

IN THE COUNTY COURT AT WATFORD

Claim No: 5YJ5538

BETWEEN

MR PAULO STANISLAW

Claimant/Appellant

and

MR JOSHUA HENDERSON

Defendant/Respondent

SKELETON ARGUMENT FOR THE CLAIMANT/APPELLANT [excerpt]

Introduction & Procedural History

1. This is an appeal brought by the Claimant Mr Paulo Stanislaw (“C”) against the decision of DJ Akhtar to refuse to grant relief from sanctions under CPR r 3.9. DJ Akhtar gave permission to appeal at that hearing.
2. The substantive claim in this case concerns a disputed right of way. The parties are occupiers of neighbouring properties at 151 and 153 Grimpton Road, Watford, Herts, WD12 00P. C denies that D has the right to pass over the alleyway that lies between the two properties. The alleyway forms part of C’s plot under Land Registry Title Number EGL10982635. D claims an implied right of way which C disputes.
3. ...

Procedural Law

4. The new CPR r 3.9 provides as follows:

“(1) On an application for relief from any sanction imposed for a failure to comply with any rule, practice direction or court order, the court will consider all the

circumstances of the case, so as to enable it to deal justly with the application, including the need –

(a) for litigation to be conducted efficiently and at proportionate cost; and

(b) to enforce compliance with rules, practice directions and orders.

(2) An application for relief must be supported by evidence.”

5. The outworking of this new procedural law is succinctly set out in ¶41-42 of *Mitchell v News Group Newspapers Limited*¹ [2013] EWCA Civ 1526; [2014] 1 W.L.R. 795.
6. The relevant procedural requirements for this appeal as set out in CPR r 52 have been complied with.

The Appeal

7. The judge failed to exercise his discretionary power to award relief from sanctions pursuant to CPR r 3.9 for 5 specific reasons as set out in the grounds of appeal. Put generally though, the court erred in placing too much weight on the older authority of *Mitchell* resulting in an overly stringent approach being applied in this case. The more recent authority of *Denton v White Ltd; Decadent Vapours Ltd v Bevan; Utilise TDS Ltd v Davies* [2014] EWCA Civ 906 makes it clear at ¶13 that, “the judgment in *Mitchell* has been misunderstood and is being misapplied by some courts. It is clear that it needs to be clarified and amplified in certain respects”.

...

(ii) There was a good reason

8. The authority of *Mitchell* gives non-exhaustive examples of potential ‘good reasons’ at ¶41 where Lord Dyson MR stated,

“The court will want to consider why the default occurred. If there is a good reason for it, the court will be likely to decide that relief should be granted. For example, if the reason why a document was not filed with the court was that

the party or his solicitor suffered from a debilitating illness or was involved in an accident, then, depending on the circumstances, that may constitute a good reason.”

9. There is clear evidence in this case that the primary fee earner for the Claimant was suffering from extreme health problems [**WS/JA ¶4**]. This therefore satisfies the second limb of the test.

[end excerpt]

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...

NO GOOD REASON

5. The reasons put forward for breach relate to the illness of one fee-earner and the retirement of another. Neither of these constitute a good reason with regard to all the circumstances of the case.
 - a. Terrace & Co Solicitors are a big firm with 8 partners and over 25 associates listed on their website. [WS/TL ¶19]. As such, individual illnesses or retirements do not excuse the professional inattention of such a large firm.
 - b. Critical engagement with the wording of ¶41 of *Mitchell* is necessary. There is no guarantee that debilitating illness *will* constitute a good reason, only that it *may*. Further, the necessity of appropriately delegating work within the firm is highlighted as an important consideration. It also states, “mere overlooking a deadline, whether on account of overwork or otherwise, is unlikely to be a good reason.”

- c. The mediation terminated on 20 October 2015. C and his solicitors had nearly one month to apply to reinstate. They failed to do so.

[end excerpt]