



## LEGAL BRIEFING

### *Venum Property Investments Ltd v Space Architecture Ltd & others*

[2013] EWHC 1242 (TCC), Mr Justice Edwards-Stuart

#### *The Facts*

During 2006 Venum Property Investments Ltd ("Venum") exchanged contracts for the purchase of Enterprise Square in Northampton ("the Site"). The purchase price was £4.55 million.

Planning permission was granted for a development consisting of 155 residential units and 171 car parking spaces. Venum completed the purchase on 22 December 2006.

In February 2007, Venum realised that the supporting columns in the underground car park shown in the development design would not be capable of supporting the building. This resulted in the loss of around 30% of the parking spaces and Venum contended the development was worth less than the purchase price.

Venum waited until 2012 to instruct solicitors to commence proceedings to recover the substantial financial losses it claimed to have suffered. Venum's Claim Form was issued on 12 November 2012 but it was not served immediately. On 28 February 2013 Venum sent a letter of claim under the Professional Negligence Pre-Action Protocol to ten proposed defendants. The defendants included the architects who had prepared the design and a number of agents employed by Venum in connection with the purchase. Venum alleged its agents had acted in breach of their duty to ensure Venum was properly advised.

Venum's Claim Form was served on 12 March 2013 being the very last day for service permitted by CPR 7.5(1) but Venum's solicitors failed to serve the Particulars of Claim at the same time contrary CPR 7.4(2) and 7.5(1). When the Particulars were served a few days later, the first eight defendants agreed to a short extension of time for service of the Particulars of Claim under CPR 3.1(2)(a) and 3.9 but the ninth and tenth defendants did not. Venum therefore issued an application for an extension of time under CPR 3.1(2)(a) and 3.9. Absent an extension, Venum's claims against the ninth and tenth defendants would be time barred.

Venum's application for an extension was issued prior to 1 April 2013 but was heard on 22 May 2013. The criteria for granting relief from sanctions set out in the pre 1 April version of CPR 3.9(1) applied but it was agreed that the amendment to the overriding objective at CPR 1.1, coming into force on 1 April 2013 were also relevant to the Court's consideration of Venum's application. The new sub-paragraph (f) to CPR 1.1 required the Court to enforce compliance with rules, practice directions and orders.

Venum said that there had been no history of default and that it had not behaved improperly where the Particulars of Claim had been served late due to an error by their solicitors.

The ninth and tenth defendants claimed that there was no good explanation for the failure to serve the Particulars of Claim in time and asserted that from 1 April 2013 the Court was required to adopt a less tolerant approach to failures to comply with matters such as time limits.

#### *Issue*

Was Venum entitled to an extension of time?

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### *Decision*

No. Looking at the circumstances as a whole, in particularly Venulum's unexplained delay in commencing proceedings, and bearing in mind the stricter approach now being taken by the courts, the Court should not exercise its discretion to grant an extension of time.

### *Commentary*

The amendments to the Civil Procedure Rules that came into effect from 1 April 2013 have allowed the courts to adopt a less forgiving approach to delay and non-compliance with directions.

Whilst Venulum's application was not considered in light of the post 1 April 2013 amendments to CPR 3.9, it was still necessary to take into account the post 1 April 2013 amendments to the overriding objective. It should be noted that the new sub-paragraph (f) to CPR 1.1, requiring the courts to enforce compliance with rules, practice directions and orders, employs the same wording that appears in the new CPR 3.9(1)(b).

Venulum's delay in bringing proceedings and not serving the Claim Form until the last possible moment was a compelling factor in the Judge's reasoning. No explanation whatsoever had been offered for Venulum's five-year delay in commencing proceedings. Mr Justice Edwards-Stuart made a general observation that a claimant who leaves it until the last minute to issue proceedings will be under a high obligation to ensure the claim presented is clear, coherent and properly particularised, especially if the claim involves allegations of bad faith.

This decision reflects the new stricter approach that the courts will adopt post 1 April 2013. In future there will be significantly less indulgence towards parties who unnecessarily or without good reason delay proceedings or fail to comply with directions or Court Rules.

Lisa Kingston  
July 2013

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