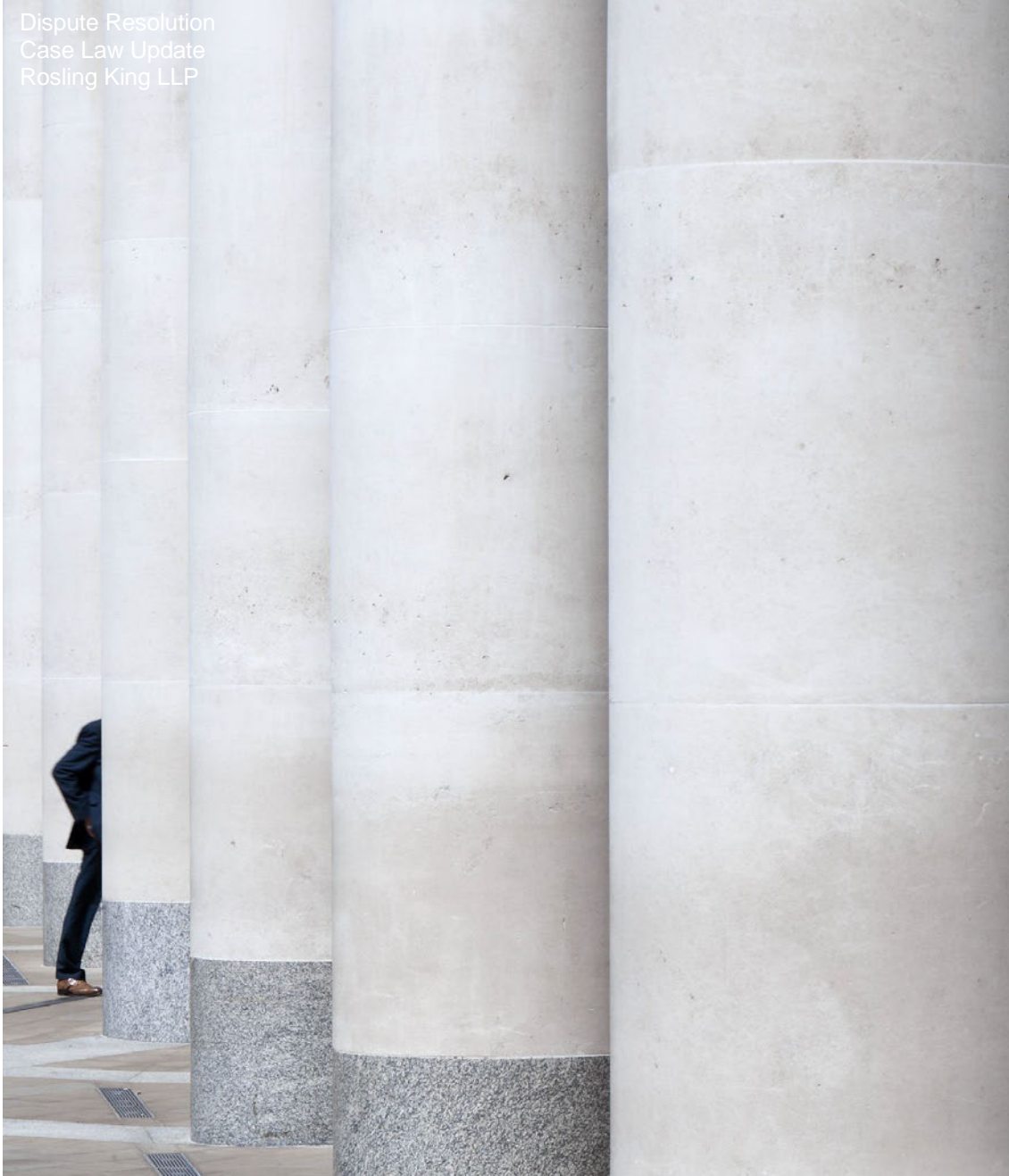


Dispute Resolution
Case Law Update
Rosling King LLP



The Claim

The claim arose out of an allegation by Mrs Osborne (“O”) that the Defendants had failed to advise her to bring a professional negligence claim against another law firm, Coodes of Torpoint (“CT”), before any potential action against CT became statute barred.

Before a full trial, the Court had to consider, as a preliminary issue, whether any claim against the Defendants was itself statute barred.

Background

Having previously made a will leaving £10,000 to O and the remainder of his estate to his daughter (“L”), Mr Roth instructed CT in February 1997 to draft a new will under which £50,000 was to be left to L, with everything else being left to O. The will was witnessed by O’s husband and six days later Mr Roth died. However, as O’s husband had witnessed the execution of the will, O’s gift was void by virtue of section 15 of the Wills Act 1837 and the sums left to O under the will should have instead passed to L.

In March 1997 O (with the assistance of CT) entered in to a written agreement with L to vary the will so that L would receive a total of £75,000 in return for O receiving the remainder of Mr Roth’s estate. L did not obtain independent legal advice in relation to the agreement, nor was she advised to.

In February 2005, L’s solicitors sent a letter of claim to O alleging that the agreement of March 1997 was not binding and that L was entitled to the whole of the deceased’s estate. Solicitors Follett Stock (“FS”) represented O from April 2007 in respect of the claim. FS were subsequently incorporated to become Follett Stock LLP (“FS LLP”) in April 2010. The dispute between O and L was settled by consent in October 2010.

O first intimated a claim against FS and FS LLP (in respect of their failure to advise her of a potential claim against CT for their earlier alleged failings) in October 2011 and she entered into a standstill agreement (to suspend time for the purposes of limitation) with FS LLP only in February 2015. The claim against FS and FS LLP was issued on 17 August 2016.

The Limitation Act 1980

Section 2 of the Limitation Act 1980 (“LA 1980”) provides that the time within which to bring a claim in tort (such as a claim for negligence) begins to run six years from the date on which the cause of action accrued i.e. when a claimant suffers loss. There is an exception to the above rule (under Section 14A of the LA 1980) which provides that if at the time a claimant suffers loss they are unaware of all material facts, then the deadline by which to commence proceedings in respect of the loss suffered will be the later of:

1. Six years from when a claimant suffered the loss; or

2. Three years from when a claimant knows, or ought to have known of the actionable, loss.

Limitation Arguments

In reaching its decision, the Court considered a number of existing authorities on limitation. It began by considering the decision in the *Law Society v Sephton & Co (a firm) and others [2006] UKHL 22 ("Sephton")*. In Sephton it was held that where damage is purely contingent, and no damage is suffered until the contingency occurs, time does not start to run for claims brought in negligence until there is actual loss. However, this can be distinguished from the decision in *Russell v Cornwell [2014] EWHC 1509 (QB)* in which the High Court held that where the transaction was flawed from the outset (a "**Flawed Transaction**") loss is suffered immediately.

O sought to rely upon the decision in Sephton, arguing that the cause of action did not accrue until L changed her mind about the agreement. However, the Defendants argued that this was not a case of contingent liability but a Flawed Transaction and time began to run when the agreement between O and L was entered into in March 1997.

The Decision

It was held that O's cause of action arose when she entered into the agreement of 1 March 1997. This was a bilateral transaction in which O, an executor of the deceased's will, had been buying L's interest in the estate for a modest sum. The Court held that this was "*a paradigm of a precarious transaction which needed careful advice in order to be free from challenge*". Furthermore, there was a measurable loss from the outset of the transaction.

It was also held that section 14A of the LA 1980 did not assist O because she had known of the claim by L in February 2005. O had an opportunity to bring her claim against the Defendants back in February 2005 and could not complain that the 6 year primary limitation period within which to bring a claim had expired. As such the claim was dismissed.

Commentary

This case highlights the test that the Courts will apply when considering limitation, but also the importance of getting proper independent legal advice at an early stage. As is clear from the instant case, it is important to obtain legal advice in respect of a potential claim at the earliest opportunity as time may begin running earlier than a potential claimant might think.

For further information, please contact [Georgina Squire](#) or the Partner with whom you usually deal.