NULLITY CLAIMANT RECEIVES *NUL* POINTS FOR NECESSITY

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The recent judgment in *Mazur v Charles Russell Speechlys LLP* [2025] EWHC 2341 (KB) was considered in relation to discretion and costs in respect of an application under CPR 19.6 opposed by Alexander Heylin instructed by Brett Wilson for the Defendant to substitute the claimant after the end of the claim's limitation period.

KEY TAKEAWAYS

- The person who signed the application notice was not authorised to conduct litigation under the Legal Services Act 2007, which rendered the application liable to be struck out (*Mazur*).

- The judge would have been reluctant to strike out on that ground alone before adjourning for the claimant to take instructions and have a further copy signed by someone authorised. The claimant's failure to rectify the issue counted against it in discretion.

- The application was dismissed because the proceedings were issued outside the limitation period and therefore CPR r 19.6(2)(a) was not met.

- Even if limitation had been current, the test for necessity in 19.6(3)(a) was not met because there was no mistake, but rather an error of law. The test for necessity in 19.6(3)(b) was also not met because the original claimant was a nullity.

- Had the requirements for substitution been met, the judge would nevertheless have exercised his discretion not to grant the application, given the conduct of the claimant (including falling foul of *Mazur*).

- The claimant's conduct also resulted in an order for costs for the entire proceedings on the indemnity basis with a substantial payment on account.

INTRODUCTION

In *Mazur*, Mr Justice Sheldon held that a person who was neither an "authorised person" under section 18 nor an "exempt person" under section 19 of the Legal Services Act 2007 ("LSA") was not entitled to conduct litigation, even under supervision. The decision caused disquiet within the legal community and resulted in the Law Society issuing new guidance, the Solicitors Regulation Authority publishing a statement and the Legal Services Board conducting a regulatory review.

His Honour Judge Timothy Parker considered *Mazur* in *Pengelly & Rylands v Hills*, in which Alexander Heylin, appearing for the defendant, opposed an application under CPR 19.6. The application to substitute "Hatten Wyatt", the intended claimant company, for "Pengelly & Rylands", the company's trading name used on the claim form, followed an abandoned application to add Hatten Wyatt as a second claimant.

Mr Heylin was instructed by Brett Wilson's Max Campbell and Vishalee Amin, who was praised by the judge for her "conspicuously clear and helpful" witness statements.

GATEWAYS

"19.6(2) The court may add or substitute a party only if -

(a) the relevant limitation period was current when the proceedings were started; and

(b) the addition or substitution is necessary."

To meet the "gateways" for substitution under 19.6(2), the claimant had to show that (a) the relevant limitation period was current when the proceedings were started; and (b) the substitution was necessary. The application failed on both limbs.

Limitation

Whether the proceedings were started within the limitation period depended on when discovery of the defendant employee's misconduct occurred, as this was the date from which limitation ran. The judge found that the claimant could with reasonable diligence have known facts that would have led a reasonable person to conclude there was a worthwhile claim, from a date which placed the date of issue outside the limitation period.

Necessity

Had the claimant succeeded on limitation, it would have also had to show that the substitution was necessary:

"19.6(3) The addition or substitution of a party is necessary only if the court is satisfied that -

(a) the new party is to be substituted for a party who was named in the claim form in mistake for the new party;

(b) the claim cannot properly be carried on by or against the original party unless the new party is added or substituted as claimant or defendant; or

(c) [...]."

The judge found that there could not have been a factual mistake, because self-evidently, Hatten Wyatt knew perfectly well that Pengelly & Rylands was a trading name. Hatten Wyatt had made an error of law that ought not to be treated as a mistake falling under 19.6(3)(a).

Wording was important and there was no "original party". Applying the Court of Appeal's decision in *Mark McLaren Class Representative Ltd v MOL (Europe Africa) Ltd* [2023] Bus LR 318, the original party was a nullity and therefore 19.6(3)(b) could not be satisfied.

DISCRETION

Had the claimant succeeded in meeting the gateways for substitution, the judge would nonetheless have exercised his discretion not to grant the application for several reasons.

Failure to provide information

The claimant's failure to provide information relating to its claimed costs investigating the defendant's misconduct was very serious. It was not obvious how the claimant could have incurred the claimed sum and no explanation was provided. It was entirely contrary to the overriding objective for the claimant to advance such a claim to avoid explanations.

Nature of the error

The obviously avoidable error on the claim form was not corrected despite being highlighted by the defendant's solicitors Mr Campbell and Ms Amin, whom the judge praised. The claimant's first defective application (abandoned shortly before the first hearing) had added to the substantial delay already caused by issuing the claim so late.

APPLICATION OF *MAZUR*

STRIKE OUT

Mazur made it clear that the application was liable to be struck out solely on the ground that the person who signed the application notice was not authorised under the LSA. Had that been the only issue, the judge would have been reluctant to strike out before adjourning for the claimant to take instructions and for a further copy to be signed by someone authorised, because it appeared from the signatory's witness statement that Hatten Wyatt intended to put forward the application.

DISCRETION

The claimant's failure to rectify the issue, even after it had been queried by solicitors at Brett Wilson, was a further aspect that counted against it in the judge's exercise of discretion whether to grant the application.

COSTS

The claimant's conduct, including in relation to the signing of the application notice, weighed against it in respect of costs, with the result that it was ordered to pay costs for the entire proceedings on the indemnity basis.

RESULT

The application was dismissed and a costs order was made against Hatten Wyatt for the whole of the proceedings on the indemnity basis with a substantial payment on account.