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Case Law Update
Rosling King LLP



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This case considered whether a judge was right in striking out the Appellants' negligence claim against their solicitors on the grounds that the claim was issued more than 3 years after they acquired the "knowledge required for bringing the action". The Appellants in this case were relying on the limitation period in s14A of the Limitation Act 1980, which provides that an action shall not be brought after the expiration of 3 years from the earliest date on which the plaintiff had the "*knowledge required for bringing an action for damages in respect of the relevant damage and the right to bring such an action*". The "*knowledge required*" means the "*material facts*" about the damage in respect of which damages are claimed and the other facts relevant to the action, such as "that the damage was attributable in whole or in part" to the Defendant's act or omission. "*The material facts...are such facts about the damage as would lead the reasonable person who had suffered damage to consider it sufficiently serious to justify them instituting proceedings*".

The Facts

A firm of solicitors (the "Firm") were engaged by three unrelated villagers (the "Appellants"). The Firm were instructed to close two Land Registry titles to correct a mistake in the register. The Firm worked predominately under a Conditional Fee Arrangement ("CFA") and made an application to close these titles in May 2007. The Firm failed to tell the Appellants that if their objection to these titles was not made by 21 April 2005, the decision on whether to close the titles could be made at the discretion of the Deputy Adjudicator. In 2010, the Deputy Adjudicator refused to close one of the titles "as a matter of discretion".

In April 2009, at least one of the Appellants discovered that the Firm had been at fault in not filing their objection with the Land Registry on time. Although one of the titles was to be closed, the other remained open at the discretion of the Adjudicator. When the firm sued for its fees, the Appellants counter claimed estoppel and then brought a separate claim in negligence arising from the Firm's failure to fully advise on, and take steps to place an objection before the Adjudicator, to prevent him exercising his discretion. The Firm issued an application for summary judgment, on the grounds that, inter alia, the claim in negligence was statute barred.

At first instance, the judge decided that the Appellants' claim was statute barred when considering the facts in conjunction with s14A of the Limitation Act 1980. The judge considered the "material facts" in this case to be the fact that the Firm had erred by failing to make their objection in time. The Appellants' pleadings revealed that one of them had been made aware of the Firm's error in April 2009. The judge's view was that, from April 2009, the Appellants had the "*knowledge required*" for "*a reasonable person who had suffered damage to consider it sufficiently serious to justify his instituting proceedings*". On the basis of the April 2009 date, the Appellants' claim was deemed statute barred as it was brought over 3 years from the "*earliest date on which the plaintiff had the knowledge required for bringing an action.*" This decision was appealed.

On Appeal

The Court of Appeal allowed the Appellants' appeal and decided that the relevant question should have been whether just knowing that the Firm had been at fault in not registering an

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objection was enough to lead a “*reasonable person to consider it sufficiently serious to justify instituting proceedings*”. The Court commented that Appellants needed to know that, as a consequence of the Firm’s fault, the Deputy Adjudicator was able to make a discretionary decision which could be fatal to the closure of the title. The Appellants in April 2009 knew the basic facts but were ignorant of their significance, which only became apparent in December 2010. The Court of Appeal therefore set aside the first instance decision on the basis that a trial of the facts was required before the question could be decided.

Commentary

The decision here shows that knowledge of fault alone will not necessarily trigger the 3 year time period under S14A unless there is also an awareness that the fault has caused loss and that loss was enough to lead a “reasonable person to consider it sufficiently serious to justify instituting proceedings”. This will be decided on the facts, in each case.

Whilst the question of limitation is still to be decided following a trial of the facts, this decision is helpful to those claimants seeking to rely on the provisions of s14A of the Limitation Act 1980 to bring claims which might otherwise be considered out of time.

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