

## Legal Briefing

### Should a claimant be entitled to default judgement on a claim that was dependent upon the outcome of separate proceedings?

*ADVA Optical Networking Ltd v Optron Holding Ltd [2017]*  
*EWHC 1813*

Before the Hon Mr Justice Coulson  
In the Technology and Construction Court  
Judgment delivered 21 July 2017

#### The facts

During 2016 ADVA settled a claim brought by BT concerning allegedly defective in-line socket electrical cables. In order to pass the claim down the supply chain, ADVA commenced proceedings against Optron who in turn joined in their own supplier Rotronic Instruments (UK) Limited. The proceedings between ADVA, Optron and Rotronic were initially stayed pursuant to a standstill agreement but a trial date was fixed for April 2018.

Rotronic was unable to obtain the consent of its own supplier, A One Distribution (UK) Limited, to enter into the standstill agreement or to become a party to ADVA's proceedings. Rotronic therefore commenced separate proceedings against A One and served its particulars of claim on 10 March 2017. A One did not file an acknowledgment of service or serve a defence.

The CMCs in Rotronic's proceedings against A One and in ADVA's proceedings against Optron and Rotronic were both fixed to take place on 16 June 2017. On 16 June Rotronic's solicitors were contacted by solicitors appointed by A One who indicated that they had only just been instructed and were unable to consider directions. At the CMCs the judge ordered A One to issue an application for relief from sanctions pursuant to CPR Rule 3.9 on or before 23 June 2017. On 23 June A One issued a draft defence and an application for an extension of time for service and/or relief from sanctions and this application was heard during the re-fixed CMCs on 14 July 2017.

#### The issue

Was it appropriate to grant A One relief from sanctions pursuant to CPR 3.9?

#### The decision

The judge followed the Court of Appeal's Guidance in *Denton & Others v TH White Limited* [2014] 1WLR 3926 and considered A One's application for relief in three stages.

The first stage was to consider the seriousness and significance of A One's failure to comply with the court rules. The judge concluded that where A One had refused to sign the standstill agreement, thus forcing Rotronic into issuing separate proceedings, and where A One had otherwise casually ignored those proceedings, this was a serious default.

The second stage was to consider whether or not there was any good reason for A One's serious breach of the court rules. The judge found that there was not. He rejected A One's submission that they had not understood the meaning and effect of the documents served by Rotronic on the grounds that there was nothing complicated about these documents. Moreover, the judge considered that A One's professed confusion was in reality consistent with their on-going refusal to engage properly or at all with the claims brought against them since 2016.

Notwithstanding that A One's conduct had prevented the efficient and proportionate conduct of the claim brought against them, on reviewing the third stage, requiring consideration of all of the circumstances of the case so as to enable the court to deal justly with the application, the judge concluded that A One should be granted relief from sanctions. This was for two reasons:

Firstly, if A One was granted relief, that would not cause any delay to the litigation overall given that the ADVA's proceedings against Optron and Rotronic were at an early stage with disclosure not yet commenced and the trial still some way off in April 2018.

Secondly, the judge accepted the argument that if judgment in default were granted against A One, this would be contingent and that would be unsatisfactory given that Rotronic's primary position as against Optron was to deny liability. Thus any contingent judgment against A One would only become relevant if Rotronic's defence against Optron was rejected. The judge also noted the risk that with a contingent judgment to rely upon, Rotronic might be tempted to not pursue its defence against Optron with full vigour.

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### Commentary

This is the latest in a series of decisions following *Denton & Others v TH White Limited*, which as the judge pointed out, have all been decided on their own facts. The interesting element of this case concerns how the likely implications of Rotronic obtaining a default contingent judgement influenced the judge's thinking in favour of granting relief under CPR 3.9. A One had demonstrated indifference to the court process for more than 12 months and it is likely that no relief would have been granted had A One's potential liability not been closely connected with the proceedings commenced by ADVA.

Ted Lowery  
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