

How broad is your settlement?

Don't settle for less, says **Adam Short**

When parties wish to settle litigation they will often do so by reference to the claim number in that litigation.

For instance, a settlement agreement may include wording such as: "In full and final settlement of the claim in proceedings number [X] the parties agree as follows."

However, the recent case of *Brazier v News Group Newspapers* [2015] EWHC 125 (Ch), [2015] All ER (D) 209 (Jan) illustrates that a settlement using such wording may, in fact, result in a settlement of wider scope than the parties (or at least one of them) envisaged. As such, parties must take extra care when drafting settlement agreements to ensure that they are not settling claims they do not intend to.

The facts in *Brazier*

Mr Brazier was of interest to the tabloid newspapers because of his relationship with Jade Goody. In February 2012, Brazier brought a claim against News Group Newspapers (NGN) in relation to the interception of voicemail messages left on his

mobile phone (now commonly known as "phone-hacking"). Brazier's claim formed part of a number of managed claims made against NGN. Under this managed claims process there were a set of "generic" particulars of claim (applicable to all claimants) and then each individual additionally served "claimant-specific" particulars of claim.

Brazier settled his claim with NGN during December 2012. This settlement came before full disclosure was given and before NGN had served its amended defence (responding to Brazier's most recent claimant-specific particulars of claim). The terms of the settlement stated: "The parties have agreed terms in full and final settlement of the claimant's claim in proceedings HC12C00607 [the claim number of the action commenced by Brazier] as follows."

“This case highlights the importance of carefully drafting a settlement”

Brazier's claim seemingly focused on the activities of a private investigator called Mr Mulcaire, which had come to the attention of Brazier as a result of the Metropolitan Police Service's Operation Weeting investigation. However, following the December settlement, the Metropolitan Police Service opened a second investigation, Operation Pinetree, which focussed on the activities of other journalists and the "Features" desk at the News of the World.

Brazier commenced a second claim against NGN in relation to the activities uncovered by Operation Pinetree. NGN sought to strike out Brazier's second claim on the basis that the complaints made in those new proceedings had already been settled under the December settlement agreement.

Judgment in *Brazier*

Mr Justice Mann looked at the previous case law on this issue and concluded that "each case will turn on the wording of the release clause

and the circumstances in which it was entered into". Mann J went on to state that because "the matters compromised [by Brazier were] identified in terms of claims made in a specific set of proceedings the principal context was the claim made in those proceedings and the proceedings themselves".

Mann J considered the scope of the pleadings and the circumstances in which the claim was settled and ruled that the claims made in the second proceedings had indeed been settled under the December settlement agreement.

Despite the focus on Mulcaire in Brazier's first claim, Mann J found that pleadings in the first proceedings (both the generic and claimant-specific particulars of claim) were drafted broadly enough that they covered all phone-hacking activities conducted towards Brazier. Mann J also considered whether Brazier's ignorance of the Operation Pinetree activities in December 2012 meant that the words in the settlement agreement should be construed in such a way so as to exclude them from the settlement. Mann J concluded that "[w]hile Brazier did not know of the parallel operation being conducted by the features desk, it is not true to say that he was totally ignorant of the existence of further claims going beyond Mulcaire's activities" and that "[Brazier] knew in general terms what it was that he did not know in detail". Mann J seems to have reached this view on account of (i) references in the generic particulars of claim to "additional activities" that the court was invited to infer were substantial; and (ii) that Brazier knew full disclosure had yet to be given and NGN's solicitors had, to some extent, flagged that additional material would be provided.

Mann J struck out Brazier's second proceedings on the basis that the substance of the complaints had already been settled in the December settlement agreement.

Comment

This case highlights the importance of carefully drafting a settlement agreement to ensure that its scope is clearly defined. As Mann J highlighted, each case will turn on the wording of the release clause and the circumstances in which it was entered into. Furthermore, where a settlement agreement is drafted by reference to the claim number for a particular piece of litigation, it is also necessary to consider the scope of the pleadings in that claim and, as a result, how wide reaching the settlement actually is.

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