The discretion to grant negative declarations (Valley View Health Centre (a firm) v NHS Property Services Ltd)

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Dispute Resolution analysis: This case concerns the discretion to grant parties negative declarations prior to trial. The underlying claims were in respect of service charges allegedly owing by the claimants, who comprised a number of GP practices operated as partnerships. An assertion in terms of the dispute was made by the defendant's solicitors prior to issue, which was later resiled from. While the stance taken by the defendant had, to an extent, changed over time, what was key was the position as at the date of issue of the application for judgment on admissions and declaratory relief. At that point in time, the judge considered that there was no remaining dispute about the incorporation of the defendant's policy into the tenancies or retrospective variation of the tenancies. There was also no utility in granting the declarations, and good reason why it should not be granted. Accordingly, the applications were dismissed. Written by Georgia Whiting, barrister, at 4 King's Bench Walk.

Valley View Health Centre (a firm) and others v NHS Property Services Ltd [2020] EWHC 3395 (Ch) (4 December 2020)

What are the practical implications of this case?

This case provides a useful reminder of the relevant considerations in respect of an application for judgment on admissions and negative declaratory relief. In particular, the judge made clear that, as a general rule, negative declarations are to be approached with a degree of caution.

The key principles are that declaratory relief should only be granted if, and only if:

- there is a real and present dispute between the parties before the court
- the declaration would serve a useful purpose
- there are no special reasons why the declaration ought not to be granted
- the grant of a declaration is fair and just to both parties

It is also clear that, whether there is a real dispute between the parties, will be judged at the date of issue of the application for judgment on admissions and declaratory relief. Parties should be wary of making such applications where a potentially fluid position taken by the other side has in fact been properly clarified at the material time.

Of further note was the judge's reluctance to consider adding a recital to any such order, to put it into its proper context. The very fact that such a 'health warning' may have been required suggested of itself that there was a risk that the orders and declarations might be misunderstood. Consequently, any such application must be very carefully drafted, and any potential for misunderstanding the same may well serve as a persuasive reason for declining to grant such declarations.

What was the background?

This case concerned applications made by five claimants in related cases. The application in each instance was identical, with the claimants seeking judgment on admissions made within the defences to the claims and inviting the court to grant negative declarations.

The claimant in each case was a GP practice operated as a partnership from premises which were acquired by the defendant pursuant to a series of statutory transfer schemes made under the Health and Social Care Act 2012. The basis of occupation of the properties in each case was disputed, with no formal written tenancy agreements being entered into in some cases. The issue of concern in each case was the service charges that the defendant sought to recover from the claimants and other GP practices, pursuant to the defendant's Consolidated Charging Policy (the policy).

The claimants relied upon a statement made by the solicitors acting for the defendants in a letter dated 27 September 2018. They said that the policy documents:

> '[…] Provide terms incorporated into the relevant contracts where there is no express lease or where the express lease does not deal with service charges.'

The defendant's solicitors later sought to resile from that position, asserting that, by the time proceedings had been issued, the true position had been made clear. It was that apparent change of position/lack of clarity which led to the claimants issuing the CPR 8 proceedings for judgment and negative declarations.

What did the court decide?

The judge declined to make the negative declarations sought by the claimants. Firstly, the judge considered that, at the time the applications were issued, there was no dispute about the incorporation of the policy into the tenancies or retrospective variation of the tenancies. The policy was relevant to the defendant's case on service charges, but in a different way to the way that was suggested in earlier correspondence. If there was any doubt as to the defendant's position at the time when the claims were issued, then the position became crystal clear upon service of the defences. At that point in time, the defendant made it clear that the terms of the policy had not been retrospectively incorporated into the tenancies, and that the service charges under the tenancies were not calculated in accordance with the policy.

The court also considered that there was no utility in granting the declarations in the circumstances—the words used in the defences put the position clearly, and it was wrong to suggest that declarations were needed and would be useful to set GP's minds at rest.

The judge held that, even if the absence of a dispute and the lack of utility were not of themselves sufficient reasons for declining to grant the declarations, there were special reasons in the instant case as to why it would not be appropriate to grant declaratory relief. In particular, while counsel for the claimants had suggested that a recital could be included within the orders granting relief to put the orders in their proper context, this would not be appropriate. Indeed, the fact that such a 'health

warning' might be necessary for the orders, suggested of itself that there was a risk that the orders and declarations may be misunderstood.

Looking at the claims and applications in the round, as well as the requirements of justice, there was no compelling case for the granting of the declarations. Instead, there was good reason not to do so, and the applications were accordingly dismissed.

Case details:

- Court: Business and Property Courts of England and Wales, Property, Trusts and Probate List, High Court of Justice
- Judge: Chief Master Marsh
- Date of judgment: 4 December 2020

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