

## Stephen Dilley

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**From:** Stephen Dilley  
**Sent:** 22 November 2005 09:51  
**To:** Tom Beezer; Bob Heckford; Simon Richardson  
**Cc:** Andrew Tobey; Julian Summerhayes; Gareth Kagan; Stephen Lister  
**Subject:** Post Office Limited -v- Lee Castleton, File number 348035.134  
**Sensitivity:** Confidential

Thanks Tom.

We are arranging to have the files copied immediately.

Mandy knew on 15 November that Mr C's solicitors had applied for judgment in default and that the Court had mistakenly awarded Judgment in default against Mr C. On the 17th, I spoke to her and told her that the Court would probably correct that judgment. I also told her that we were applying to retrospectively extend time for filing and serving the Reply and, in case default judgment had been entered against the P.O, to set that aside. The Court rules require any application to be made promptly. The application was filed at Court late on Thursday and the witness statement was sent late on Friday. Given the sensitivity of the matter, I wanted to escalate the matter internally at BP before going back to Mandy again. I received Judgment in default against the P.O yesterday.

Kind regards. Stephen

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**From:** Tom Beezer  
**Sent:** 21 November 2005 18:53  
**To:** Stephen Dilley; Bob Heckford; Simon Richardson  
**Cc:** Andrew Tobey; Julian Summerhayes; Gareth Kagan; Stephen Lister  
**Subject:** RE: Post Office Limited -v- Lee Castleton, File number 348035.134  
**Sensitivity:** Confidential

All

I have spoken to Mandy - more on that below.

### **CURRENT POSITION**

I have also spoken to Stephen Dilley. The up to date position is (as I understand it) that the Court has rectified its own order and the default judgment is now entered against RM. I understand that a defence to Mr Castleton's counterclaim was finalised on the evening of the 15 November, with Mandy's help. Stephen - when and how did the defence to counterclaim go to court - by fax first thing on the 16th? In any event the default judgment is dated the 9th, but sealed on the 17th November. I also understand that an application to set aside and a witness statement in support has been issued and filed.

### **MANDY'S CONCERNS**

I spoke to Mandy. She is understandably a little disturbed. This matter has wide implications, being:

- 1) whilst it is "damages to be assessed" on the actual default judgment Mandy sees this as "a £250,000 default judgment"
- 2) Hugh James are currently trying to contain a embryonic and not yet issued class action

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relating to the Horizon System. A judgment in relation to it (even a default) is currently very bad news for RM

**3)** Mandy is a little miffed at how we have applied to set aside a default judgment (which presumably involves significant evidence in support) without her knowledge of that judgment or involvement. i.e. we knew of the default AND applied to set aside before telling her...She simply thought the judgment was wrongly entered (which it was) and that we were late in the defence to counterclaim which was now filed - i.e. problem over...

**4)** Mandy questions why she was not kept fully informed as soon as there was a problem - and told of all steps taken to rectify and shown drafts of what we intended to submit to the court.

### **REQUESTS FROM MANDY**

Mandy has made a number of requests that I feel we MUST comply with. These are:

**1)** that she is kept fully informed on this matter - including steps to be taken. I will lead on this.

**2)** that she be sent a full set of proceedings (in order) and a full set of correspondence (WP and open) from the outset of the matter. Stephen, this **MUST BE DONE ASAP**. Mandy has a meeting on the Horizon matter on Friday this week. She needs this paperwork. Please confirm that the files and an appropriate covering letter (which you will discuss with me) will be sent out in tomorrow's DX. As you know I would like a full set too please. This is an absolute priority and the client is expecting receipt of the documents by Wednesday.

**3)** due to the matters handled by Hugh James relating to Horizon, Mandy asks that we speak to them to ensure we are all pulling in the same direction. This is even more important given the threatened class action. Who makes this call is partly dictated by how many Horizon related cases we currently have. More on this below.

**4)** Mandy asks that we NEVER issue proceedings on a claim based on Horizon evidence (or connected in any way to Horizon) without her specific consent. Please let everyone know this.

**5)** Mandy wants a report on how many Horizon based claims we currently handle. Please action with in your teams. I will co-ordinate the response - please feed information into me. This is urgent. Please action now. This will guide who should call Hugh James

### **NEXT STEPS**

From here on we need to fully involve Mandy in all decisions on this case - from which Counsel to instruct, to what further evidence to collate.

Many thanks  
Tom

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**From:** Stephen Dilley  
**Sent:** 18 November 2005 18:22  
**To:** Bob Heckford  
**Cc:** Andrew Tobey; Julian Summerhayes; Gareth Kagan; Stephen Lister; Tom Beezer  
**Subject:** Post Office Limited -v- Lee Castleton, File number 348035.134  
**Sensitivity:** Confidential

**PRIVATE, PRIVILEGED AND CONFIDENTIAL AND PREPARED FOR THE PURPOSES OF A POSSIBLE CLAIM AGAINST THE FIRM**

22/11/2005

Dear Bob,

This is Denise's case which Julian mentioned earlier:

**(A) The Claim and Defence and Counterclaim**

1. Mr Castleton ("Mr C") was a subpostmaster from 18 July 2003 to 23 March 2004. The Post Office ("P.O") have a claim against him for approximately £27,115.83 plus interest and costs in respect of net losses. Mr C's case is that any shortfall is entirely the fault of problems with the P.O's Horizon computer and accounting system at his Post Office and that the P.O wrongfully terminated his Sub Post Master Contract.

2. CMS were wary about issuing a claim. There is an attendance note of a telecon between Laura and Richard Benton (Service Management Section) on file dated 20 April "LRB expressing concern that she would only want to issue if she was entirely satisfied there were no holes in the evidence which would make the claim fail" and letter from Laura to Cheryl Woodward dated 10 May stating "...although you have instructed me to issue proceedings, I am reluctant to do so with the knowledge that some vital evidence may be missing. In particular, some balance snapshots and documents for Week 51 and 52 are missing together with an audit trail. The debtor's solicitors claim that these documents are pivotal..." and email from Laura to Cheryl of 24 May "...it will damage the claim if we are unable to provide evidence pivotal to the claim." Laura was then told to issue a claim without this information.

3. Despite these concerns the P.O instructed CMS to issue. The claim was issued by CMS then transferred to Denise Gammack. Mr C served a Defence and Counterclaim on 15 August and the Reply to Defence and Defence to Counterclaim ("the Reply") was due to be filed and served by 29 August. Mr C claims wrongful termination of his contract and seeks damages of up to £250,000 but those losses have not yet been particularised. Mr C has obtained 2 experts' reports which conclude that the P.O's Horizon computer system, despite the suspense account entry, has failed to recognise the entry on the daily snapshot and that Mr C's Defence, "appears to hold potential merit based on the limited documentation" they have so far reviewed.

4. I inherited this case at the end of September from Denise Gammack when she left the firm. When I took over the case it was stayed for a month to allow the parties to settle. I reviewed the papers and asked the P.O to produce the documents Mr C says they removed from the subpost office when they did an audit in March 2004, but they cannot find all of them, some of which Mr C says are crucial. Given the nature of Mr C's Defence, my initial view was that the Court will draw strong adverse inferences against the P.O if it is unable to produce relevant documents that could either help or hinder its case. I advised the P.O to seek a settlement given they cannot find the relevant documents. It took a while to get any instructions because the person dealing with it at the P.O changed during October as it was transferred from Chesterfield (Cheryl Woodward) to Corydon (Mandy Talbot). Mandy agreed with my view and instructed me to ask seek a mediation. By the time I received the P.O's instructions, the stay had expired. I put forward the offer of a mediation but Mr Castleton refused to mediate until the P.O produces the documents he has requested that he believes they removed by the P.O during their audit on 25 March 2004. These include daily snapshots showing the accounts position which he says will prove the weekly snapshots are wrong.

**(B) Judgment in default on the Counterclaim**

5. On 10 November 2005, I received a Default Judgment against Mr Castleton for an amount to be decided plus costs. The Court listed the case for a CMC on 6 December 2005. On 15 November we filed and served the Reply.

6. Mr C's solicitors have now stated that they filed a request for judgment in default on 7 September because we had not filed a Reply. They state that during the course of a telephone conversation their Mr Turner had with Denise on 15 September, she said that there was an oversight that she had not filed the Reply with the Allocation Questionnaire, that she had not



been in the office at the time when the Allocation Questionnaire was despatched for filing and that she assumed that whoever had dealt with it in her absence had forgotten to enclose the Reply. Mr C's solicitors then say Denise asked whether Mr C would be prepared to grant a retrospective extension of time for service of the Reply and they said they would seek instructions but that they did not envisage Mr C would be prepared to do so, given the dilatory way (in his view) that the P.O had treated his requests for information and documentation. They then state they had told Denise they had filed a Request for Judgment in Default and they got the clear impression from Denise that she suddenly realised on receipt of their letter of 14 September that no Reply had been filed. Denise has recorded time on 15 September for a telephone conversation with Mr Turner, but there is no attendance note of their conversation. When I took over the file, she did not inform me that she had not filed the Reply in time (or at all) or that Mr C had put in an application for a default judgment on the Counterclaim. I have asked Denise to confirm what she recalls of the 15 September conversation with Mr Turner and who she left the AQ with for filing and she says she cannot currently remember much about this case. However, nobody else recorded any time on the file when the AQ was filed and the AQ is signed by Denise.

7. I have telephoned the Court who confirmed that the Default Judgment should have been against the P.O on the Counterclaim and that it will be amended. As the amount of the default judgment has not yet been determined, Mr C cannot yet in my view enforce any judgment.

#### **(C) Application to set aside default judgment**

8. On 17 November we sent to the Court an Application to set aside any Default Judgment and to extend the time period for filing the Reply. We have today sent to the Court a witness statement in support of the application. No hearing date has yet been set. I anticipate instructing Counsel to deal with the application, but that I will also attend. The P.O like to use Counsel at Devereux Chambers. The Court may set aside a Default Judgment pursuant to CPR 13.3 if the Claimant has a real prospect of successfully defending the Counterclaim, or there is some other good reason why they should be allowed to defend the Counterclaim. Our arguments for setting aside the judgment in default are that:

- (a) The Claim and Counterclaim are intertwined. The P.O cannot have wrongfully terminated the Defendant's contract if the Defendant has negligently, carelessly, and/or in error failed to account for over £27,000. If the Claim succeeds, I believe that the Counterclaim will fail. There needs to be a full trial of the Claim and Counterclaim and the trial judge's discretion should not be fettered or affected by a Default Judgment on the Counterclaim. It would be inconceivable if the trial judge finds that Mr C has failed to account for over £27,000 but the Claimant has to pay Mr C damages for wrongful termination, because of a Default Judgment on the Counterclaim. There is therefore a good reason that the P.O should be allowed to defend the Counterclaim
- (b) Following large unexplained losses reported over the preceding 12 weeks an audit took place at the Marine Drive Post Office on 25 March 2004. The inspector reported that the figure put into the suspense account was not authorised. Mr C was suspended pending a full investigation. The P.O followed their dismissal procedure: Mr Castleton was given the opportunity to explain why his contract should not be terminated summarily, had an interview, was dismissed and then appealed. The appeal was also dismissed.
- (c) Fujitsu Services ("Fujitsu") examined the Horizon computer system used by Mr C at the time. Fujitsu were responsible for designing, implementing and operating the Horizon system on behalf of the P.O. They stated that the discrepancies in the figures were caused by the difference between the transactions that were recorded on the system and the cash that was declared. They also concluded that there is no evidence whatsoever of any system problem. This contradicts Mr Castleton's assertion that computer errors caused the discrepancies.
- (d) Mr Jones, Area Development Manager of the P.O dealt with the appeal. He has read Mr Castleton's expert's reports and emailed me yesterday and stated "the assumptions Mr

Castleton makes, as well as those from his alleged 'experts' simply do not hold credence."

(e) Mr Jones has stated that he reconstructed the Marine Drive Post Office branch accounts for seventeen weeks and examined every transaction entry over the critical periods when the losses being incurred were at their greatest. The reconstruction of the accounts and the analysis of cash usage against the actual transaction being performed at the branch did not reveal any discrepancies, apart from incorrect cash declarations. The reconciliation of these accounts, the evidence obtained from customers depositing cash at the branch demonstrated that the Defendant had made repeated false cash declarations. On a number of occasions it was demonstrated that the physical cash that was proven to be in the branch, was different from the cash that was being declared onto the Horizon system. Additional tracking of all increases in cash ordered by the branch, showed that the branch did not need to order excessive amounts of cash because it was not required to service the transactions that were being performed. The orders placed by the Marine Drive Post Office for extra cash were always in weeks where there was a reported significant loss at the branch.

9. In the light of Mr Jones' email to me, I am cautiously optimistic that any default judgment should be set aside, although there are no guarantees and there is more work to do before our application is heard. For instance I have prepared a letter for the P.O to forward to Fujitsu to prepare a more formal report. I will also obtain a witness statement from Mr Jones.

**(D) Client relationship**

10. We have informed Mandy Talbot at the P.O that Mr C's solicitors applied for a default judgment on the Counterclaim and that we expect the Court to correct the error in the Default Judgment they have entered against Mr C. I spoke with Mandy Talbot yesterday. She appreciates we are doing everything we can to move things forward for the P.O and did not criticise BP for failing to file the Reply. She said that she and I had got the sharp end of the case. My impression was that the client relationship appears to be fine. Obviously we must now do everything we can to get any default judgment set aside.

Please let me know if you have any further queries.

Kind regards.

Stephen Dilley  
Solicitor  
for and on behalf of Bond Pearce LLP

**GRO**

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