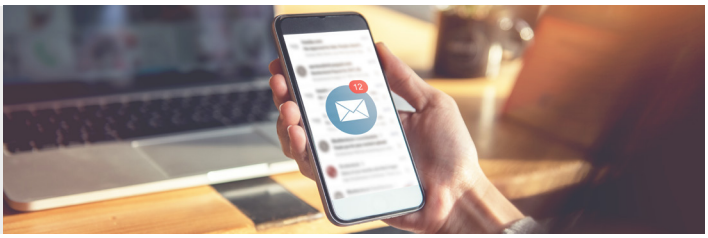
IGNORANCE OF THE RULES IS NO DEFENCE

The Supreme Court has recently handed down a judgment in a case involving an individual's claim against his firm of solicitors.



The Claimant had commenced a negligence claim against his former solicitors and served the court papers on the solicitors by email without checking that the solicitors would accept service by email. The court rules permit service by email but only where the other party agrees to this form of service.

By the time that the Claimant accepted that he had failed to serve the papers correctly, the claim limitation period had expired and the claim was ultimately struck out.

The Claimant appealed against this strike out decision. The appeal progressed all the way to the Supreme Court.

Attention focused on whether the fact that the Claimant was not represented (in his original claim against the solicitors) meant that allowances should be made and the requirement for parties to comply with the court rules should be loosened.

The Supreme Court, in a majority of 3 to 2, dismissed the Claimant's appeal and decided that there was no good reason to treat the Claimant's claim as having been validly served.

The Court made it clear that just because a party is not represented does not mean that a lower standard of compliance with rules or court orders should be permitted.

Lord Sumption confirmed that:- *"Unless the rules… are particularly inaccessible or obscure, it is reasonable to expect a litigant in person to familiarise himself with the rules which apply to any step which he is about to take".*

The Supreme Court's decision has come as welcome news to legal practitioners who have previously faced (and indeed may continue to face) situations in which an unrepresented party ignores the court rules and pleads ignorance of those rules. In some cases, this may be understandable, but in many cases, parties are simply playing the system and expecting sympathetic treatment by the court.

HUGHES PADDISON NEW APPOINTMENT

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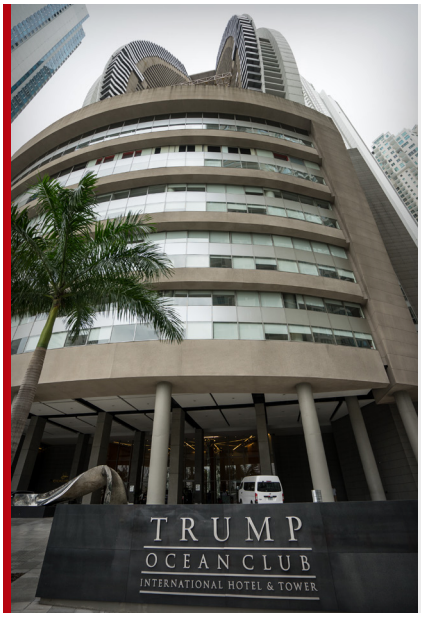

INTERNATIONAL PERSPECTIVE: REPOSSESSION IN PANAMA

The service of a termination notice by the owner of a luxury hotel in Panama got out hand earlier this month. The hotel was managed by a company owned by Donald Trump. The owner wanted his hotel back but Trump's management company had other ideas. Having attempted, and failed, to serve notice, the US owner of the hotel, Mr Fintiklis, returned to the hotel with a security team to deal with matters in a more forthright manner. The management company's security team were duly mobilised and this resulted in ongoing skirmishing over physical control over the premises that lasted for a week. Having initially adopted a relatively "hands off" approach, the Panamanian police finally intervened and the Trump management team and their security staff quietly exited the property. To cap off a surreal turn of events, Mr Fintiklis proudly declared to the media that he was incredibly proud of Panama and that he intended to apply for Panamanian citizenship. Enforcement of possession can sometimes get messy but this incident created a mess of an entirely different kind.

ARROGANT PROFESSIONALS BROUGHT DOWN TO EARTH

The case of *Riva Properties v Foster & Partners* concerned a successful professional negligence claim against the world-renowned architects, Foster & Partners. It is a cautionary tale of the consequences of failing to follow a client's instructions. Whilst the case concerns architects, it is applicable to professional advisers of any specialism.

Riva Properties had instructed Foster & Partners to design an iconic 5* hotel at a site near Heathrow Airport in 2007, to be opened in time for the 2012 London Olympics. Riva's director, Mr Dhanoa, informed Fosters that he had a budget of £100 million. Fosters assured him that they would be able to engineer the scheme within that budget and Riva subsequently obtained planning permission.

It turned out that Fosters' complex design would cost in excess of £195 million and that there was no prospect of engineering the scheme down to £100 million. The scheme therefore fell through and Riva sued Fosters for the £4 million that they had incurred in professional fees and the £16 million loss of profit. Fosters denied that they had provided any binding assurance that the scheme could be completed within a budget of £100 million.

The Court agreed with Riva and held that Fosters had failed to comply with its contractual duties of care and skill. The Court held that Fosters were liable to Riva for the professional fees that had been incurred.

What sets this case apart from other high profile negligence cases is the Judge's finding that Foster's breaches of duty were the direct result of the very low regard in which they held their client. The Judge found that Fosters considered Mr Dhanoa to be *"beneath them as a client"*. It was clear from the outset that Fosters held him in low esteem with various witness statements making express reference to the initial client meeting at Mr Dhanoa's *"semi-detached house in Hayes"*, suggesting that Mr Dhanoa was not a client of a suitable calibre.

Nevertheless, Fosters were happy to take Mr Dhanoa's money and to accept the instruction as his architect. The Foster's low opinion of Mr Dhanoa was also evident in their defence of his claim.

The strategy in their defence appeared to be based on attacking Mr Dhanoa's credibility as a businessman and describing him as treating the litigation as a *"game of high stakes poker"*. The attempted character assassination in Fosters' witness statements was evident in the descriptions of Mr Dhanoa as being *"out of his depth"*, as being subservient to his wife, and as being a previous bankrupt with a rather cavalier attitude to business.

This strategy backfired. The Judge was extremely critical of Fosters' conduct and their defence to the claim. A number of the witnesses were described as *"extraordinarily enthusiastic… to twist the facts"*.

Salutary lessons for all professionals concerned.

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YOUR QUESTIONS ANSWERED

Q I own commercial premises and I have a tenant who occupies the site without a written agreement. He pays rent monthly. I have been told that he has a protected business tenancy and that it is a periodic tenancy. How do I go about terminating the existing tenancy?

A You will need to serve a Notice to Quit and also a Notice under Section 25 of the Landlord and Tenant Act 1954. The minimum notice period for a Section 25 Notice is six months. Be aware that the Notice to Quit must expire on the last day of a period. If rent has been paid monthly, it is likely that the tenancy will be a monthly periodic tenancy. In order to work out the last day of a period, you need to look at when the tenant went into occupation and the day of each month when the rent payments are made. If you are not sure precisely when the occupation commenced, it is the rent payment dates that are commonly used to calculate the start date and the end date of each monthly period. So if rent is paid on the 10th, the last day of a period will be the 9th.

Q My tenant has been late paying the rent. It is a commercial lease. There is nothing in the lease about charging interest. Am I able to charge interest on the late payments?

A If the lease is silent on the question of interest, then assuming both you and your tenant are businesses, you will have to try to rely upon the Late Payment of Commercial Debts (Interest) Act 1998 to claim statutory interest.

The position is not entirely satisfactory because this particular Act applies to contracts for the supply of goods and services. Does the grant of a lease amount to the "supply of services"? My view is that when granting a lease, you are not supplying a service and that the tenant would therefore have a reasonable case for arguing that it is not liable to pay interest under this Act.

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