UK: Commercial Dispute Resolution Newsletter - April 2018

Last Updated: 1 May 2018

Article by Clyde & Co LLP

Clyde & Co

Overview

The English courts have been busy during the first part of 2018. The Supreme Court has revisited t claim form once again, providing useful tips for claimants. Disclosure, often the most costly part of t also been the subject of further case law, in particular how e-disclosure should be managed. At the provide an update on a new disclosure pilot scheme. The courts have revisited issues relating to fre security for costs, two important tools in a litigator's armoury. There has also been a case on the En dealing with letters of request, a useful support for foreign proceedings where documents and witne jurisdiction of the English courts.

The Asbestos Victims Support Groups Forum (UK) v Cape Distribution Limited & (QB)

Non-party entitled to access to documents filed at court

Master McCloud has held that documents "filed" on the court record which are read in court can be provided the non-party has a legitimate interest. Documents on the record of the court which are no to a more stringent test, namely, there must be strong grounds for thinking that access is necessary

The principle of open justice is engaged even if a case settles before judgment. In this case, filed pa of the court. However, a bundle provided solely in electronic form via a document management syst disclosed documents) was not a bundle filed at court, and so did not fall within the scope of CPR r5 required delivery to the court office and in any event CPR 5.5 provided that a 'practice direction may documents to be filed or sent to the court' by electronic means and there was no provision for electr

It was irrelevant that the parties had agreed a confidential settlement. This point should be borne in filed at court. If documents other than statements of case have been filed at court (and filing does n documents in electronic form, where no order for electronic filing has been made), they may be vuln access to non-parties even though they are later made the subject of confidentiality obligations as b themselves (and even though they may not have been read in court).

John Michael Sharp v Sir Maurice Victor Blank [2017] EWHC 3390 (Ch)

Court considers revision of a costs budget and the meaning of a "significant development"

Costs budgets cover costs to be incurred (not costs already incurred). PD3E para 7.6 provides that budget in respect of future costs upwards or downwards, if significant developments in the litigation The court may approve, vary or disapprove the revisions having regard to any significant developm since the date when the previous budget was approved or agreed".

This case involved seven claims that were subject to a group litigation order and the claimants appl order. Total budgeted costs amounted to just under £37 million. The defendants subsequently asser developments required them to revise their budget and the claimants refused to agree to the revisio

Chief Master Marsh held that the court has jurisdiction to revise a budget taking the last agreed or a base reference point: "Costs which have been incurred since the date of the last agreed or approve date) that relate to significant developments are, for the purposes of revision, placed in the estimate Precedent H in one or more phase. In some cases, it may not be obvious where they go (for examp security for costs) but I can see no reason why Precedent H may not be adapted as necessary to a not easily fit in".

The following factors were found to be "significant developments" in this case: (a) the trial timetable total of 48 business days; (b) an application for specific disclosure had resulted in a large number o reviewed; and (c) the claimants had served an expert's report which was a change from the agreed evidence was to be provided. However, the following factors were found not to be "significant devel application for third party disclosure; (b) questions put to the defendants' experts by the claimants; a to the claimants' case following a change in approach by the claimants' expert.

Triumph Controls UK Ltd & Ors v Primus International Holding Co & Ors [2018] EW

Judge criticises unilateral decisions taken by a party during the disclosure process and orde

The defendants sought two orders from the court following the claimants' disclosure: (1) an order th list of 860,000 folders and file paths to the defendants so that they could identify whether any additi ought to have been searched; and (2) an order that the claimants undertake a manual review of the documents (out of a total of 450,000) which had been identified as potentially disclosable following parties had agreed on keywords but the claimants had unilaterally used a Computer Assisted Revie only 0.38% of these documents would be relevant

The first order was refused by Coulson J. Although the claimants had acted without consulting the d have been better to have consulted), the process had been clearly set out in the claimants' original defendants had had 17 months to raise this complaint. In any event, this method had been sensible facts, especially as the defendants had been unable to identify any obviously missing folders/file pa

In relation to the second order, Coulson J held that both the CAR exercise and the sampling exercis been transparent or independently verifiable. The Electronic Documents Questionnaire had referred documents and "At no time have the claimants provided relevant details as to how the CAR was se In circumstances where the decision to use the CAR was unilateral, and where the defendants had unsatisfactory". It was also not apparent that there had been any overseeing senior lawyer. The jud agree a methodology by which a sample of 25% of the 220,000 documents would be manually sear take no longer than three weeks.

Cyprus Popular Bank Public Co Ltd v Vgenopoulos & Ors [2018] EWCA Civ 1

Court of Appeal confirms that freezing order obtained abroad can be registered and served i appeal against registration

A bank commenced proceedings in Cyprus and obtained a worldwide freezing order from the Cypri that freezing order as a judgment of the English High Court (pursuant to Article 38 of the Judgments 44/2001)). The first novel issue in this case was whether the worldwide freezing order became imm enforceable in England or whether it only became effective and fully enforceable if no appeal was b registration order within two months (or, if an appeal was brought, once that appeal was determined that the order was immediately effective and enforceable.

The second issue was what was meant by "measures of enforcement" as referred to in Article 47(3 Regulation. Article 47(3) provides that during the time specified for an appeal against registration, n enforcement" may be taken. The issue in this case was whether it meant the processes in which the securing enforcement, or whether it also included service of the worldwide freezing order and/or no parties. The Court of Appeal favoured the argument that, as a question of English law, "enforcemen invocation of the process of the English court. However, it did not need to decide the point because service/notification are not "measures of enforcement" prohibited by Article 47(3) (even if they conta

PSJC Commercial Bank Privatbank v Kolomoisky & Ors [2018] EWHC 482 (Ch)

Judge rules on what must be disclosed by the respondent following the grant of a freezing o

A worldwide freezing order ("WFO") granted against the respondents contained the standard disclo applicant in writing "of all his assets exceeding [here, £25,000] in value as at the date of this order, g and detail of all such assets." The WFO defined the term "assets" as including a chose in action (br party), although it did not give any guidance as to what had to be provided in relation to a chose in a had made various loans and the applicant argued that full disclosure of these had not been given, in debtors were likely to be able to repay.

The judge noted that an asset disclosure order should only be made for the purpose of policing, or g and should not go beyond information that is necessary for that purpose. Confidentiality does not en withhold information. She accepted that the court has jurisdiction to make the order (which might inc documents), where "such an order is required to enable a claimant, first, to identify the nature and e interest in assets, and second, to decide whether and, if so, what further steps it should take to prot being an important aspect of its ability to police the freezing order".

The judge refused to order disclosure of loan documents and drew an analogy with details of a ban the court would require disclosure of the bank's name and location, the name or names in which the account number and the balance in the account, which is the asset for these purposes. What the co provision of bank statements. They contain details about the asset but they are not details necessa of the interest in the asset or to enable the freezing order to be policed".

The judge was prepared to order disclosure of the date on which each contract was entered into an sold or services provided under the contracts. Such basic information fell within the scope of "detail WFO. The date of repayment was also a detail which was directly relevant to the value of the chose "location, value or details". The applicant was further entitled to know whether the repayment of mo the estimated value of any such security. However, although information about payments made to d applicant, the respondent was not required to provide details of future payments.

Allergan, Inc v Amazon Medica [2018] EWHC 307 (QB)

Judge sets aside order made pursuant to a letter of request from a US Court

This was an application to set aside an order made by a master pursuant to a letter of request issue the UK applicant to provide oral evidence and documents.

Cockerill J confirmed that the first step when considering a contentious letter of request is to keep a jurisdiction: "In other words, when talking of compelling oral evidence the comparator is with when a be available in proceedings in the English Court". A two-stage test has been laid down in the case o Sheikh Zayed Al-Nahyan [1999], namely: (i) whether the intended witness can reasonably be expec evidence and (ii) whether there is an intention to obtain evidence for use at trial. Unless the US cou English approach and confirmed that the evidence sought is relevant to issues for trial, the English request: "It is not the same thing at all ... when a court issues a letter of request without the defenda Court itself says nothing about relevance but simply records the submission of the applicant".

Here, the letter of request was issued following an unopposed paper application. Although the judge be said that no consideration of the merits would ever eventually take place in the US, he went on t pause for thought: "Here we are looking at a stage even before the pre-trial discovery stage. There issues; because there is no pleading from the Defendant... Thus it is clear that a part of the purpose investigatory and therefore impermissible".

The judge concluded that the English court had no jurisdiction to make the order and the order was accepted that it was possible, in principle, for a letter of request issued at such a stage to meet the affirms that a letter of request should not be treated as a wide-ranging "fishing expedition", which is being aimed at obtaining evidence.

To read this Newsletter in full, please click here.

The content of this article is intended to provide a general guide to the subject matter. Specialist ad your specific circumstances.

Contributor
Clyde & Co LLP

Clyde & Co

Authors

Clyde & Co LLP