



## Corporate Liability for Contempt

By Paris Aboro

*In Back Office Ltd v Percival & Ors [2013] EWHC 1385 (QB), Mrs Justice Slade held that the liability of a company for the acts of its servants or agents in breach of an order or undertaking given by the company is strict: it is not necessary to establish that the company failed to take reasonable steps to prevent breach. The case is a welcome clarification of the test for corporate contempt.*

*Kathleen Donnelly, of Henderson Chambers, appeared on behalf of Back Office, the claimant in the underlying conspiracy claim, and the applicant in the contempt action.*

### THE LITIGATION

Back Office is a company which provides payroll services. In February and March 2012, a number its employees, including its managing director Mr Tipper and its relationship manager Mr Foulsham, tendered their resignations and went to work for a newly formed, rival company, Liquidity Group Solutions Limited (“Liquidity”). Back Office commenced proceedings alleging that Mr Tipper and Mr Foulsham had breached their fiduciary duties by setting up Liquidity while still employed by Back Office, that they and others had breached their post termination restrictive covenants, and that, together with Liquidity, they were part of an unlawful conspiracy.

## UNDERTAKINGS

The conspiracy proceedings were settled at the door of the court in July 2012, on terms which included that Liquidity (and named individuals) “*not ... solicit or deal with any of the clients listed in the confidential Annex to [the] Order until 5 March 2013*”.

## THE APPLICATION TO COMMIT

In March 2013 Back Office issued an application for committal, against Liquidity (as well as 3 named individuals), for breach of the undertakings, arising from contact made by two Liquidity sales persons with prohibited clients.

## THE TEST FOR CORPORATE LIABILITY

It was argued on behalf of Liquidity, that it was a necessary element of the test for corporate liability for contempt, that the company either authorised the acts of its employees (in this case, the making of contact with the prohibited clients), or failed to take reasonable steps to prevent such acts: i.e. applying the third limb of the test identified by Slade J in Hone v Page [1980] FSR 500.

On behalf of Back Office, it was said that this was not a necessary ingredient of the test for corporate contempt, there is a distinction to be drawn between applications for contempt against individuals (such as the directors in their individual capacities), and applications against corporations, who are in effect strictly liable for the acts of their employees or agents.

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After a thorough review of the authorities, Slade J resolved the matter in favour of strict liability. The scope and significance of this conclusion is clear from her judgment, at paragraph 70:

*“Accordingly in my judgment the liability of Liquidity for contempt has been established by the acts of its agents Mr Richardson and Mr Percival attempting to solicit the business of prohibited clients on 12th and 21st February 2013 respectively. They were engaged as salesmen and were acting within the scope of their authority. As in Stancombe<sup>1</sup>, the fact that they may have acted in dereliction of duty, or in their case, in breach of an instruction does not excuse Liquidity from liability for contempt of court.”*

## SUMMARY

Mrs Justice Slade’s judgment resolves any uncertainty as to the scope and extent of corporate liability for contempt. It is a welcome clarification, which underlines the seriousness and significance of companies giving undertakings to the Court. Even if a company specifically instructs its employees not to act in a way which would breach the undertakings given, if an employee in fact does so, the company will be guilty of contempt of court, and exposed to the Court’s censure and sanction.

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Date 6<sup>th</sup> November 2013

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<sup>1</sup> *Stancombe v Towbridge Urban District Council* [1910] 2 Ch 190

***Kathleen Donnelly** appeared on behalf of Back Office. The judgment on liability is reported at [2013] EWHC 1385 (QB), and is available in full [here](#). There was a separate hearing in relation to sanction and costs, in respect of which judgment is due to be handed down on 3<sup>rd</sup> December 2013.*