Liverpool County Court

D63YM89

Mr Petra's Andreas Kalp

And

Mr Andrew Griffiths

Judgment

1. This is my judgment in relation to application dated 17th April 2018 of Mr Andrew Griffiths the Defendant, to set aside the final judgment dated the 27th February 2018. The defendant seeks an order that the judgment is set aside pursuant to CPR 39.3(5).
2. The application is supported by a witness statement of Rhys Reynolds, paralegal, with conduct on behalf of Mr Andrew Griffiths, the Defendant dated the 17th April 2018. The application is opposed by the Claimant who relies upon the witness statement of David Morris, Senior Litigation Executive employed by the Claimant's solicitors, dated the 24th August 2018. I have also had the benefit of oral submissions from counsel for the Defendant and the Claimant.
3. Unfortunately due to lack of court time and the fact that I was given the court file shortly before the hearing started, without the opportunity to consider the papers, I reserved my judgment.
4. At the commencement of the hearing, both parties agreed, that the application the court was to consider was under CPR 39.3(5). Despite the references in both witness statements to CPR 13.3 they only wished to proceed under CPR 39.3(5).
5. By way of background, the claim arises out of a road traffic accident that occurred on the 19th of May 2017 when the defendant drove his motor-vehicle registration number E016WDX into collision with the claimants motorcycle registration number RK10 0ZL. As a result of the collision the claimant suffered loss and damage comprising hire £29,943.83, recovery and storage £530.40, pre accident value £4410 and miscellaneous expenses £50. The defendant's application to set aside the Judgment exhibits a draft defence and counter schedule which indicates that the Claimant does not have to prove negligence (paragraph 3) with no admissions made in relation to "the existence, nature, causation or extent of the loss or damage" (paragraph 4).
6. The Claimant issued proceedings on 12th October 2017 upon the Defendant at his last known address, Flat 19, Mimosa House, 16 Liberty Bridge Road, London, E201AP. Apparently this was the address given to the Claimant by the Defendant at the scene of the accident. On the 1st December 2017 judgment in default with an amount to be assessed was ordered and on the 22nd February 2017, Deputy District Judge Williams assessed damages and gave judgment to the Claimant in the sum of £42,845.52 together with a summary assessment of costs in the sum of £4506.71.
7. **Chronology**
    a. 19th May 2017 — Accident date
    b. 19th May 2017 — Insurers letter nominating Plexus Law to accept service of the claim
    c. 30th May 2017 — Claimant solicitors response to 'blanket' nomination
    d. 31st May 2017 — Letter of Claim

e. 31st May 2017 Engineers report sent to Defendant and his Insurers
f. 11th July 2017 Storage and Recovery account sent to Insurers
g. 20th September 2017 Section 152 notice sent to the Insurers (both post and fax)
h. 12th October 2017 Proceedings issued
i. 16th October 2017 Proceedings served direct upon Defendant Andrew Griffiths
j. 16th October 2017 Certificate of Service
k. 18th October 2017 Deemed date of service
l. 23rd October 2017 Payment on account of the claim received from Insurer
m. 1st December 2017 Judgment entered for an amount to be assessed
n. 1st December 2017 Notice transferring case to Liverpool
o. 14th November 2017 Notice listing case for a disposal hearing
p. 13th February 2018 Trial bundle sent to both Defendant and his Insurers
q. 22nd February 2018 Disposal hearing, the court assessed damages
r. 2nd March 2018 Claimants solicitor sent a copy of judgment to the Insurers
s. 23rd March 2018 Proceedings issued to enforce statutory obligation S151 RTA 1988
t. 17th April 2018 Application to set aside Judgment in Case No D63YM862
u. 18th April 2018 Proceedings Served on Insurers Case E47J662 Judgment on Case No E47J6623.

8. Defendants Submissions

9. The defendant believes that he was not afforded the opportunity to defend this matter and liability and quantum is disputed. It is the defendant's case that insurers nominated Plexus Law to accept service of proceedings on the 19th of May 2017, however the claimant has issued proceedings directly on the defendant and ignored that nomination.
10. Pursuant to CPR 39.3 (5)(a) the defendant submitted that the application has been made promptly being filed as soon as the firm received notice that the claimant had been awarded judgement at a disposal hearing. Having received a letter dated the 2nd March 2018 from Armstrongs Law requesting payment of the judgement within seven days on the 9th March 2018, the insurers promptly instructed DAC Beachcroft Claims Limited to set up a file on the 23rd of March 2018 and gave instructions to make the application to set aside judgement on the 3rd of April 2018. The defendant submits that there was only a short delay in sending the file of papers and instructions to DAC Beachcroft Claims Limited and this short delay was due to a backlog of work when the judgement was received.
11. Pursuant to CPR 39. 3(5)(b) the defendants would have been afforded the opportunity to defend the claim had the proceedings being served on the defendants nominated solicitors. The defendant would not have understood the court documents and their insurers, the defendants insurers, did not receive the same until two days before the disposal hearing meaning they couldn't have dealt with the same in such a short time frame.
12. Pursuant to CPR 39.3 (5)(c) the defendant has reasonable prospects of defending the claim since the claimant has failed to address the assertion of impecuniosity as in the particulars of claim. In addition the defendant has issues surrounding the need to hire, the need to hire a vehicle of the type hired, period of high, the validity of the claim for pre-accident value of the claimants vehicle and the enforceability of the recovery and storage agreement.
13. In addition to the issues raised above, there is no evidence that the claimant solicitors served a trial bundle on the defendant, the trial bundle was served on the defendants insurers two days before the disposal hearing. The court is referred to the practice direction 39A paragraph 3.9 and the defendant solicitors will confirm that there is no evidence of the claimant solicitors attempting to agree the contents of the bundle with the defendant. As a result of the above the judgment should be set aside.
14. Relief from sanction CPR 3.9. The defendant submits that it seeks relief from sanctions as it is in the interests of the administration of justice for the defendant to be allowed to defend the claim made against him, that the application was made promptly, and the

failure to respond in time was not intentional and there is a good explanation for the failure.

15. Relief from sanctions CPR 3.9
(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.

16. The decision of Denton v TH White Ltd [2014]EWCA Civ 906 provides guidance on interpreting this rule and such applications for relief by way of a three stage test. This will include:
    a. Whether the breach giving rise to the sanction was serious or significant.
    b. Why the breach occurred; was that a good or bad reason for the breach.
    c. A consideration of all the circumstances of the case, so as to enable it to deal justly with the application including the factors set out in CPR 3.9 (1)(a) listed above.
17. It is the defendant's position that the breach cannot be considered to be serious or significant since the defendant was not given the opportunity to defend the case due to the defects in the service of proceedings. Had the claimant served proceedings on the defendants nominated solicitors Plexus Law, the circumstances leading to the judgement could have been avoided. For this reason there is also a good reason for the breach. The defendant has instructed the solicitors as soon as was reasonably practicable in light of the circumstances described above. It would be unjust for the claimant to receive a windfall of all the credit hire because they failed to follow valid nomination.
18. The defendants further submitted that the case had a significant value. Moreover the claimant will face the same issues raised in the defence as was highlighted in the pre-action correspondence.
19. **Claimant's submissions**
20. The claimants claim was first intimated to the defendant by way of a letter of claim dated the 31st of May 2017. By a letter of the same date, a copy of the claimants engineering evidence was sent to both the defendant and his motor insurer UK insurance (Direct Line). By letter dated 11th of July 2017 a copy of the claimants recovery and storage account was sent to Direct Line. Two further chaser letters were sent to Direct Line on the 20th of July 2017 and the 6th of September 2017.
21. All communication sent to both the defendant and his motor insurer were ignored.
22. By letter dated the 20th of September 2017 notice, as required by section 152 of the Road Traffic Act 1988, of the claimants intention to issue court proceedings was given to Direct Line, sent by post and fax. There was no response to that communication from Direct Line. There was no nomination from Direct Line in this specific matter and in response to the letter of the 20th of September 2017 of solicitors to accept service of the intended proceedings on behalf of the defendant.
23. The claimants reject the assertion at paragraph 4 of the defendants witness statement that prior nomination of solicitors to accept service of proceedings was ignored by the claimant. The claimants maintains that the defendants witness statement is misleading. The statement does not explain the purported nomination was not provided specifically in relation to this claimant's claim or in relation to the index accident or indeed in relation to the presently named defendant. The nomination letter produced, which coincidently is dated the same date as the index accident in this matter, was an attempt by plexus solicitors to provide a blanket nomination in respect of all future matters involving the Direct Line group of companies. It is submitted by the claimant that the blanket nomination was not acceptable, was not a valid nomination and was certainly not CPR compliant or indeed capable of being put into practice. Further, the purported nomination does not identify the specific brands within the group referred to, of which they understand there are a number.

24. The relevant rule in relation to nomination of solicitors to accept service of proceedings is CPR 6.7 which provides as follows; " service on a solicitor or European lawyer within the United Kingdom or in any other EEA state - 6.7(1) Solicitor within the jurisdiction: Subject to rule 6.5 (1), where -
    a. The defendant has given in writing the business address within the jurisdiction of a solicitor as an address at which the defendant may be served with the claim form; or
    b. A solicitor acting for the defendant has notified the claimant in writing that the solicitor is instructed by the defendant to accept service of the claim form on behalf of the defendant at a business address within the jurisdiction,
25. The purported nomination letter does not confirm that Plexus have been instructed by the defendant in this action Mr Griffiths.
26. Mr Griffiths was not a party to any court proceedings or indeed any proposed court proceedings when that nomination was provided. In fact at the time of the purported nomination this claim had not even been intimated. The rules do not provide for prospective or anticipated parties. The defendants have failed to append to their witness statement in support of the application the claimants response to the letter of nomination.
27. The response letter clearly disputes validity of the nomination and confirms that the proposed nomination for any such future claims was not acceptable. The letter highlights both practical and ethical reasons as to why the blanket nomination was not and is not acceptable. No explanation has been provided by the defendant solicitor as to why he is not referred to the response.

28. The claimants further submitted that any nomination requires the identification of specific parties and specific claims. All solicitors must have regard to core basic principles, for example conflict-of-interests and a clients right to choose a legal representative. Solicitors are governed by a code of conduct which imposes a duty prior to accepting any such nomination to undertake a conflict search to establish that no such conflict exists. This cannot be undertaken when a solicitor is blanket nominated in such circumstances. Further, many claims may include a counterclaim by an insured. The solicitors do not have the right in those circumstances without specific written permission from the insured to nominate themselves to deal with that aspect of any potential counterclaim. Such nomination would be or potentially would be a breach of the solicitors code of conduct in particular 8.6. Solicitors are to ensure clients are in a position to make informed decisions about the services they need, how the matter will be handled and options available to them. The task cannot be undertaken by way of the suggested nomination in this matter.
29. There was no further correspondence received from Plexus Law on the subject and there was no direct response received to the reply to the nomination letter. In the absence of any further response from Plexus Law the Claimants solicitors position on the subject, it would appear, was accepted by Plexus Law.
30. It is further submitted by the claimant that a further flaw in the defendants position is that the purported nomination does not take into account those matters where indemnity is refused and insurers distance themselves from their insured as quite often happens. Service of the proceedings upon an individual/firm where there has been a withdrawal of indemnity would clearly not be appropriate by delivering those proceedings to solicitors 'blanket' nominated by the insurer who is withdrawing indemnity.
31. The claimants position is that there was no effective nomination of solicitors in this matter to accept service of proceedings on behalf of the defendant Mr Griffiths. The proceedings were properly and correctly served and the judgement entered in default and the judgement obtained at disposal are perfectly regular judgements.
32. It is further submitted therefore by the claimants that proceedings were issued and served directly upon the defendant Mr Andrew Griffiths under cover of letter dated the 16th of October 2017. The proceedings were served upon the defendant at the address provided by him to the claimant at the scene of the index accident. A certificate certificate of service

was filed with the court. The claimant therefore submits that the proceedings are deemed served pursuant to CPR 6.14.

33. The claimants further submitted that they were aware that the defendant and or direct line had been receiving correspondence and were aware of the claimants claim because on the 23rd of October 2017 a payment on account of the claimants claim was received from direct line dated the 18th of October 2017.
34. The defendant failed to respond to the proceedings and in the absence of any acknowledgement, judgement was entered for the claimant on the 1st of December 2017 for an amount to be assessed by the court. A copy of the judgement would have been sent to the defendant by the court. By notice dated the 1st of December 2017 the action was transferred to the County Court at Liverpool. In addition a copy of that notice would have been sent to the defendant. By notice dated the 14th of December the court listed the claim for disposal hearing to take place on the 22nd of February 2018. Again the court will have sent a copy to the defendant.
35. The claimant submits that by way of preparation for the disposal hearing a copy bundle was sent to both the defendant and his insurer Direct Line under cover of letters dated 13 February 2018. The bundle contained all the pleadings, orders and court notices. It also contained the claimant's witness evidence and supporting documents. The action proceeded to a disposal hearing on 22 February 2018 when after considering the claimants evidence, Deputy District Judge Williams gave judgement for the claimant. A copy of the judgement will have been sent to the defendant by the court.
36. The claimant solicitors under cover of a letter dated the 2nd of March 2018 also sent a copy of the judgement to Direct Line. No response was received and enforcement proceedings were dispatched to the courts for issue. The defendants maintain that UK insurance has a statutory obligation under section 151 of the Road Traffic Act 1988 to satisfy the judgement. Those proceedings were received by the court on 19 March 2018 and formally issued on 23 March 2018 with case number E47YJ662. The proceedings were served upon UK insurance under cover of letter dated 18 April 2018. Once again there was a complete a lack of response to the proceedings. Judgement in default was entered in that action which is now presently listed for disposal.
37. In relation to CPR 3.9(5)(a) The claimant submits that the application has not been made with any degree of promptitude. The judgement in this matter is dated 22 February 2018 and the defendant must have been aware of the proceedings from the plethora of documents sent to him by the claimant solicitors and the court. Furthermore, Direct Line insurance was provided with written notice of intention to issue proceedings giving it an opportunity to intervene, it was also sent and it received prior to the hearing on the 22nd of February 2018 a bundle containing all relevant documents and evidence including a copy of the proceedings. The defendants solicitors in their chronology at paragraph 3 of the witness statement accept that they received the bundle on the 20th of February 2018. No direct evidence from Direct Line has been given as to when precisely the bundle was received nor the comments of Mr Griffiths, the Defendant. The claimants solicitors maintain that there is no reason why the defendant could not of contacted his firm, the court or instructed solicitors to attend and deal with the matter or seek an adjournment. The defendant nor the insurers who had knowledge of the hearing did nothing to protect its position. On the issue of the bundle the Defendants solicitor suggests at paragraph 14 of his statement that there was no invitation from the claimant to agree the content of the bundle. The Claimants solicitors maintain that there is no such requirement for disposal hearings. This matter is a matter to which CPR 26PD 12.4(5) applies.
38. The claimants solicitors submit that notwithstanding receipt of the bundle and the defendant's insurers knowledge of the hearing they did nothing until it received a copy of the judgement sent on the 2nd of March 2018. In fact they delayed further and did not instruct solicitors until the 9th of March 2018. No explanation as to why no immediate and decisive action was taken by Direct Line upon receipt of the bundle was given.

39. The claimants solicitors submit the promptness is calculated and based upon the defendants knowledge, not on how quickly his insurer or legal representatives react from the date of instruction. There is no evidence at all from the defendant to support this application which has been made in his name. In fact and of concern, there is no evidence to suggest that either his insurer or solicitors have made any attempt whatsoever to make contact with the defendant.
40. According to the Claimants solicitors witness statement there has been further procrastination following the defendant's solicitors receipt of instructions. The solicitors are instructed on the 9th of March 2018 but don't open the file until the 23rd of March 2018, and then receive instructions to apply to set aside the judgement we are told on the 3rd of April 2018 but no application is prepared until the 17th of April 2018. The defendant's solicitor has not explained why there has been such a delay on their part, 5 1/2 weeks from his instruction and eight weeks post judgement, astonishingly with no contact at all during that period with the claimant's solicitors. No explanation has been put forward to explain the delay which it is to be noted at paragraph 9 of the defendants solicitors statement he attempts to blame on a backlog thereby acknowledging that there has been delay at the Insurers office.
41. In relation to CPR 39.3(5)(b) The claimant submits there is no evidence from defendant as to why he did not attend the hearing when quite clearly he has received all the relevant court orders and notices. The claimants solicitors also submit that there was no effective nomination and service was correctly undertaken upon the defendant. The defendant has had ample opportunity to engage. Direct Line had the bundle which included the court notices and there was no satisfactory explanation as to why it did not intervene and attend the hearing. Moreover there is no evidence at all before the court to suggest as advanced by the defendant solicitor that the defendant would not have understood the court documents.
42. In relation to CPR 39.3(5)(c) the claimants solicitors maintain that the defence does not show a reasonable prospect of success. It is not enough to show that there may be an arguable defence, the defendant must show that he has a real prospect of successfully defending the claim. The proposed defence produced concedes liability and is simply a put to proof document in respect of quantum that is at best speculative. There is no cogent evidence produced to show there is a defence to the claimants claim with prospects.
43. In relation to Denton the claimants solicitors submit that the court has to assess the seriousness or significance of the breach. Quite remarkably at paragraph 29 of the defendants solicitors statement he suggests that the failures are not serious or significant. At paragraph 36 of Gentry, Lord Justice Vos considered that a failure to acknowledge court proceedings was a serious and significant breach. Having wrongly assumed that the failure/breach was not serious or significant the defendant solicitor fails to deal with the further Denton tests.
44. In relation to the second stage the defendant solicitor has not provided any evidence from the defendant as to why he ignored the proceedings and why he failed to attend the hearing on the 22nd of February 2018. Also we are not provided with any evidence from anyone at Direct Line as to what precisely it did when it received the RTA notice letter and the bundle prior to the disposal hearing. There is no evidence from Direct Line to say what its procedures are upon receiving such important and pivotal documents.
45. The third test is for the court to consider all the circumstances to enable it to deal justly with the application. The claimants solicitors submit that the effect of the breaches will have prevented the court and the parties from conducting this litigation efficiently and at a proportionate cost. Not only has the court and judicial time been expended but the parties have now been put to additional expense. This leaves aside the delay in disruption in the court timetable. This court must bear in mind the need for compliance with rules practice directions and orders. There has been a wholesale failure by and on behalf of the defendant and Direct Line to act in accordance with the need. The application should therefore be dismissed.

46. Decision

The Law

47. CPR 39.3(5) Where an application is made under paragraph (2) or (3) by a party who failed to attend the trial, the court may grant the application only if the applicant—
(a) acted promptly when he found out that the court had exercised its power to strike out(GL) or to enter judgment or make an order against him;
(b) had a good reason for not attending the trial; and
(c)has a reasonable prospect of success at the trial.
48. It is clear from the notes to CPR 39.3 that "the court may grant the application only if ..." ' 39.3.7 - Note that the wording of r.39.3(5) provides more stringent requirements than CCR Ord.37 r.2 which it replaced. The court no longer has a broad discretion. There is only jurisdiction to set aside a regular judgment if the party seeking to have the order set aside can satisfy all three requirements in r.39.3(5). (This passage was quoted with approval by Simon Brown L.J. in Regency Rolls Ltd v Carnall 16 October 2000, unrep., CA, but noted in Civil Procedure News, April 23, 2001 and approved in Bank of Scotland Plc v Pereira (Practice Note) [2011] EWCA Civ 241; [2011] 1 W.L.R. 2391, CA. See too Barclays Bank Plc v Ellis [2001] C.P. Rep. 50, CA.)"
49. Upon the basis that both parties wish me to approach this as a part 39.3(5) application the first question I need to consider is whether or not the defendant acted promptly when he found out that the court had exercised its power to strike out or to enter judgment or make an order against him.
50. I will now consider the defendant's actions upon discovering that there was a final judgment in the sum of £42,845.52 against him. The defendant's solicitors submitted that an application was made promptly being filed when the solicitors received notice that the claimant had been awarded damages at the disposal hearing. I am told that the defendant's insurer having received a letter dated the 2nd March 2018 on the 9th March 2018 promptly instructed DAC Beachcroft Claims Limited to set up a file on the 23rd March 2018, 14 days later, and then gave instructions to make an application on the 3rd April 2018, 11 days later. I am told that the delay was due to the backlog of work. It then took the solicitors a further 14 days to send the application to the court on the 17th of April 2018. The defendant solicitors said that the Insurers knew nothing about the judgement until the 9th of March 2018 yet it took until the 17th of April 2018 to issue the application, that is 39 days for the application to be issued or just over five weeks.
51. Turning to the conduct of the defendant I have been given no evidence of what the defendant Mr Griffiths did other than to say that he shouldn't be expected to understand what was going on. Even if that was the case, and I do not accept that as an explanation with any credibility, he could at the very minimum have passed on the pre-action correspondence and proceedings to the professional insurer to be dealt with on this not so inconsequential claim. Nevertheless I have seen no evidence of what he did and can therefore only conclude that he did nothing.
52. The disposal judgment is dated the 22nd of February 2018 and in my judgement the defendant must have been aware of the proceedings from the pre-action correspondence sent to him by the claimant solicitors and the the court orders sent to him by the court. He did nothing. The insurer was aware of the pre-action correspondence since they were copied in by the Claimant solicitors together with the written notice of the intention to issue proceedings. Both the Defendant and the insurer were sent trial bundles on the 13th of February 2018 although the insurer said they only received the bundle on the 20th February 2018. Again I am left to conclude that the defendant did nothing in the absence of evidence as to actually what he did, and the insurer had 2 days to do something. Even if that was the case, 2 days in my judgment is enough time to instruct a solicitor/barrister to attend court. The Insurer is a professional organisation with no doubt a department who deal specifically with claims and litigation before the courts. They will have the expertise to deal with the proceedings and even if they don't they will have people and the resources to instruct solicitors to deal with the litigation for them.

53. In my judgment both the defendant and the insurer knew about the judgement on the 22nd of February 2018 yet it took another 54 days, nearly 8 weeks for the application to set aside the judgment to be issued. Even when they received the letter dated the 2nd of March 2018 on the 9th March 2018 it took another 5 weeks for the application to be issued. The Insurers can't even say in this case that the delay was due to negotiations with the Claimant solicitors to set aside the judgment by consent. The defendant/Insurers /solicitors simply did not engage with the Claimant solicitors. Under the circumstances I am bound to conclude that the defendant did not act promptly when he found out about the disposal judgment.
54. The second question I need to consider is whether the defendant had good reason not to attend the trial pursuant to CPR 39.3(5)(b). The defendant solicitors submitted that the defendant would have defended the claim had the proceedings been served upon the Defendant's nominated solicitors. The defendant solicitors say that they sent a letter of nomination to the claimant solicitors. The letter can be found at Exhibit RR01 attached to Mr Reynolds statement. Whilst Mr Reynolds statement makes no reference to a response by the claimant solicitors they did in fact send one on the 30th May 2017 to be found at exhibit DWM5. The response letter disputes the validity of the nomination and confirms that the proposed nomination for any such future claims was not acceptable. The letter highlights both practical and ethical reasons as to why the blanket nomination was not and is not acceptable.
55. In my judgement I accept that any nomination requires the identification of specific parties and specific claims. All solicitors must have regard to basic principles for example conflict-of-interests and a clients right to choose a legal representative. Solicitors are governed by a code of conduct which imposes a duty prior to accepting any such nomination to undertake a conflict search to establish that no such conflict exists. I accept that this cannot be undertaken when a solicitor is blanket nominated in such circumstances. I also accept that the purported nomination does not take into account matters where indemnity is refused and service upon a nominated firm where there has been a withdrawal of indemnity, would not be appropriate by delivering those proceedings to solicitors blanket nominated by the insurer who is withdrawing indemnity.
56. Regardless of the above the Claimant rejected the blanket nomination and communicated this to the Defendant's solicitors on the 30th May 2017. It was not until the 12th October 2017 that proceedings were issued just under 4 months later. I accept that no proper nomination had been made in this case, to accept service of proceedings on behalf of the Defendant, and under the circumstances the proceedings where correctly served upon the Defendant direct. I am also bound to conclude that the defendant's/insurers knew about the claim because they sent what has been described as a payment on account in a letter dated the 18th October 2017. I reject the Defendant's submission that they were deprived of the opportunity to defend the claim because proceedings were served upon the defendant direct.
57. In my judgement I have not been given a proper explanation as to why the defendants could not attend the trial. The insurers have been copied into all the correspondence both pre-action and subsequent court orders. They have failed to respond to all correspondence from the claimants solicitors. As a professional litigant they have failed to take steps to protect themselves. They have provided no evidence as to their systems for dealing with proceedings nor to the structure within the claims department other than to say that they had a backlog. As a professional litigant they are fully aware of the consequences of failing to deal with proceedings in the above context.
58. The defendant and the Insurer were given notice on the 20th September 2017 that the proceedings were potentially imminent. They have adduced no evidence as to what steps they took at that stage to contact the defendant and neither did they write to the claimant solicitors asking to be provided with a copy of the proceedings when they were issued. This is of course, against a background in which the insurers have been copied into pre-action correspondence about the claim and against a background in which they knew that their

solicitor nomination had not been accepted for reasons set out in correspondence going back to May 2017.

59. As stated above even at its worst the insurers had two days in which to prepare for the disposal hearing. They say that this was insufficient time therefore they did nothing. They accept that they received the trial bundle which contained all the paperwork they needed to attend court even if just to apply for adjournment. Under the circumstances and given the history off this case in my judgment there is no reasonable explanation as to why the defendant didn't attend the trial.
60. The third question for consideration is whether the defendant has a reasonable prospect of a success at trial pursuant to CPR 39.3(5)(c). It is clear that the proposed defence concedes negligence and makes no admissions in relation to "the existence, nature, causation or extent of the loss or damage" (paragraph 4 of defence). The defence in essence puts quantum in dispute in dealing with hire, the need to hire, the need to hire a vehicle of the type hired, the period of hire, the rate of hire and the enforceability of the storage charges. These are standard arguments pleaded in hire charges cases, nevertheless I accept in my judgment there is a reasonable prospect of success.
61. As stated above the court no longer has a broad discretion. There is only jurisdiction to set aside a regular judgment if the party seeking to have the order set aside can satisfy all three requirements in r.39.3(5) and in this case the defendant has not satisfied me of all three requirements.
62. For the sake of completeness I will go on to deal with the submissions made in relation to Denton. The first test is for the court to assess the seriousness or significance of the failure /breach. At paragraph 36 of the case of "Gentry" Lord Justice Vos considered that a failure to acknowledge court proceedings was serious and significant breach. In my judgement there has been serious and significant breach in this case.
63. The second test is to consider why the failure/breach occurred. The defendant solicitors have failed to provide us with any evidence from Mr Griffiths as to why he ignored all of the pre action correspondence and the proceedings and in addition why he failed to attend the hearing on the 22nd of February 2018. As indicated above there is no good explanation as to why the insurer did not engage with the litigation or attend the trial nor comply with court orders. No evidence of their procedures or systems within the organisation has been provided to the court.
64. The third test is for the the court to consider all of the circumstances to enable it to justly deal with the application. It is clear that court and judicial time have been expended and the parties have now been put to additional expense in dealing with the application. The failures have prevented, if the judgements are set aside, the court and the parties from conducting this litigation efficiently and at proportionate cost. What's more the enforcement action in which there is a judgment against the defendant will also have to be set aside involving even more court time and extra expense. The court must bear in mind compliance with court orders, rules and practice directions. In this case the defendant has completely failed to engage in the litigation ignoring all correspondence and court orders. Moreover the insurers are professional litigants who can be properly held responsible for any blatant disregard of their own commercial interests. In this case the insurers have known from the beginning that they were at risk of proceedings being commenced and being served upon insured, yet they did nothing. Moreover they have simply failed to engage with their Insured providing no proper explanation for his or their own conduct.
65. For the reasons set out above I dismiss the defendants application. I have heard no argument with regard to the principle or quantum of costs. I leave it therefore to the parties to agree the position on costs. If they cannot reach an agreement they should request the court list the case for hearing when the judgement is handed down with a suitable time estimate.

DDJ Bates 18th September 2018 .