THE TIMES
2TG MOOT

IN THE COUNTY COURT AT CENTRAL LONDON

B E T W E E N :

MR STEVEN ARNOTT

Claimant/Applicant

- and -

(1) MR TED HASTINGS

(2) THE COMMISSIONER OF TEMPLE POLICE

Defendants/Respondent

THE TIMES 2TG MOOT 2019/2020
Rounds 1 and 2 Moot Problem

Facts

The Claimant ("Arnott") and the First Defendant ("Hastings") used to work together as Police officers employed by the Second Defendant ("Temple Police"). They would habitually socialise with one another off duty, outside work.

On the evening of 3rd September 2015 Arnott and Hastings were both off duty and enjoying a drink together, talking about a recent AC-12 case they had been involved in. The conversation led back to whether to invest in a property scheme in Ireland that they had both been discussing earlier that day during a break in a case review at work. Hastings said *"everyone should invest in it; it would be madness not to fella"*. Arnott said that he *"wouldn't touch anything recommended by Hastings with a bargepole"* as Hasting's track record in property development *"speaks for itself"*.

This touched a nerve with Hastings, and without warning Hastings punched Arnott square in the face causing the Arnott to lose his balance momentarily and hit the side of his head against the bar. He did not lose consciousness and Arnott shook the assault off, insisted that he did not need medical assistance and carried on drinking at the bar for another couple of hours, Hastings having left.

After he had calmed down the next day, Hastings (a stickler for procedure) confessed to the head of the Temple Police legal department what had happened. He was concerned that as the altercation had occurred when they had been discussing something whilst on duty, Arnott might try to sue Temple Police for his actions. Temple Police thought this possibility was remote, and couldn't see how they'd be held liable for Hastings assaulting Arnott whilst having a drink off duty.

Over the next 18 months, Arnott began to behave oddly at work and at home. He complained of headaches every few weeks, memory lapses and took occasional days off work (having taken no time off previously). He was also increasingly disinhibited

– which would manifest itself in him taking risks at work which he never had done before, and refusing to share intelligence he gathered with his colleagues, preferring now to *"go it alone"* with covert operations.

Concerned by this behaviour and out of an abundance of caution, Temple Police issued a written apology to Arnott for the assault, and requested that Arnott sign a waiver. This waiver (which Arnott eventually signed on 1st October 2017 without taking any legal advice) was drafted in the following terms:

> "I hereby forego any legal claim against Mr Ted Hastings or Temple Police arising out of the assault on 3rd September 2015, to the extent (which is not admitted) that the assault occurred in connection with my employment as a Police officer with Temple Police."

In July 2018, and after the breakdown of his long term relationship with his girlfriend, Arnott became very concerned about his symptoms. He saw his GP who in turn referred him urgently to a Consultant Neurologist. In August 2018, after extensive investigations, the Consultant Neurologist diagnosed Arnott with a mild to moderate, traumatic brain injury – which she said was caused by the assault on 3rd September 2015. She stated that, given the passage of time, Arnott's symptoms were unlikely to resolve and would be likely to impair his promotion prospects. However, they could improve if he undertook a number of therapies/treatment on a medium term basis to assist him to adapt to his cognitive impairments. It was then that he decided to sue Hastings and Temple Police.

Arnott issued proceedings against both the Defendants via his solicitors Matthew Oron LLP on 2nd September 2018. The claim form stated the value of the claim as in excess of £300,000. Both Defendants acknowledged service of the proceedings within time and entered Defences to the claim.

By order dated 27th November 2018 the parties were ordered to file and serve the witness statements they sought to rely on in support of their cases by 4pm on 25th February 2019. The Defendants filed and served their statements on 25th February 2019; but Arnott failed to do so – he had become ill with persistent headaches and dizziness in the week prior to the deadline, and hadn't signed or returned the draft statements his solicitors had produced. His solicitors, having sent the draft statements out to Arnott, had also forgotten the deadline.

The partner with conduct of Arnott's case was away on a 2 week holiday and so it was not until he returned on 4th March 2019 that anybody phoned Arnott to chase the return of the signed statements.

Arnott did not initially return these calls, and it was only after being informed by the Defendants on 25th March 2019 that they would not agree to an extension of time, that the Claimant's solicitors Matthew Oron LLP applied to the Court for relief from sanctions.

The application was dated 8th April 2019 and included as evidence all of the background facts set out above, but no further evidence.

The Sanction

Because the Claimant's witness statements were not filed in time (by 4pm on 25th February 2019), the Claimant has breached the terms of a court order.

The automatic sanction for this breach of the court order is prescribed by CPR r.32.10 and applies in this case. CPR r.32.10 states as follows:

> "If a witness statement or a witness summary for use at trial is not served in respect of an intended witness within the time specified by the court, then the witness may not be called to give oral evidence unless the court gives permission."

Application for Relief From Sanctions

Where a sanction is imposed, a party can apply for relief from that sanction under CPR r.3.9. Matthew Oron LLP have made a CPR r.3.9 application in this case, dated 8th April 2019 and supported by the evidence in the section "Facts" above.

You are required to draft the skeleton argument on behalf of the Claimant (Arnott) for relief from sanctions under CPR r.3.9.

The skeleton argument must address the following three grounds:

1. The breach was not serious or significant.
2. There was a good reason for the breach.
3. Considering all the circumstances of the case, permission ought to be given to the Claimant to put in witness evidence late.

Authorities

1. CPR r.3.9 and accompanying commentary as set out in the White Book
2. *Imperial Loan Co Ltd v. Stone* [1892] 1 QB 599
3. *Primus Telecoms Netherlands BV v. Pan European Ltd* [2005] EWCA Civ 723
4. *Denton v. TH White Ltd* [2014] 1 WLR 3296
5. *Gladwin v. Bogescu* [2017] 4 Costs LO 437
6. *Otuo v. Watch Tower Bible & Anr* [2019] EWHC 346 (QB); [2019] 2 WLUK 514

Please note: in accordance with rules 18 and 19 of the Times 2TG Moot Rules, these are the only authorities that you are permitted to rely on. No further research is required.

Where these 6 authorities refer to other authorities (i.e. where The White Book extract refers to other cases not listed above, or where *Denton* refers to other cases not listed above), you may quote the proposition and rely on the reference to that other authority making clear where and how it is cited in one of the 6 authorities listed above; but you may not independently rely on the other authority itself (or any part of it not expressly referred to and included in the 6 authorities listed above).