June 2013

Recovery of Costs in The Small Claims Court

On April Fool's Day, amidst much wailing and gnashing of teeth by both lawyers and clients, the Small Claims Court limit was increased from £5,000.00 to £10,000 for debt collection claims. The Government in its wisdom sees this as "a good thing" because it increases access for those who would otherwise be intimidated in an arena where the loser pays costs, whilst others, the judiciary included, are concerned that seasoned debtors and novices alike will clog up the Courts and delay payment with spurious defences that carry no costs risk except if the Court should think the Debtor had been behaving unreasonably.

Shortly before this unwelcome increase and overlooked by many, the Late Payment of Commercial Debts Regulation 2013 came into force on 16th March. Section 3 of the Regulation provided that The Late Payment of Commercial Debt (Interest) Act 1998 be amended to allow the supplier to claim the reasonable costs of the recovery not met by the compensation. Nobody yet knows what will happen when the Act as amended by the 2013 Regulation is relied upon in the Small Claims Court where the no costs rule reigns.

There is another way of avoiding the No Costs rule. In Shaw v. Nine Regions [2009] EWHC the Court awarded costs because costs were specifically recoverable under the contract between the parties. Unfortunately the recent case of Graham v. Sand Martin Heights casts doubt on the efficacy of seeking costs pursuant to a term of the contract to avoid the no costs rule in Small Claims matters.

In Graham v. Sand Martin Heights a Circuit Court judge ruled that previous case law set by Shaw v. Nine Regions [2009] EWHC was wrongly decided because the Judge in *Shaw* had failed to take into account the statutory provisions of CPR 27.14 which forbid the court awarding costs except in exceptional circumstances, and that therefore the Court had no jurisdiction to order a party to pay the other party's costs.

The above are two conflicting authorities of equal weight so again we do not know which way the judiciary will turn.

In the meantime our advice is that your clients' should have terms and conditions of business and that those terms should include costs clauses. Even if Graham v. Sand Martin Heights wins the day it would still be possible to argue that the existence of a properly drafted clause means that the case should be allocated to a Court where costs are recoverable.

As for the Late Payment of Commercial Debts Regulation 2013 – watch this space!

Matthew Halton
M&D Law LLP
Tel: 012996 436723