

SAMPLE REPORT

Western Broadcasting Services v. Edward Seaga

26th FEBRUARY 2008

Description of the Case:	Affidavits – Oral evidence - Judicial decision-making – Negotiations – Proceedings – Settlement - Dispute as to whether binding compromise reached - Nature of procedure to be adopted by judge
Case name:	<i>Western Broadcasting Services v Edward Seaga</i>
Date of Judgment:	29 th March 2007
Court:	Privy Council
Judge:	Lord Bingham of Cornhill, Lord Rodger of Earlsferry, Baroness Hale of Richmond, Lord Carswell and Lord Brown of Eaton-under-Heywood
Citation:	[2007] UKPC 19

Background: The Appellant, Western Broadcasting Services Ltd, appealed against a decision that a valid and binding settlement had been reached between itself and the Respondent, Edward Seaga.

The Respondent had begun proceedings in defamation against the Appellant and others in respect of the content of a radio programme broadcast by the Appellant. The Respondent was also suing the company who had made the programme, The Break Fast Club Ltd (“the Club”), and the programme’s host, Anthony Abrahams. In the event that it accepted liability, the Appellant was contractually bound to indemnify the Club and Anthony Abrahams. In the course of a case management hearing, the Respondent had asserted that he and the Appellant had reached a binding settlement. That binding settlement was disputed by the Appellant, and the judge had directed that she would decide the issue on affidavits, without receiving oral evidence.

In the parties’ affidavits, the Respondent asserted that the negotiations were complete and that the Appellant had entered into an agreement relating solely to its own liability. The Appellant asserted in the affidavit that

negotiations were incomplete and that it could not have reached any settlement that determined its own liability without including the Club and Anthony Abrahams. One particular area of dispute concerned the extent to which the parties had agreed the terms and publication details of an apology. The judge had declared that a binding agreement had been reached between the Appellant and the Respondent, and the Court of Appeal upheld her decision.

The Appellant argued that it was unfair and prejudicial and was an abuse of the judge’s powers for her to have determined the point on affidavit evidence alone and to have declined to hear oral evidence where the affidavits disclosed significant factual conflicts. The Appellant further argued that had the judge approached the case correctly, there were still outstanding matters to be decided and it would not have been possible for her to conclude that a complete settlement had been reached.

Issue: The main issue before the Privy Council was whether a binding settlement agreement had been reached between the parties.

Held: The Privy Council observed that they were content to proceed upon the assumption that the case management powers conferred by CPR Rule 26.1¹ were broad enough to justify the judge's decision to determine the issue summarily. However, according to the Privy Council, the procedure adopted by the judge was unfair and went outside the ambit of her powers of case management. The Privy Council further stated that the judge's decision to decide the matter on the affidavits while declining to hear oral evidence did not show a proper willingness to permit cross-examination of the deponents of the affidavits. The Privy Council took the view that in the absence of cross-examination the appellate court was in no better position than the judge to assess the credibility of the respective deponents, and the Court of Appeal had been wrong to uphold the judge's factual conclusion.

The Privy Council applied *Chitty on Contracts*² and stated that while parties might reach agreement on essential matters of principle, if important points were left unsettled their agreement would be incomplete. According to the Privy Council, the instant case was not one in which it could be said that an enforceable agreement had been reached on the matters in issue, leaving the rest to be determined by further agreement or litigation. The Privy Council found that there were lacunae in the agreement that were impossible to fill. Whilst there might be cases in which the matter remaining to be negotiated was of such subsidiary importance as not to negative the intention of the parties to be bound by it. However, the instant case could not be so regarded. The Privy Council held that the content and publication of the apology were crucial, and failure to settle that essential term left the agreement incomplete for uncertainty.

Therefore, the Privy Council allowed the appeal

Significance: This case illustrates the importance of ensuring that all major terms of the settlement agreement are settled sufficiently to ensure that the agreement as a whole will be enforceable.

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¹ Rule 26.1 - Scope of this Part (1) This Part provides for- (a) the automatic transfer of some defended cases between courts; and (b) the allocation of defended cases to case management tracks. (2) There are three tracks - (a) the small claims track; (b) the fast track; and (c) the multi-track.

² *Chitty on Contracts*, 29th Ed (2004) para 2-110.