

All England Reporter/2020/February/*McParland & Partners Ltd and another company v Whitehead - [2020] All ER (D) 106 (Feb)

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***McParland & Partners Ltd and another company v Whitehead**

[2020] EWHC 298 (Ch)

Chancery Division

Sir Geoffrey Vos

14 February 2020

Practice – Civil Procedure Rules – Disclosure Pilot

Abstract

The parties sought guidance from the court regarding the scope of CPR PD 51U: Disclosure Pilot for the Business and Property Courts (the Disclosure Pilot), in a case concerning alleged breaches of non-compete and confidentiality clauses in a service agreement by the defendant. The Chancery Division held that, among other things, the important point for parties to understand was that the identification of issues for disclosure under the Disclosure Pilot was a quite different exercise from the creation of a list of issues for determination at trial.

Digest

The judgment is available at: [2020] EWHC 298 (Ch)

Background

The present hearing was a disclosure guidance hearing (DGH) under CPR PD 51U: Disclosure Pilot for the Business and Property Courts (the Disclosure Pilot). At the DGH, the parties sought guidance by way of a discussion with the court in advance of a case management conference (CMC), concerning the scope of extended disclosure. CPR PD 51U para 11(1) provided that such a hearing could take place where: (i) the parties had made real efforts to resolve disputes between them; and (ii) the absence of guidance from the court before a CMC was likely to have a material effect on the court's ability to hold an effective CMC.

In the proceedings, the claimant companies alleged breaches of non-compete and confidentiality clauses in a service agreement by the defendant. Initial disclosure had been provided by the parties in accordance with

para 5.1 of CPR PD 51U para 5.1. The issues on which the parties had been unable to agree concerned the way in which extended disclosure was to be given under CPR PD 51U paras 6-9. In the course of the DGH, the judge held that he was content or disclosure to be provided by reference to the issues that the parties had agreed. The court reserved judgment in order to clarify some of the aspects of the way in which the Disclosure Pilot was intended to work.

Issues and decisions

Clarification of aspects of the Disclosure Pilot.

The Disclosure Pilot was intended to operate proportionately for all kinds of case in the business and property courts, from the smallest to the largest. Compliance with it did not need to be costly or time-consuming. The important point for parties to understand was that the identification of issues for disclosure was a quite different exercise from the creation of a list of issues for determination at trial. The issues for disclosure were those which required extended disclosure of documents (further disclosure beyond what had been provided on initial disclosure) to enable them to be fairly and proportionately tried. The parties needed to start by considering what categories of documents likely to be in the parties' possession were relevant to the contested issues before the court (see [55], [56] of the judgment).

Unduly granular or complex lists of Issues for Disclosure were to be avoided. Likewise, the models chosen ought to simplify the process rather than complicate it (see [57] of the judgment).

Cooperation between legal advisers was imperative. The Disclosure Pilot was not to be used as an opportunity for litigation advantage. If that was attempted, the parties responsible would face serious adverse costs consequences (see [55]-[58] of the judgment).

Aidan Reay (instructed by Weightmans LLP) for the claimants.

Nigel Grundy (instructed by Farnworth Shaw Solicitors) for the defendant.

Toby Frost - Barrister.