

Court of Appeal gives ruling on limitation in matrimonial proceedings

Published 9 July 2020

On 7 July 2020, the Court of Appeal handed down its Judgment in *Holt v Holley & Steer* [2020] EWCA Civ 851 providing new guidance on the assessment of the date of damage for the purposes of primary limitation in tort in the context of family proceedings. In a decision that will be welcomed by solicitors and their professional indemnity insurers the Court dismissed the Claimant's appeal. In doing so, the Court clarified that no distinction should be made between matrimonial proceedings and other forms of civil litigation when identifying when damage has been sustained. DAC Beachcroft acted for the successful Defendant/Respondent solicitors and their professional indemnity insurers.

Background

The Claimant's main allegation was that the solicitors had failed to obtain expert valuation evidence of investment properties and jewellery losing her the opportunity to achieve a better financial result in her ancillary relief proceedings.

The Claimant issued proceedings 6 years after the conclusion of the final hearing in the ancillary relief proceedings, but 6 years before the date that judgment was handed down. The Claimant argued that damage was only suffered and time did not start to run until the date of judgment. This was on the basis that the Court in family proceedings have a particularly wide discretion when seeking to achieve a fair distribution of the assets between ex-spouses upon divorce and, therefore, whether damage had been sustained could only be known (and was contingent on) when the District Judge delivered his final judgment.

Court of Appeal Decision

In dismissing the Claimant's appeal, McCombe LJ, delivering the lead judgment, found that the Claimant's prospective result in the final hearing was diminished in quality because the base line for distribution of the matrimonial assets would be defined by what she contended were the inflated values of an important part of her assets. The sum that she would be likely to receive either on settlement or upon judgment would be calculated on those inflated values. Accordingly, the Court held that the claimant suffered measurable damage at the latest by the end of the final hearing and the claim for damages in tort was statute barred by section 2 of the Limitation Act 1980 before the claim form was issued.

Ancillary relief proceedings v other forms of litigation

The court agreed that the most useful analogy were the line of cases involving allegations against solicitors in the conduct of other types of litigation. In those cases the claimants had suffered a loss in that their claim (chose in action) had been diminished in value by the solicitors' conduct. While the Court recognised that a claim in ancillary relief proceedings is not a chose in action, the Claimant's right to a division of the matrimonial assets was still quantifiable and could be rendered either valueless or of diminished value and the loss was measurable.

The Court indicated that no distinction should be made between matrimonial finance proceedings and other forms of civil litigation and to do so "would be a triumph of technicality over reality".

Comment

The case provides helpful guidance on the approach the court will take to assessing limitation in matrimonial proceedings. In particular, paragraphs 50 to 54 of the Judgment makes it clear that, whilst judges in family proceedings have a wide discretion, no distinction should be made between matrimonial proceedings and other civil litigation. Accordingly, although the decision was the first time that the Court of Appeal has considered limitation in the family context, practitioners will be familiar with the approach taken by the Court which applies the existing authorities relating to solicitors' negligence in the civil litigation context.

The case also serves as a reminder to litigators that the date measurable damage is found to occur should not be assumed to be the final hearing as the court will assess when the claim/chose in action has become less valuable which may be much earlier in litigation.

Authors

Catrin Davies

Newport

+ 44 (0)1633 657682

cadavies@dacbeachcroft.com



Freddie Beard

Bristol

+44(0)117 918 2049

fbeard@dacbeachcroft.com



DCD
DAC BEACHCROFT