

No fee means no application. Price v Egbert H Taylor & Company Limited

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Matthew White, member of our personal injury team successfully represented the Defendant in the recent civil procedure appeal *Price v Egbert H Taylor & Company Limited* at Birmingham County Court (judgment handed down 3/11/15). The claim was struck out on the basis that an application to extend time for service of the claim form, whilst received by the court in time, did not have the right fee with it so was in fact not made until too late.



The Claimant suffered a stroke at work. He contended that his employer should have called an ambulance rather than having him driven to a hospital which then had to transfer him. He was always going to need medical evidence to make out causation. He was very slow to get it. He issued the claim in April 2014 hard up against the limitation period. In August 2014 he applied for (and got) an ex parte extension of time to serve the claim form, PoC and medical evidence. He still had no medical evidence within the extra allowed time, so in November 2014 applied again and got a second extension until 10/3/15. Still having no medical report he applied again. The application reached the court on 6/3/15.

Two problems:-

- (1) The claimant's solicitor forgot to enclose the fee with the March 2015 application and the fee was not received until the previously allowed time had run out; and
- (2) He sent that application to the bulk centre where the claim had been started but by that time it had been transferred to Birmingham.

If the application were in time that would trigger the court's discretion under CPR 7.6(2) in relation to a further extension of time. If the application was late, the court could only give more time if the much tougher 7.6(3) criteria were met.

The Claimant relied on CPR 23.5:- "Where an application must be made within a specified time, it is so made if the application notice is received by the court within that time." He contended that the lack of fee was no problem because "the application notice" was received in time (albeit that by the time the fee was paid, it was too late).

The judge (on appeal) rejected that:-

“76. ... I accept the submissions on behalf of the Respondent that this was a situation akin to filing a Claim Form with no fee. In that scenario the Court will not issue the Claim Form. In short the claim is issued when it is delivered to the Court with the appropriate fee. The rationale being the purpose that the limitation period and extensions of time are designed to achieve. Further, I accept his submission that by analogy an attempt to extend time without a fee is treated as invalid. Put bluntly, the risk of not filing the right fee when issuing ought to fall on the applicant. Further, there is no difference in principle between the first fee upon issue of the proceedings and later fees necessary in order to apply to extensions of time.

77. Further, I accept the submissions on behalf of the Respondent that as the Appellant was in control of (a) whether; (b) when; and (c) where the Court received the fee, the logic of *Collier v Williams* is consistent with time not stopping to run merely when the application is received without the fee and in the wrong Court. Any errors were the responsibility of the Appellant and his legal advisors. It is self evident that the Court will not issue the application, even if an application notice has been received, if no fee has been paid.

The simple message is:

- Claimants:- Make sure you pay the correct fee on time! [Note that tendering the right fee might well suffice... see *Sands & Another v Singh and Others* [2015] EWHC 2219 (Ch) (HHJ Purle QC sitting in the Birmingham District Registry)].
- Defendants:- Watch out for this. The Defendant got lucky in this case, only discovering that the fee was paid late because it applied to set aside the second extension of time (which was served on it in error) and counsel (Matthew White) asked the judge at the hearing of the application for a chronology of what had happened so far as the court was concerned in relation to the second and third applications to extend time. That led to discovery that the application was received in time with no fee, and the fee was only paid late.

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