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When can a court refuse to issue a Claim Form?

Chelfat v Hutchinson 3G UK Limited (2022) EWCA Civ 455

The primary issue on this appeal was whether the claimant/appellant's failure to complete Form N510 (in relation to service out of the jurisdiction) entitled the court to refuse to issue the claim form that she had sent to them prior to the expiry of the limitation period. When she eventually discovered the court's refusal, the claimant provided what she called a replacement claim form, which the court issued; but the claim based on the replacement form was struck out because by then the claim had become statute-barred.

On 14 December 2009, the claimant went to a shop near Marble Arch belonging to the defendant/respondent. There she purchased a 3G dongle. She asserted that the defendant's employee installed the dongle into her laptop.

It was the claimant's case that, because of the way in which the dongle was installed, her laptop was damaged irreparably and, in consequence, she lost a number of valuable items of information, and data including photographs. She was refunded the price of the dongle. On 16 December 2009 she purchased a replacement dongle from another of the defendant's shops in Oxford Street. This dongle did not work and caused her laptop to slow down. On 30 December 2009 the replacement dongle was returned to the store. A refund was refused.

IN BRIEF

The Court of Appeal held that the court had been wrong to refuse to issue a Claim Form, notwithstanding that the claimant had failed to provide a Form N510 or deal properly with the payment of the court fee.

Sometime in the autumn of 2015, the claimant was in communication with the defendant, asking about the correct address for the service of legal proceedings. On 9 December 2015, the claimant sent to the County Court Money Claim Centre in Salford ("CCMCC") a Claim Form, a Particulars of Claim, and a witness statement. The Claim Form gave as the defendant's address for service an address in Scotland that she had been given by the defendant.

These documents were delivered to the CCMCC on 11 December 2015. On the face of it, therefore, the claim form and the other documents were delivered within the six-year limitation period, which was due to expire on 14 December 2015 (first dongle) and 16 December 2015 (second dongle). However, the claim form was not issued by the CCMCC. The CCMCC said that the documents were returned to the claimant under a letter dated 17 December 2015.

The letter identified three reasons why the CCMCC had refused to do what the claimant had requested. The first concerned an alleged failure properly to complete an application for fee remission. The second alleged that the appellant was the subject of a Civil Restraint Order and so required permission before any claim was issued. The third noted that the claimant had not provided Form N510, concerned with Service out of the Jurisdiction.

Two principal issues arose on the appeal:

Issue 1: Was the CCMCC entitled to refuse to issue the claimant's Claim Form in December 2015?

The answer to that question was an unequivocal ‘no’. Whatever degree of scrutiny the court staff were permitted, and whatever incremental changes may have been made to the CCMCC's general powers in the last decade, neither could justify a refusal to issue a claim form, which was itself in proper form. A request by a litigant to issue a claim form was one which he or she was entitled to make. Thereafter, the litigant was completely dependent on the court. His or her legal rights might depend on the timeous issue of that claim form. Accordingly, the court's primary obligation was to comply with that request. It would take exceptional circumstances – far beyond the facts of this case – for a court's refusal to comply with a legitimate request to issue a claim form to be even arguably justified.

The claim form which should have been issued on or around 11 December 2015 would have been issued within the limitation period.

Issue 2: Was it arguable that the action was brought on 11 December 2015?

The limitation position was frozen, and time stopped to run, when an action was "brought". The date the proceedings were "brought" for the purposes of the Limitation Act could be earlier than the actual date of the issue of the claim form. The working assumption made by both the District Judge and the Judge below when considering this matter was that the claim form that was issued in December 2016 was the same as the claim form that should have been issued in December 2015, with one modification: the address in Scotland had been changed to an address in Maidenhead.

On the assumption that the claim forms were the same, with the only difference being the change of address, a narrow question arose as to whether it could be said that "the claim form as issued" in December 2016 was that which "was received" by the CCMCC in December 2015.

The court tested the position as follows: suppose that the wording of the two claim forms was precisely the same and all the claimant had done was to amend the Scottish address, keeping the

original address on the claim form but showing the Maidenhead address by way of amendment. The claim form that was received by the CCMCC in December 2015 was the claim form that was issued the following year. The change to the address for service did not matter because it had no bearing on the claim itself.

That was also the effect of the Limitation Act. The claim was brought in December 2015. The court wrongly failed to act on the claimant's request to issue the claim form and that was the only reason that the subsequent claim form was struck out as being statute-barred. The court could, technically, reinstate the 2015 proceedings but what would be the point? Proper proceedings were already underway and at a more convenient location. It would be absurd if the claimant was in a worse position because she had taken the sensible option of pursuing the defendant in England rather than seeking to reactivate the non-issued proceedings with the service address in Scotland.

There was a related debate about whether the claimant did all that she reasonably could do to bring the matter before the court in the appropriate way and at the appropriate time. In the view of this court, she did. There was nothing further she could or should have done in order to get the claim form issued in December 2015. Her failure in respect of Form N510 related only to service and, once the claim form had been issued and the error in respect of Form N510 had been pointed out to her, no doubt that it would have been promptly rectified.

The court was not persuaded that the fee cases summarised in *Hayes v Butters (2021)* were directly analogous to this situation. That was because the fees that were not paid in each of those cases were fees payable for and on the issue of proceedings: in other words, there was a direct link between the payment or non-payment of the fee, and the issue of the claim form. That at least made it arguable that the non-payment of the fee justified the non-issue of the claim form. But here, there was no link whatsoever between Form N510 and the issue of the claim form.

However, to the extent that those authorities were analogous, they assisted the claimant. As in *Hayes v Butters*, there was force in the concerns expressed in the authorities about the disallowing of a claim on limitation grounds merely because of an inadvertent miscalculation of a court fee. That might be said to have resonance in the present appeal: the claimant, a litigant in person, inadvertently failed to complete Form N510. That failure should not be held against her for the purposes of limitation.

For these reasons, therefore, it was arguable that this action was "brought" on or around 11 December 2015 for the purposes of the Limitation Act. That was sufficient to mean that the order striking out this claim should be set aside and the matter remitted to the county court.

The full case report may be found at: Chelfat v Hutchinson 3G UK Ltd [2022] EWCA Civ 455 (06 April 2022) (bailii.org)