BRIEFING NOTE

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ROOKS RIDER SOLICITORS

Covid-19 and the future of resolving disputes

For years we have become accustomed to the Court imposing sanctions on a party who has unreasonably refused to engage in Alternative Dispute Resolution ("ADR") to try to resolve their dispute. This has been further reaffirmed in the recent case of Wales (t/a Selective Investments Services) -v- CBRE Managed Services Ltd [2020] EWHC 1050 (Comm).

The recent case serves as an important reminder to all parties engaged in litigation that they should explore all options to try and resolve their disputes at all stages. Here, the Defendant was successful in defending the claim brought against it by the Claimant, Mr Wales. However, despite its victory, Judge Halliwell who heard this case held that the Defendant should be deprived from receiving part of the costs they were entitled to due to the fact they had unreasonably refused the Claimant's requests for mediation.

The general principle is that the unsuccessful party will be ordered to pay the costs of the successful party (CPR 44.2 (2)), but the Court does have the ability to make a different order. When deciding whether to depart from the standard position, the Court will have regard to the conduct of the parties; one such conduct being whether the parties have engaged in ADR.

The cases of Halsey –v- Milton Keynes General NHS Trust [2004] 1 WLR 3002, and PGF II SA –v- OMFS Company 1 Ltd [2013] EWCA Civ 1288 are good authority of the types of scenarios the Court may want to consider if it is contemplating departing from the standard costs order. Generally speaking, if a party who is looking to receive a costs order has unreasonably refused to engage or has declined to participate in ADR, this amounts to a warranted departure from the standard costs order set out in CPR 44.2 (2).

In the present climate, some may be forgiven for questioning how they can protect themselves from the cost sanctions we see so regularly imposed by the Courts.

Covid-19 should not be used as a reason for why parties cannot attempt ADR. It ultimately is a question of the parties adapting. In recent weeks, parties have been attempting to resolve disputes by holding virtual mediations. Whilst at first blush one may firstly question how this could work, the resounding feedback from such has been widely positive with parties seeing the great benefit that can be had from using such technology. The virtual technology in place allows the parties to see one another and the typical desire of wanting to 'see the whites of your opponent's eyes' remains in place. As the weeks and months progress, one cannot help but consider how this will be used going forward. With disputes frequently having a foreign element involved, one can see how a virtual mediation will be a good way of parties from across the world committing to engage in mediation; not least because of the travel time and associated costs that could well be saved by using the available technology.

Whilst virtual mediations may not be suitable for every dispute, it is certainly an option parties should be willing to give careful consideration to. There are a wide range of technology options at our disposal, which are developing at a rapid pace. Parties should be willing and able to utilise such resources for the purpose of seeking to explore the resolution of disputes. By exploring ADR, parties can protect themselves against sanctions that are frequently imposed, just like those in the recent case.

For further assistance, please contact Gemma Newing or a member of our Rooks Rider Solicitors Dispute Prevention & Resolution team:

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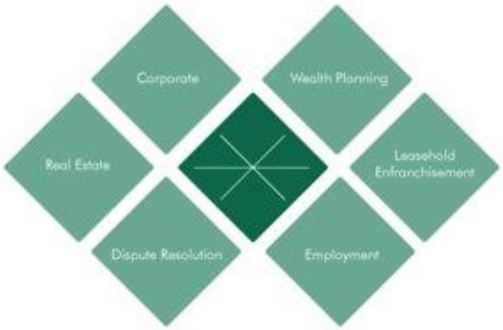

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