Leggett & Others v American International Group UK Limited

4 New Square

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Introduction

On 12 February 2025, Recorder Janet Bignell KC, sitting as a Judge of the High Court, handed down judgement in ***Leggett***. This is the latest chapter in the "Giambrone" litigation, a lengthy legal saga arising out of the disastrous "Jewel of the Sea" property development in southern Italy.

The case concerned the trial of a preliminary issue as to whether AIG, the professional indemnity insurer of Giambrone Law LLP (**"the LLP"**), was liable under the Third Parties (Rights against Insurers) Act 1930 to indemnify the 41 Claimants, who had obtained a judgment against the LLP for damages of c. €3.5m.

At the heart of the dispute was the extent to which AIG was liable for breaches of duty by Giambrone & Law (**"the Firm"**), for which the LLP was the successor practice. AIG argued that it was not, first because the liabilities of the Firm had not been effectively transferred to the LLP, and second because, in any event, those liabilities were not within the scope of cover under AIG's policy of insurance with the LLP (**"the Policy"**).

In a detailed decision, the Judge accepted that the circumstances in which the Firm's practice had been transferred to the LLP had given rise to a novation of its liabilities. However, she also found that, while the Policy provided cover for both prior and successor practices, it did not follow that it responded in this case. On proper analysis, the Policy only covered the LLP for civil liabilities arising from its *own* failure to perform legal services, rather than from the transfer to the LLP of the Firm's liabilities.

Background

As noted above, the High Court was required to determine the preliminary issue of whether AIG was liable to provide an indemnity in relation to a judgment which the Claimants had obtained against the LLP. The circumstances in which the Claimants obtained judgment were somewhat unusual. They had pursued their litigation on two fronts, bringing claims against both the Firm (and Mr Giambrone himself) directly, and the LLP. Although the claims against the Firm and Mr Giambrone were struck out for failure to comply with service provisions, that was not the end of the matter, since the Claimants obtained judgment in default of acknowledgment of service against the LLP in 2017 (it had itself been in liquidation since 2011).

The High Court had already ruled on the quantum of damages payable to the Claimants by the LLP (in a judgment of Fordham J; [2020] EWHC 724 (QB)). The issue was therefore whether AIG, as the LLP's insurer, was liable to indemnify the Claimants for those same damages under the Third Parties (Rights against Insurers) Act 1930.

Fordham J's decision drew on a previous judgment of Foskett J (in ***Various Claimants v Giambrone and Law (A Firm)*** [2015] EWHC 1946 (QB)). In that case, Foskett J held that a novation of the professional relationship from the Firm to the LLP had taken place, either by implication or conduct. Further, and perhaps surprisingly, Foskett J found that under the novation the LLP had assumed liability for the Firm's existing contractual breaches.

Fordham J adopted this analysis and gave a judgment against the LLP in respect of both its own liabilities and the liabilities of the Firm. It was this judgment which the Claimants sought to enforce against AIG under the Third Parties (Rights against Insurers) Act 1930.

The Judge's Decision

AIG's defence to the claim regarding the LLP's liability was put in two ways.

First, AIG launched a robust attack on Foskett J's original findings, and the subsequent approach of Fordham J. No tripartite agreement between the Claimants, the Firm and the LLP had ever been identified providing for the transfer of the Firm's liabilities to the LLP. Further, even if a novation had occurred, it did not follow that any such transfer had been achieved.

The Judge rejected these submissions, holding that, on the particular facts, Foskett J had been right to conclude that the novation was effective to transfer the Firm's liabilities (see [127]-[132]). There was therefore no reason why Fordham J should not have accepted and applied the same conclusion.

Second, AIG argued that, even if Foskett J had been correct, it nevertheless had no obligation to indemnify the Claimants under the Policy. This was because the liability of the LLP was not a civil liability arising from its performance of, or failure to perform, any "*Legal Services*" within the meaning of the Policy (see [137]-[139]). Rather, the LLP's liability arose by virtue of the novation from the previous, offending entity (i.e., the Firm).

On this point, AIG was successful.

The Judge acknowledged that a professional indemnity policy may cover both prior and successor practices, but it did not follow from this that an indemnity would be afforded to the latter in respect of failings of the former. A claimant must still correctly identify the offending party, and if that party is out of reach, the policy cannot "*magically have the effect of transferring liability from one to the other*" (at [158]). In this case, the Claimants had obtained judgment against the LLP, not the Firm. This was fatal to their claim under the Policy, which only provided cover to the LLP for liabilities arising from its own breaches of duty, not liabilities transferred to the LLP by way of the novation.

Comment

The judgment in ***Leggett*** raises several points of interest.

First, the decision serves as a salutary reminder to potential claimants to pick their defendant wisely. In this case, the Claimants pursued the LLP, even though they knew it was in liquidation and there was some risk that no indemnity from AIG would be obtained (see [103]). As the Judge acknowledged, the Claimants might well have been able to claim an indemnity under the Policy if they had instead obtained judgments against the Firm, given its status as a prior practice of the LLP (see [156]). The importance of identifying the right party to sue is acute in the context of today's legal marketplace, where firms routinely merge with or take over other practices.

Second, although AIG's arguments on novation failed, this issue was still an engaging aspect of the case, especially given the specific nature of the novation in question. Although the Judge declined to depart from the conclusions of Fordham J and Foskett J that a novation of the Firm's existing liabilities had taken place, the finding was a rather unusual one and reached by reference to relatively slim authority. As the Judge herself acknowledged, it is not at all common for the rearrangement of a solicitors' business to take effect by way of "*a tri-partite implied novation (or novation by conduct) between a firm, an LLP and the firm's existing clients*" (at [146]).

Third, ***Leggett*** provides an interesting example of an insurer challenging the correctness of not one, but two previous judgments of the High Court. AIG could do so on the basis that judgment between a third-party claimant and an insured is not generally binding on the insurer as to whether the insured was under a liability, or if so what the basis of the liability was (see [92]-[106]). Although these principles were common ground in ***Leggett***, they arguably exist in some tension with the wider doctrine against collateral attacks on previous judgments. As it is, ***Leggett*** is now the third High Court decision confirming the validity of the disputed novation (see [129]). Against this backdrop, outside of an appeal, it would surely test the boundaries of the doctrine if any further challenge was made in future proceedings.

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