

Civil Procedure Update: Redbourn Group Ltd v Fairgate Development Ltd

On 26th May 2017, Coulson J handed down judgment in the case of *Redbourn Group Ltd v Fairgate Development Ltd [2017] EWHC 1223 (TCC)* in which the court provided important guidance as to applications made to set-aside judgment under CPR r13.3 and the interplay with the test for relief from sanctions under CPR r3.9.

The defendant had applied to set-aside judgment under CPR 13.3 in circumstances where the claimant had originally indulged it with a seven-day extension to the 1st February 2017. On that date, the defendant applied to the court for an extension until the 22nd February. However, it did not chase its application and on the 23rd February the claimant applied for, and on the 9th March obtained, judgment in default. The defendant applied to set-aside that judgment on the 17th March and eventually served a defence (and counterclaim) on the 11th May.

The court dismissed the application. In doing so, the court relied upon the decision of the Court of Appeal in *Gentry v Miller [2016] EWCA Civ 141* to the effect that the provisions for relief from sanctions were relevant to any application made to set-aside judgment in default. Most notably, at paragraphs 17 – 20 of the judgment, the court went on to confirm that the correct approach in such cases was to first consider the elements of CPR r13.3 and then, if the applicant satisfied the same, to consider CPR r3.9 and the three-stage test in *Denton v TH White Ltd [2014] EWCA Civ 906*. Of further note, in considering the issue of promptness, the court found that it would be artificial to only consider the short period of time between the default judgment and the application to set-aside. Rather, the three-month delay between the initial deadline for the defence and the date on which it was actually filed and served was key.

Needless to say, the judgment is likely to be heavily relied upon by respondents to set-aside applications under CPR r13.3. It is further likely to make it much more difficult for applicants seeking to set-aside judgments to succeed.

A full copy of the judgment can be found via the following link:

[http://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/TCC/2017/1223.html&query=\(DENTON\)](http://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/TCC/2017/1223.html&query=(DENTON))

Gary Lewis
7th June 2017

Direct Dial: 0161 833 6078 19 Quay Street
Chambers: 0161 833 6000 Manchester, M3 3HN
Fax: 0161 833 6001 DX 14327 Manchester
w www.cobden.co.uk **e** gary.lewis@cobden.co.uk

