



SELBORNE CHAMBERS

# Shill Properties Ltd v Bunch [2023] EWHC 478 (Ch)

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Master Clark's recent decision in [Shill Properties Ltd v Bunch \[2023\] EWHC 478 \(Ch\)](#) provides an example of how badly wrong things can go when a party has a chequered past when it comes to complying with directions, but requires the court's mercy in a relief from sanctions application. Things went badly wrong for the claimant, who now faces the prospect of pursuing a claim for specific performance of a property contract, defended on the grounds of misrepresentation, without any witness evidence.

The claimant and defendant had both failed to file and serve their trial witness statements in time. Time had been initially extended by the court from February to September 2022, but both parties had failed to meet the deadline. On 7 October 2022, they both applied for retrospective extensions of time, and having fallen afoul of CPR 32.10, for relief from sanctions under CPR 3.9.

The defendant also made an oral application to rely on witness statements that were revised to comply with PD 57AC.

## The Court's Approach to Relief from Sanctions:

Master Clark applied the familiar *Denton v TH White Ltd* [2014] EWCA Civ 906. There was no question that the breach was serious.

This was a case where the Claimant was already on thin ice, having: a) Failed to provide disclosure as ordered; b) Failed to carry out proper searches when giving extended disclosure; c) By virtue of the first breach of disclosure directions, caused the loss of a trial in June 2022.

As for the reasons for the breach, the Claimant applied on 7 October 2022 for an extension until 13 October 2022 to serve witness statements, implying they were almost ready.

Yet by the time of the hearing in February 2023, the witness statements had still not been served, requiring an oral application for more time. There was no explanation for this long delay.

As for the delay between the initial deadline of 21 September and the application on 7 October, this was apparently because the parties were exploring ADR. Master Clark said that "The fact that the parties are negotiating or seeking, as here, to arrange a mediation is not a good reason for not progressing preparation of witness statements in order to comply with a court order."

Experience shows that parties frequently fail to comply with directions because they are confident that their case will settle, and do not want to waste money on work that they think will serve no purpose. This case demonstrates the risks of this approach.

When considering all the circumstances of the case, Master Clark put considerable weight on the Claimant's history of non-compliance; if a client has a history of breaches, especially if this has caused the loss of trial (a cardinal sin in the modern court system), they must expect to receive short shrift in an application for sanctions.

In refusing the application for relief, and noting the grave consequences, Master Clark said:

"the fact that the refusal of relief would result in the claimant being unable to make out its case is not sufficient to justify granting relief - that consequence is implicit in the application of the sanction in CPR 32.10."

The Defendant, on the other hand, served her witness statements between 7 and 10 October 2022, and with an unblemished record of compliance with directions, Master Clark granted relief from sanctions.

The Defendant's witness statements were not, however, compliant with CPR PD 57AC, and therefore she had also applied for permission to file revised, compliant statements. The reason given for this breach was that her solicitors do not normally practice in the Business and Property Courts, which was described as "plainly not a good reason."

However, because the substance of the Defendant's statements remained the same and the sanctions in paragraph 5 of CPR PD 57AC tend towards the inclusion rather than the exclusion of evidence, Master Clark did not consider it proportionate to refuse relief.

### Conclusion

The misfortune in this case could have been quite easily avoided, and it is a striking reminder of the importance of risks a party takes by not complying with directions; judges will enforce the rules and could cut the legs from out under a claim.



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