“Brevity is the Soul of Wit”: Beware Sesquipedalian Counsel!

William Shakespeare wrote that “Brevity is the soul of wit.” The courts are increasingly in agreement.

Justice Leggatt’s Commercial Court judgment in the case of Tchenguiz et al – v- Grant Thornton et al Case No: 2014 Folio 1434 will alarm prolix solicitors and Counsel alike.

The judgment is far more than a benevolent “warning shot” from the Commercial Court that pleadings and submissions should be succinct and applicable court guidance be followed.

The Commercial Court ordered that the claimant’s lengthy Particulars of Claim be struck out. It also ordered that the costs of drafting the Particulars be disallowed and new Particulars be filed.

Given that leading Counsel and three junior Counsel were involved in the drafting of the Particulars, the costs involved are likely to have been significant.

**Background Facts**

The material facts of the underlying claim are not important for our purposes, aside from Justice Leggatt’s comment that the claim was not “a complicated one”.

In brief, the claimants allege that the defendants conspired to induce the Serious Fraud Office (“SFO”) to investigate the claimants on a false basis by the unlawful means of making statements to the SFO which the defendants did not believe to be true.

The Particulars of Claim served in support of the claimants’ case were 94 pages long.

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The Commercial Court ordered that the Claimant’s lengthy Particulars of Claim be struck out. It also ordered that the costs of drafting the Particulars be disallowed and new Particulars be filed.
The Commercial Court Guide specifically states (at paragraph C1.1) that:

a. pleadings should be “as brief and concise as possible” and;
b. statements of case should be limited to 25 pages in length and the court “will only exceptionally give permission for a longer statement of case to be served”

Service of the 94 page Particulars was made without any permission being sought from the Commercial Court.

The defendants understandably took issue with this and it was only then that the claimants retrospectively made an application to the court for permission to serve Particulars that Tolstoy would have been proud of (at least in terms of length). This was some two months after actual service. The application hearing came before Justice Leggatt on 20 February 2015.

The Judgment

The judgment did not pull any punches.

Justice Leggatt recorded the current efforts of the courts to limit the “tendency towards longer and longer pleadings,” notably by providing clear guidance on the drafting of pleadings in the Commercial Court Guide (as set out above).

In their submissions at the application, the claimants conceded that the Particulars of Claim could in theory be edited down to perhaps half their current length. However, they argued this would mean omitting key detail and would inevitably lead to the defendants seeking further clarification as to matters at a later date.

Justice Leggatt did not accept this and noted that large tracts of unnecessary narrative and rhetoric could be omitted.

Justice Leggatt was also unimpressed with the claimants’ argument that if they were required to re-plead the claim then this would cause unnecessary delay, commenting that in the short term that may be the case but that “the efficient conduct of the case will be assisted by particulars of claim which are properly drafted” and that “any responsibility for such delay and inconvenience lies squarely with the claimants or their legal advisors in disregarding the requirements clearly stated in the Commercial Court Guide.”
Justice Leggatt concluded that only the ordering of adverse costs in cases of "flagrant non-compliance" would stop practitioners overlooking the guidance. Therefore an order was made that the offending Particulars be struck out, the costs of drafting the Particulars of Claim be disallowed and fresh Particulars, no longer than 45 pages, and complying with the court guide, be served.

Comment

This judgment follows on the heels of the Court of Appeal's decision in Standard Bank PLC –v- Mat International Ltd [2013] EWCA Civ 490 in which it was stated that overlong pleadings have become the "bane of commercial litigation in England and Wales." It was made clear by the Court of Appeal that a failure to "heed the need for brevity" in submissions may well lead to strict adverse costs orders.

However, it was not simply the length of the Particulars that caused the application before Justice Leggatt to fail. A central concern seems to have been that the Commercial Court guidance had not been followed.

The judgment highlights the court’s increasingly hands on approach to the case management of claims. Gone are the days when practitioners could ignore, or sidestep court guidance relying on the fact that the court would exercise flexibility and sometimes circumvent its own rules. Practitioners should therefore ensure that they are fully aware of the guidance contained in the various court guides and abide by those rules at all times.

In situations, such as this where the legal team were singled out for such explicit criticism by the judge, it is not difficult to see clients seeking to recover any lost costs from their advisors.

It might be wise for practitioners to heed the words of Thomas Jefferson who commented that "The most valuable of all talents is that of never using two words when one will do." This is traditionally not something lawyers have been adept at, but given the increasing dislike expressed by the court for verbosity in legal pleadings and submissions, it is a mantra that should not be ignored.

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