RPRA SOLICITOR'S (RICKERBY'S) COURT CASE SUMMARY

THE ROYAL PIGEON RACING ASSOCIATION CLAIM AGAINST LESLIE BLACKLOCK AND OTHERS – SUMMARY OF HEARING ON CLAIMANTS' APPLICATION FOR SUMMARY JUDGMENT OR INTERLOCUTORY INJUNCTION ON 12th JANUARY 2015

The hearing on the Claimants' application for summary judgment or interlocutory injunction took place on 12th January 2015 at the Bristol District Registry of the High Court of Justice. The Defendants' interests were represented by Hugh Saunders of 3PB Chambers. Alexandra Cooper of Harrison Clark Rickerbys also attended the hearing. We set out below a summary of the outcome of the hearing. A transcript of the full note of the hearing can also be made available upon request.

Request for permission to apply for Summary Judgment.

The usual rule is that a party cannot apply for Summary Judgment until after a defence has been filed (or the time period for doing so has expired) unless the court gives permission. In this case, not only had the Claimants applied for Summary Judgment before an acknowledgment of service or a defence had been filed, but they had also failed to comply with the Practice Direction on Pre-Action Conduct ("PD-PAC"), which requires them to have served a formal Letter of Claim before issuing court proceedings (this is despite the fact that the Claimants had taken legal advice by this point). As our Counsel pointed out to the Judge, in cases where the parties have failed to comply with the PD-PAC, an application for Summary Judgment will not normally be entertained before a defence has been filed, except in exceptional circumstances.

The Claimant's Counsel submitted that no prejudice would be caused to the Defendants if the application for Summary Judgment were to proceed. However, our Counsel advanced a number of arguments as to why permission should not be granted, including that:

1. The Defendants had been put in a position of having to deal with the matter at short notice. As a result, they had been unable to set out a considered defence and were now being criticised by the Claimant's Counsel for making points during the hearing which they had not thought out before; and

2. The Claimants had failed to comply with the PD-PAC. Their letter of 19th November 2014 did not set out what they were going to do or what they were looking for, despite the fact that the letter had been written after they had obtained legal advice.

Our Counsel therefore submitted that there was nothing exceptional about this case and that the Judge should not, therefore, depart from the usual rule.

The Judge agreed that there was nothing exceptional about this case; it could not be a matter of urgency as, if the matter was truly urgent, the Claimants would have applied for an injunction. In this case, the Claimants had applied for an injunction as an alternative, in the event that their application for Summary Judgment was not granted. As a result, the Judge was satisfied that there was no pressing urgency.

For the reasons set out above, the Judge was not persuaded that the Court should give the Claimants permission to apply for Summary Judgment. However, the Judge made it clear that this decision was not taken as an easy way of avoiding the central issues in the dispute and went on to explain the reasons why he would have refused the application for Summary Judgment in any event (even if permission to apply for it had been granted).

Reasons for refusal to grant Summary Judgment to the Claimants.

The Claimants had sought Summary Judgment on the following grounds:

(a) that the purported vote is a nullity since there is no power to remove elected officers who hold office for a year under Rule 39;

(b) that the resolution of "no confidence" was not properly put to the meeting, since in effect the First Claimant (Brian Walsh), who had control of the meeting, was bullied into submission by the Defendants; and

(c) that the counting of the vote was irregular since the recorded votes excluded the votes of the four officers, who were entitled to vote in accordance with Rule 54. Had their votes been counted, there would have been a tie, and the First Claimant would have had the casting vote.

The Claimants' Counsel accepted that, so far as the Summary Judgment application was concerned, issues (b) and (c) are incapable of resolution without a trial. However, the Claimants' Counsel submitted that issue (a) is an issue of construction and law, which is capable of resolution on a Summary Judgment application and requires no additional evidence.

Our Counsel submitted that, although there is no express power of removal within the Rules, it is obvious that there must be an implied power in order to deal with necessity or to give the Rules business or commercial efficacy. Further, the power to amend the Rules in an emergency should not be taken to displace the existence of an implied term as many situations requiring such an implied term would not be considered an emergency.

The Judge was satisfied that issue (a) was not just a point of law and that he could not determine it at the hearing on the application for Summary Judgment. The Judge felt that this issue was too tied into the factual background of how the RPRA has been run. Further, the Judge also made the point that it was illogical to consider a situation where, for example, an officer was convicted by the RSPCA for cruelty for pigeons but was still allowed to attend meetings, and simply say that there was no power to remove him.

Our Counsel also advanced the argument that the Claimants had effectively resigned from office, and that it did not matter, therefore, whether there was a power to remove the Claimants within the Rules.

The Judge considered that this was the weaker argument but did not dismiss it as fanciful. The Judge therefore concluded that all of the matters raised by the Claimants were triable issues and that the Defendants had real prospects of defending the Claim. As a result, the Judge confirmed that even if permission had been granted to apply for Summary Judgment, the application would have been dismissed.

The Claimants' application for an injunction

The Judge explained that it was the Claimants' application for an injunction that would have the effect of removing the Defendants. Therefore, the question for the Judge was whether he should grant an injunction removing the Defendants and reinstating the Claimants.

The Judge further explained that he was effectively being asked to disturb the arrangement which had been in place since the meeting in October 2014 and put the Claimants back in office six weeks before the AGM in February. The Claimants' Counsel suggested that the Judge should do so as the Defendants had been making executive decisions in relation to the outcome of Stewart Wardrop's appeal, and were not, therefore, simply carrying out a "watching guard". The Judge explained that he had little evidence on this point but considered that Council's decision to have an independent HR company deal with Mr Wardrop's appeal would usually be admired; the fact that an independent company had been appointed served to evaporate the criticism advanced by the Claimants of the Defendants' conduct in not opposing the outcome of the appeal.

The Claimants' Counsel also made reference to alleged financial irregularities during the Defendants' previous tenure in office and suggested that they should be removed to enable the Claimants to continue to investigate this. Again, the Judge explained that he had little evidence on this point and that it was unsafe for him to rule on anything based on such limited evidence.

Finally, although the Judge considered that there was a serious issue to be tried and that damages may not be an adequate remedy for the Claimants, he felt that the balance of convenience favoured maintaining the status quo, which he considered to be in the best interests of the RPRA. As a result, the Claimants had failed to satisfy the guidelines required for an injunction.

The Judge also explained that he had considered whether any harm would be caused to the RPRA by maintaining the current position but was satisfied that the Defendants were all experienced and that there was no evidence before him that any harm would be caused to the RPRA by them remaining in office. Finally, the Judge also confirmed that he did not consider that the Defendants were at any advantage as a result of being the "sitting tenants" during the election process ahead of the AGM in February, as he was satisfied that the election process was such that it would be carried out by experienced, elected Councillors.

Next steps and costs

The Claimants' Counsel confirmed that the Claimants were discontinuing this action. This is therefore the end of these proceedings.

The Claimants have also been ordered to pay the Defendants' costs of the application in full (Harrison Clark Rickerbys' fees and Counsel's fees), which total £10,348.40, within 28 days of the hearing.

A copy of the sealed Order from the Court will be provided to the RPRA upon our receipt of the same.

BRISTOL HIGH COURT JUDGES JUDGEMENT

GENERAL FORM OF JUDGEMENT OF ORDER
In the High Court of Justice Chancery Division, Bristol District Registry

Claim Number A30BS668. Date 3rd February 2015.

Brian Walsh (elected officer of Royal Pigeon Racing Association), 1st Claimant, Ref DH/FA/ROY00015/00001; John Gladwyn (elected officer of Royal Pigeon Racing Association), 2nd Claimant; Dr Geoffrey Richmond (elected officer Royal Pigeon Racing Association), 3rd Claimant; Ray Harris (elected officer Royal Pigeon Racing Association), 4th Claimant; Leslie Blacklock, 1st Defendant, Ref AC03.ROY0045-0017; Mr Leslie Carlton, 2nd Defendant; Mr Patrick Mitchell, 3rd Defendant; Mr Brian Tattersall, 4th Defendant.

Before His Honour Judge McCahill QC (sitting as a Judge of the High Court pursuant to s.9 of the Senior Counsel Act 1981) sitting at Bristol District

Registry, Bristol Civil Justice Centre, 2 Redcliff Street, Bristol, BS1 6GR.

Upon the Claimants' Applications dated 5th December 2014 for (i) permission to issue an application for summary judgement before service by the Defendants of either an acknowledgement of service or a defence, (ii) if permission is granted, for summary judgement; and/or (iii) for an interlocutory injunction and upon hearing Counsel for the Claimants and Counsel for the Defendants and upon the Claimants indicating following judgement in the Applications that they would discontinue the claim it is ordered that: 1. The Claimants' application for permission to issue an application for summary judgment before service of an acknowledgement of service or a defence is dismissed; 2. The Claimants' application for an interlocutory injunction is dismissed; 3. The Claimants are to pay the Defendants' costs of the Applications, summarily assessed at £10,348.70, by 4pm on 9th February 2015; and 4. The Claimants are to pay the Defendants' other costs in the case on the standard basis, to be assessed if not agreed.

Dated 12th January 2015.