

Sleeping Dogs Don't Lie: Court Draws Inference from Claimant's Inactivity

A claimant who has issued proceedings may commit an abuse of process where it does not have an intention to progress the claim, even temporarily (known as 'warehousing' the claim). The sanction for warehousing can be severe: the court may strike out the entire claim. The court may give the claimant an opportunity to revive the claim before striking it out. The defendant's conduct can also be relevant, as it should not sit passively. However, the court may proceed directly to striking out the claim where it is already convinced the claimant's intention is to warehouse the claim. This intention can be inferred from its prior actions, and can put the burden on the claimant to provide a proper explanation.

This was the case in the recent English High Court decision of *Alfozan v Quastel Midgen LLP*¹. The claimant issued a claim for negligence and / or breach of trust against a London law firm. The defendant sought to strike out the claim for warehousing. The claim was issued in December 2018 and the warehousing application was heard three years later in November 2021.

The court held that six primary factors led to the inference that the claimant did not, for a prolonged period of time, intend to pursue the claim:

1. The claim was issued shortly before the expiry of the limitation period.
2. There was no pre-action correspondence.
3. The claim was served at the very end of the period for doing so.
4. The claim was not pleaded properly, and yet the claimant took 17 months to amend its pleadings after admitting that it should do so; and even the amended pleadings did not properly set out the claim.
5. The claimant failed to request a case management conference after service of the defence.
6. The claimant only responded to the strike out application shortly before it was heard.

The court considered this to paint a picture of "*almost complete inactivity ... beyond the basics of issuing and serving the claim.*" The court did consider proportionality and whether other orders could be made giving the claimant a chance to remedy the situation, but concluded that "*I can have no confidence that the making of such orders will change the Claimant's attitude to this litigation.*"

The court accordingly struck out the claim for warehousing.

Comment

This case serves as a stark reminder to claimants to actively progress their claim. Notably, this does not only extend to conduct during the proceedings themselves. The court here took into account delay prior to issuing the claim, even though the

¹ *Alfozan v Quastel Midgen LLP* [2022] EWHC 66 (Comm)

claim was issued within the limitation period, as well as delay in serving the claim form even though it was served within the procedural time limit.

Further Assistance

If you need assistance with a recent claim, our BVI Dispute Resolution & Insolvency team have unparalleled experience providing in-depth, pragmatic and commercial advice with cross-office cooperation and support on all litigation matters.

For further information, please reach out to your usual Maples Group contact or any of the persons listed below.

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