

IN THE COURT OF APPEAL

Apollo Solicitors v Shibby

Baggs Brand plc were a manufacturer of gourmet crisps, and had contracted with Sandeesh Supermarkets to supply 30,000 boxes of their "Mexican Pork Chimichanga" crisps for nationwide distribution. Following the swine flu epidemic in 2009, to avoid negative publicity, Sandeesh Supermarkets decided to withdraw from the contract prior to delivery. Baggs Brand plc decided to sue Sandeesh Supermarkets for the losses they had incurred.

Baggs Brand plc immediately instructed Apollo Solicitors to bring the claim on their behalf. Apollo regularly used Paloma from Synergy Chambers, but as she was on maternity leave, he asked the clerk, Nick, if he could recommend an alternative. Nick suggested Shibby, who was a new tenant, having recently completed pupillage. Apollo in turn instructed Shibby to "advise upon the case at a telephone conference". Shibby was informed that Apollo would deal with the initial formalities and explore early correspondence, and that Shibby should expect to be asked to represent the Claimant if and when the matter reached trial. Two months later, Apollo duly instructed Shibby further to "review evidence and represent the Claimant at trial".

At the trial, in December 2009, Brady J found for the Claimant. However, it was found that neither the Particulars of Claim nor Schedule of Loss had made reference to any claim for interest. Brady J therefore refused to allow the claim for interest as it was not in the pleadings.

Baggs Brand plc therefore sought to recover the lost interest from Apollo, who settled out of court. Apollo in turn brought a claim in negligence against Shibby for 50% of the settlement amount, on the basis that it was Shibby's responsibility to advise Apollo that interest had not been properly pleaded.

At first instance, Sugarlord J found the following facts:

1. The papers accompanying the instructions to "review evidence and represent the Claimant at trial" included a draft trial bundle index and all the relevant copied documents including the Particulars of Claim and Schedule of Loss which Apollo had drafted.
2. Neither Apollo nor Shibby had identified the omission of the claim for interest before trial.
3. Shibby's profile on the website of Synergy Chambers showed that he had been called to the Bar in 2007, and after completing pupillage in 2009, accepted instructions in all areas of Chambers' practice.

Sugarlord J found for Shibby on the basis that there was no suggestion that Shibby was specifically asked to consider or advise about the form of the Particulars of Claim or Schedule of Loss within his instructions, and as such, responsibility should not be placed on Shibby for failing to alert Apollo to such an obvious matter. He further stated that in any event, he would have been bound by the decision in *Williams v Leatherdale* [2008] EWHC 2574, where in order to establish the duty of care required, regard must be given to seniority, and therefore as a junior barrister, Shibby should not in any event be held negligent for this omission.

Apollo appeal on the following grounds:

1. It was undoubtedly part of Shibby's duty to consider the adequacy of the Particulars of Claim and Schedule of Loss when specifically asked to review evidence.
2. Regardless of the fact that Shibby was a junior barrister, there was no requirement for Sugarlord J to refer to seniority as a factor in the standard of care, and attention should have been given to the appropriate terminology in Part VII of the Code of Conduct of the Bar of England & Wales.