A blooming liberty – The English Courts' discretion to strike out a claim for abuse of process

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PRACTICES Litigation

The ability to strike out claims for abuse of process provides the English courts with a means of ensuring that the mechanisms of English litigation are not used improperly or to the detriment of other court users. This article considers the Court's discretion to strike out claims for abuse of process, with a particular focus on two recent decisions – one concerning the proportionality of litigation, and the other considering a potentially insidious use of the Court's machinery.

Background

The law: abuse of process

Abuse of process is found where there is "… *a use of the court process for a purpose or in a way which is significantly different from the ordinary and proper use of the court process*". As Lord Diplock explained in *Hunter v Chief Constable of West Midlands Police* [1982] AC 529 "… *the circumstances in which abuse of process can arise are very varied*" and should therefore not be limited to a pre-existing formula.

Notwithstanding that, there are a number of useful examples that illustrate when the court will strike out a claim as an abuse of process.

Where proceedings are used to try and get a second bite of the cherry

A party may try to seek to get a second chance, after failing in their first submissions, by mounting a new argument in a further application/claim. If they could have raised such an argument at the time of the initial submissions, it is likely that the court will consider the further application/claim to be an abuse of process.

One example of this is the application in *Rawlinson v ITG Ltd* where Morgan J dismissed an application by a Claimant to serve re-amended pleadings out of jurisdiction, where the Claimant had already made an application for this which had been refused. Noting at paragraph 76 that "*The submission that subsequent proceedings are abusive will be much stronger where the application is a second attempt to re-run an earlier unsuccessful application without anything, or without very much, by way of new material*", Morgan J concluded that the Claimant's application was an abuse of process.

Read the full article.

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