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General

**Dental Practice Owner Vicariously Liable for Subcontractors' Acts**

Can business owners be legally liable for the negligence of subcontractors? In the case of a dental practice proprietor who engaged self-employed dentists, the High Court answered that question with a decisive 'yes'.

The case concerned a woman who underwent dental treatment at the practice over a number of years. She claimed that she was negligently treated by four dentists, three of whom were self-employed subcontractors. She claimed compensation from the practice owner although he had not at any point treated her himself. The issue of whether he could be held personally liable for the alleged failings of the subcontractors was considered as a preliminary issue.

Ruling on the matter, the Court found that the practice owner owed the woman a duty of care that could not be delegated to others. His relationship with the subcontractors was also sufficiently akin to employment to render him indirectly – or vicariously – liable for any negligence on their part.

Although he had chosen to deliver his services via subcontractors, he bore ultimate responsibility for patient care under the terms of his NHS contract. The woman was a patient of the practice, not just of each dentist who treated her. She had placed herself in the care of the practice in circumstances where she was vulnerable to injury and the practice owner was under a duty to protect her from harm.

The practice held her dental records, arranged her appointments and received payment for her treatment. It provided the premises, equipment and support staff required by the subcontractors. Any goodwill associated with her treatment was retained by the practice and the subcontractors were subject to post-termination restrictions designed to protect the practice's client base.

The subcontractors were free to make their own clinical decisions and to provide treatment as they saw fit. They also largely determined their own working hours. However, they worked as an integral part of the practice and its owner had sufficient control over them to render their relationship akin to employment. The imposition of vicarious responsibility on the practice owner was fair, just and reasonable. The Court's ruling opened the way for the woman to proceed with her claim.

**Partner Note**

Hughes v Rattan [2021] EWHC 2032 (QB)

Property

**Conversion of Listed Buildings and VAT Zero-Rating – Guideline Ruling**

Building works that involve the 'substantial reconstruction' of listed buildings have the great benefit of being zero-rated for VAT. As a case concerning the conversion of a grand former military nursing home showed, however, that advantage is only available in highly restricted circumstances.

The case concerned a vast, Grade II listed building that was for almost a century used to provide nursing facilities for war veterans. During a building project that lasted more than two years, it was converted into 86 luxury flats. The developer argued that the sale of the flats was zero-rated for VAT purposes and that it was thus entitled to recover all the input tax paid on the conversion works. That contention was, however, rejected by HM Revenue and Customs.

Ruling on the matter, the First-tier Tribunal (FTT) noted that the Value Added Tax Act 1994 zero-rates the supply of dwellings which are the result of a substantial reconstruction of a listed building. However, the Act also states that a building is not to be regarded as having been substantially reconstructed unless it incorporates no more than the external walls of the original, together with other external features of architectural or historic merit.

Dismissing the developer's appeal, the FTT noted that certain internal features of the building had been retained in compliance with planning requirements. They included a chapel, a splendid marble entrance hall and staircase, chimney stacks, trusses and most of the building's reinforced concrete floor slabs.

Despite the enormous scale of the conversion works, the retained internal features covered some 7 per cent of the building's floorspace and could not be viewed as de minimis or trifling. The floor slabs, trusses and chimney stacks, whilst performing a structural role, were not part of the external walls or other external features. Other grounds of challenge, based on European law principles of fiscal neutrality and proportionality, also fell on fallow ground.

Our specialist lawyers can advise you on all matters involving commercial property. Contact us for guidance.

**Partner Note**

Richmond Hill Developments (Jersey) Ltd v The Commissioners for Her Majesty's Revenue and Customs [2021] UKFTT 290 (TC)

Tax

**Received an Adverse Tax Decision? Don't Delay Seeking Professional Advice**

If you are on the receiving end of an adverse tax decision, any delay in seeking legal advice can be fatal to your cause. In a case on point, an importer of mobility scooters came dangerously close to losing its right of appeal against six-figure tax demands.

The importer argued that scooters it imported over a three-year period were properly classified as carriages for disabled persons and were thus free from import duties and VAT. HM Revenue and Customs (HMRC), however, took the view that they were simply motor vehicles and raised tax demands totalling £383,736.

The importer had 30 days to appeal against HMRC's relevant decisions, but missed that deadline, in one case by over three months. In those circumstances, the importer was constrained to make an application to the First-tier Tribunal (FTT) for permission to pursue a late appeal.

Upholding the application, the FTT noted that the law in relation to the tax treatment of mobility scooters was in a state of flux. The impact of the COVID-19 pandemic on the importer's ability to file the appeal on time was also relevant: workers had been instructed by the government to stay at home during lockdown and that made it difficult to access paperwork needed to file an appeal.

HMRC had suffered little prejudice as a result of the delay. Measured against that was the prejudice to the importer of having to pay a significant sum in tax without being able to pursue an arguable appeal. There were in any event good reasons for the delay and the balance came down firmly in favour of the importer.

If you are embroiled in a legal dispute with the tax authorities, our specialist lawyers can advise you.

**Partner Note**

Sunrise Medical Ltd v The Commissioners for Her Majesty's Revenue and Customs [2021] UKFTT 316 (TC)

Commercial Litigation

**Obey Court Orders Or Else! Businessman Receives Maximum Sentence**

Judges mean business and those who defy their orders face severe punishment, up to and including loss of liberty. The Court of Appeal resoundingly made that point in confirming a prison sentence imposed on a businessman whose acts of contempt were perhaps the most serious ever to come before an English court.

A commercial dispute reached its culmination in 2014 when the businessman was ordered to pay a shipping company over $37 million. The judgment debt remained largely unsatisfied and, with interest, it had since ballooned to over $70 million. The company's attempts at enforcing payment had been repeatedly frustrated by the businessman's flagrant breaches of numerous court orders.

Over a period of nine years, he had presented false affidavits and consistently failed to fully disclose his assets. He failed to provide access to email and social media accounts, did not comply with a search order and took steps to dissipate assets. Despite being jailed for contempt of court on no fewer than three occasions, his determined disobedience had continued unabated.

His latest sentence of two years' imprisonment – the maximum term available – was imposed after he admitted 20 acts of contempt. He challenged that punishment on the basis that it was manifestly excessive and plainly wrong in principle, in that his mitigation had not been taken into account.

Rejecting his appeal, however, the Court found that there was no material mitigation available to him. His admissions were made at a late stage and the judge who jailed him was entitled to take the view that his apologies amounted to meaningless lip service. The sentence accurately reflected the gravity of his conduct.

Says <<CONTACT DETAILS>>, "Expert legal advice is essential in all litigation. Preparing the best possible evidential support is vital, as is compliance with the rules of litigation practice."

**Partner Note**

Su v TMT Company Ltd and Others [2021] EWCA Civ 1355

Company

**Business Relationship Fallen Apart? The Law Can Help Pick Up the Pieces**

No matter how long and successful a business relationship may be, there is always a risk that it may end acrimoniously. Such disputes can be intractable and, as a High Court ruling showed, there are times when only the law can provide closure.

The case concerned a thriving company that was established in the 1980s by two men in their 20s who were best friends at school. After more than three decades working together, they fell out irretrievably. One of them (A) decided that the other (B) must resign from the company's board and brought pressure to bear upon him to do so.

Following a meeting, B signed documents by which he resigned as a director. He agreed in principle to sell his and his wife's shares in the company to A for £6.6 million. However, B subsequently declined to sign the sale contract, instead launching proceedings against A, the company and its other directors.

B asserted that A had tried to manipulate him with a view to removing him from the company. He and his wife claimed that, contrary to Section 994 of the Companies Act 2006, the company's affairs had been conducted in a manner that unfairly prejudiced their interests as minority shareholders.

Upholding that claim, the Court found that B's formal resignation prior to negotiating a price for his shares was influenced by a threat and an implied threat made by A. Although he was not directly influenced to agree a £6.6 million price for his shares by any threat, he had been forced to negotiate that price from a position of weakness, having already resigned from the board.

In the light of those findings, the Court ordered the company or its directors to buy out the combined 45 per cent shareholding of B and his wife for a total of £20,853,000. B's claim that he was pressured into selling his shares in a connected company at an undervalue was rejected.

For advice on any aspect of company law, contact us.

**Partner Note**

Fewings and Another v Poulter and Others [2021] EWHC 2455 (Ch)

Competition

**Wholesaler's Competition Complaint Founders on Inadequately Pleaded Case**

The first rule of litigation is to plead your case in a sufficiently detailed, intelligible and logical manner, a task for which specialist lawyers undergo years of training. The fate of a case before the Competition Appeal Tribunal (CAT) underlined the consequences of failing to meet that basic requirement.

A food and drink wholesaler lodged a claim against one of its suppliers, asserting that it had lost substantial profits due to the latter's abuse of its dominant position in the relevant market, contrary to Section 18 of the Competition Act 1998. It sought more than £11.6 million in damages, plus exemplary damages and interest.

The supplier, however, complained that the allegations pleaded by the wholesaler in its particulars of claim were so vague and unclear that it was impossible to discern the specific conduct complained of, how it was said to have infringed competition law or how any such alleged infringement had caused loss to the wholesaler.

In striking out the entirety of the wholesaler's claim, the CAT noted that the critical importance of properly particularising competition law claims had been repeatedly emphasised in other cases. There were manifest and serious deficiencies in the way the claim had been advanced and no attempt had been made to amend the particulars of the claim so as to set out a coherent or intelligible case.

On the basis of the wholesaler's pleaded case, there was no reasonable basis for its claim nor any real prospect that it would succeed. If the wholesaler did in fact have a case that merited an answer, it had not been made either to the supplier or the CAT.

Competition law is complex and should be dealt with by professionals. Our specialist lawyers can provide you with advice and guidance on making a claim.

**Partner Note**

Forrest Fresh Foods Ltd v Coca-Cola European Partners Great Britain Ltd [2021] CAT 29

Contract

**Commercial Negotiations – Talk is Cheap But Writing is Binding**

Commercial negotiations often involve many meetings and any amount of talk, but the question of whether anything has actually been agreed is a common source of dispute. As a High Court case showed, the only real way to avoid such discord is to engage a solicitor to record agreements formally, in writing.

The case concerned a businessman who, via his corporate vehicle, was instrumental in arranging a lucrative contract by which a club engaged the services of a mutual management company for four years. He launched proceedings after the company denied that he was entitled to an introduction fee or any other form of remuneration for the contribution he had made to achieving the deal.

Ruling on the matter, the Court noted that there was no dispute that the deal was the businessman's brainchild and that it was he who affected the introduction between the two willing parties to the contract. He was a highly necessary and active participant and had been involved in the negotiations throughout.

The company's policy, however, was never to pay referral or introduction fees. There had been some discussion of the issue, but the company never expressly agreed, either orally or in writing, to pay the businessman an introduction fee, still less the basis on which such a fee would be calculated.

In upholding the businessman's claim, however, the Court found that it must have been obvious to the company that he was not acting simply from the goodness of his heart. There was a common understanding that he would receive some financial reward if the negotiations bore fruit. There was a sufficient meeting of minds to impose a contractual obligation on the company to pay him a reasonable fee.

Given the extent of his contribution to the successful deal, failing to afford him any financial reward would be unjust. If he were denied a fee, the company, which had garnered a handsome profit from the contract, would be unjustly enriched. The businessman's corporate vehicle was awarded £212,294, that sum representing 10 per cent of the profit the company had made on the deal. It was also entitled to a 10 per cent share of future relevant profits.

For advice on any contractual matter, please contact <<CONTACT DETAILS>>.

**Partner Note**

Premia Marketing Ltd v Regis Mutual Management Ltd [2021] EWHC 2329 (QB)

Data Protection

**Claims Manager Behind Unsolicited Marketing Calls Hit Hard in the Pocket**

When it comes to combating the modern scourge of unsolicited direct marketing calls, the law is not resting on its laurels. In one case, a claims management company that was responsible for millions of such calls received a six-figure financial penalty.

Following an investigation, the Information Commissioner's Office (ICO) found that the company was responsible for 11,489,873 unsolicited direct marketing calls over a six-month period. More than 300 public complaints had been received by the ICO and the Telephone Preference Service.

Aggressive tactics appeared to have been used when making some of the calls and there was evidence of great distress being suffered by some recipients. There were indications that operatives continued to call individuals who had specifically asked not to be contacted and refused to comply with requests to remove telephone numbers from the database.

The company said that it had obtained data from reputable sources and that it had engaged the services of compliance advisers. The ICO, however, found that its lack of knowledge and understanding of regulations designed to protect privacy and to police the use of personal data and the public communications network was apparent.

It had failed to show that any of the complainants gave sufficient consent to receiving the calls. Whilst it had not deliberately set out to contravene the regulations, it had done so negligently and its multiple breaches were serious. There were no relevant mitigating features in the case and the ICO imposed a £200,000 penalty.

**Partner Note**

ICO Monetary Penalty Notice Issued on 25/6/2021

Intellectual Property

**AI Machines May Take Over – But Not Yet. Landmark Patents Ruling**

Artificial intelligence may be advanced but, at least so far as patent law is concerned, it has yet to overcome the human monopoly on inventiveness. The point was made by a Court of Appeal test case concerning devices that were said to have been invented by a machine without any need for human input.

The creator of an AI machine applied to the Intellectual Property Office (IPO) for a grant of patents in respect of a food container and a form of flashing light. On the application forms, the machine was identified as the inventor of the devices. The applicant eschewed any claim to inventorship and asserted that the devices were entirely and solely conceived by the machine.

There was no suggestion that he had filled in the forms other than in accordance with his genuine and honest beliefs. The IPO, however, treated the applications as having been withdrawn on the basis that his statements of inventorship failed to satisfy Section 13(2) of the Patents Act 1977. The applicant's challenge to that decision was subsequently rejected by a judge.

Dismissing his appeal against that outcome, the Court found that, on a true reading of the Act, only a natural person can be an inventor. The machine had no legal personality or capacity and any assertion that it had assigned its rights in respect of the devices to the applicant was therefore a legal impossibility. As a matter of law, he could not derive a right to be granted the patents from his ownership of the machine.

The applicant did not identify any person or persons whom he believed to be the inventor or inventors of the devices, as required by Section 13(2)(a) of the Act. On the contrary, he deliberately identified a non-person. Having failed to comply with the statutory requirements, the fact that he genuinely believed that the machine was the inventor was neither here nor there.

For expert advice on any matters relating to intellectual property, contact <<CONTACT DETAILS>>.

**Partner Note**

Thaler v Comptroller General of Patents, Trade Marks and Designs [2021] EWCA Civ 1374

Employment

**Commercial Property Specialist in Performance Fee Dispute**

Many employees are driven to work hard by the prospect of receiving performance fees. However, as a case concerning a commercial property specialist showed, entitlement to such payments very much depends on the precise wording of employment contracts.

The woman, a chartered surveyor with more than 30 years' experience, worked for a commercial real estate management company. After she was made redundant at the height of the COVID-19 pandemic, she claimed that she was contractually entitled to a performance fee in the form of a 10 per cent profit share relating to a substantial transaction with which she was heavily involved prior to her departure.

She lodged Employment Tribunal (ET) proceedings on the basis that the failure to pay her such a profit share amounted to an unauthorised deduction from her wages, contrary to Part II of the Employment Rights Act 1996. In resisting her claim, the company argued that it should be dismissed or struck out as misconceived.

Ruling on the matter, the ET noted that her employment contract stated that she 'may' receive a minimum 10 per cent share of profits generated by projects on which she acted as designated asset manager. The terms and percentage of any such performance fee were to be negotiated if not agreed in advance.

Dismissing her claim, the ET found that, by the use of the word 'may', the company had retained a discretion as to whether or not to pay her a performance fee. It could not be exercised unreasonably, capriciously or arbitrarily, but it was nevertheless significant. Negotiations in respect of the percentage of profit that it would be appropriate for her to receive had in any event not ended in agreement.

The ET noted that it could only hear an unauthorised deduction from wages claim in respect of a quantifiable sum. Given the existence of the discretion and the absence of agreement as to the percentage of her profit share, the woman's claim was for an unquantified and unidentified sum. The ET thus had no jurisdiction to entertain her complaint.

We can advise you on all aspects of employment law, including employment contracts.

**Partner Note**

Thom v Hobart Real Estate Partners Ltd [2021] UKET 2207227/2020

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