

# Striking Out Cases in the Royal Court

*As originally appeared in Resolution – Jersey Summer 2009*

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In recent years, the Royal Court has adopted a more active approach to case management. The power of the Royal Court to strike out cases remains one of the most draconian judicial weapons available. In the recent case of **Eckman v. Sidem International Limited and Others** (Unreported Judgment 2 June 2009), in which this firm acted, the Royal Court considered the principles to be applied.

## PAULINE ACTION

The plaintiff brought a claim against a company and one of its directors (the second defendant) seeking by way of a Pauline action the enforcement of previous judgment debts against the company totalling over US\$1.4 million. The second defendant himself was not a judgment debtor but the plaintiff alleged that he had transferred funds from the company to third parties between 1996 and 2000 with the intention of preventing such funds being used to satisfy the outstanding judgment debts.

The plaintiff's claim was issued towards the end of the limitation period in 2006 and served on the second defendant in early 2007. The second defendant filed his answer to the claim in March 2007. A summons for directions should have been issued by the plaintiff within one month but was not. No further action was taken by the plaintiff until December 2008 when the plaintiff sought further and better particulars of the answer (period of inactivity of nineteen months).

In January 2009, this firm issued an application on behalf of the second defendant to strike out the plaintiff's claim on two grounds. Firstly that the plaintiff's claim be dismissed pursuant to Rule 6/26(2) of the Royal Court Rules 2004 on the grounds that the plaintiff had failed to issue a summons for directions in good time. Alternatively, that the plaintiff's claim be struck out for want of prosecution on the grounds that there had been inordinate and inexcusable delay in prosecution of the action.

Rule 6/26 was considered in **Lescroel v. Le Vesconte** [2007] JLR 273. The test to be applied is, has the plaintiff satisfied the court that:

- (i) apart from the failure to issue a summons for directions he has prosecuted his case with at least reasonable diligence?
- (ii) in all the circumstances, his failure to apply for a summons for directions is excusable?
- (iii) the balance of justice indicates the action should be allowed to continue?

Underlying the Royal Court's approach is the dicta of the Court of Appeal in **Re Esteem Settlement** [2000] JLR 41A that the objective of all involved in civil proceedings is to progress to trial in accordance with an agreed or ordered timetable, at a reasonable level of cost and within a reasonably short time. In the case of **Garfield-Bennett v. Phillips** [2002] JRC 214 the Royal Court held that in cases where there has been no contumelious conduct by the plaintiff, the court, if it is to strike out a claim for want of prosecution, must be satisfied:

- (i) that there has been inordinate and inexcusable delay after the issue of proceedings on the part of the plaintiff or his lawyers;
- (ii) that such delay will give rise to a substantial risk that it is not possible to have a fair trial of the issues in the action or is such as is likely to cause or to have caused serious prejudice to the defendant.

It is also clear that the later a plaintiff commences proceedings, the higher his duty to prosecute it with all due speed and diligence.

The court found that the plaintiff had not prosecuted his case with reasonable diligence and that his failure to apply for a summons for directions was inexcusable. The court was keen to

stress that the rules very clearly impose an obligation on all plaintiffs to apply for a summons for directions within the stipulated period. The court found that the balance of justice lay with the second defendant and struck out the claim.

Further, the court had no hesitation in finding that the period of inactivity totalling nineteen months amounted to inordinate and inexcusable delay. The plaintiff had taken no active steps during this period and no credible reason had been put forward for this inactivity. The court found that this was a clear case where there would be serious prejudice caused to the second defendant as he was suffering from a significant impairment of memory and there were considerable difficulties in relation to the availability of documentary evidence and witnesses. The court also found that there was a substantial risk that it would not be possible to have a fair trial and struck out the claim for want of prosecution.

This judgment provides a very clear and comprehensive description of the principles to be applied by the Royal Court when dealing with applications to strike out cases. Plaintiffs should always be reminded to issue their summons for directions in good time and take all reasonable steps to actively progress their cases speedily to trial. This will ensure that plaintiffs are not subsequently faced with an application to strike out, but more importantly, it will give the Royal Court an opportunity to ensure that cases do not fall into a black hole.

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July 2009

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