**Day v Womble Bond Dickinson (UK) LLP [2021]:**

**Lawyers Using Covid-19 As An**

**Excuse Should Now Be Cautious**

Courts have recently decided to restrict Covid-19 as an acceptable reason for procedural failings where lawyers and law firms have failed to take reasonable steps to mitigate their shortcomings.

For example, in *Day v Womble Bond Dickinson (UK) LLP* [2021] EWHC 3236 (QB), the Claimant’s solicitors claimed that as a result of Covid-19, staff having been furloughed and many having been made redundant led to an increase in workload. This meant that the Claimant breached a court order by not applying to amend his Particulars of Claim by the required time (7 May 2020), and then applied for relief from sanctions and a time extension by application dated 4 September 2020.

While Deputy Master Toogood sympathised with the solicitor’s position, it was the firm’s responsibility to ensure there was adequate remaining staff to cover the work that needed to be done.

Moreover, the near 4-month delay was inexcusable and unreasonable especially as the Deputy Master noted that the Claimant’s solicitors pursued an application to the case to the Supreme Court – expressing that they were still able to work effectively. It was this lack of urgency that distinguished *Day* from *Stanley v London Borough of Tower Hamlets* [2020] EWHC 1622.

The Claimant’s solicitor contracting Covid-19 in early April 2020 was not held as a reasonable excuse for missing the deadline and delaying for 4 months.

Stage 3 of the *Denton* test from *Denton & Ors v TH White Ltd & Ors* [2014] 1 WLR 3926 was also considered: evaluate all circumstances of the case so the application is dealt with fairly. In this case, the Claimant failed to particularise his loss in the amended pleading therefore, over 9 years from the alleged negligence, the Defendant still did not know what case it had to meet. In all the circumstances Deputy Master refused the Claimant’s relief from sanctions and dismissed the claim.

The decision made by Deputy Master Toogood is in line with an earlier case during the pandemic: *Boxwood Leisure Ltd v Gleeson Construction Services* [2021] EWHC 947 (TCC). Here the Claimant’s solicitor made a diary error partly caused by remote working. Nevertheless, O-Farrell J held that it was still the solicitors’ responsibility to ensure deadlines were met despite the error.

Through these pandemic-related cases, it is clear that the courts have begun to harden their attitude towards procedural failures as a result of the pandemic which will most likely expose cases of solicitor negligence claims.

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