

CIVIL PROCEDURE 2

354. Admissions – limitations – attempt to resile from admission of liability – certainty of litigation under Civil Procedure Rules 1998

[Civil Procedure Rules 1998 (SI 1998 3132) Part 14. r.14.1 (5).]

H was involved in a road traffic accident in February 1996 when after braking successfully to avoid a car which had pulled into his path, HLBC's lorry drove into the rear of his vehicle. The offending car was not traced. HLBC's insurer subsequently admitted liability in an open letter and H indicated that he would therefore take no further steps on liability. Negotiations ensued and protective proceedings were issued in February 1999. The admission of liability was relied upon in the particulars of claim. The defence, served April 1999, denied liability on the basis of undetectable brake failure. Directions were given for a preliminary hearing as to whether HLBC should be allowed to resile from its earlier admission. H sought to rely on the admission on the basis that if the brake failure had been raised before the expiry of the three year limitation period for a claim against the Motor Insurer's Bureau, H would have had an alternative avenue, which had been lost. HLBC sought to rely upon *Gale v. Superdrug Stores Plc* [1996] 1 W.L.R. 1089, [1996] C.L.Y. 759 supporting the right of a litigant to change his or her mind. The basis of HLBC's submission was that, according to the law prior to the coming into effect of the Civil Procedure Rules 1998, a claimant had a right to withdraw from an admission unless the person relying upon it was able to establish very significant prejudice.

Held, determining the preliminary issue in favour of H, that *Gale* distinguished, did not survive the coming into force of the Rules as their purpose was to make litigation more certain. Part 14 r.14.1 (5) gave the court the power to permit a party to withdraw from an admission, the burden resting upon the party applying. Reference was also made to the PI protocol which indicated that protocol admissions were expected to hold good.

HACKMAN v. HOUNSLOW LBC, December 1, 1999, Judge A Thompson Q.C., CC (Portsmouth). [*Ex rel.* Steven Weddle, Barrister, Hardwicke Building, New Square, Lincoln's Inn, London].

355. Admissions – right to resile from mistaken admission of liability – prejudice

S suffered an injury in the course of his employment when he was hit by an excavator bucket operated by an employee of DJ. S commenced proceedings for personal injuries against DJ who denied any responsibility for the accident. Upon receipt of the summons, DJ forwarded the proceedings to its insurers, BA. BA instructed solicitors, BM, to act on the company's behalf and BM subsequently wrote to S admitting liability. After the accident, but before the admission had been made, DJ sold its assets, but did not transfer any liabilities, to another company, D, and also changed its name to TD. D later changed its name to DJ, on behalf of which the admissions were later made, although in law any liability to S lay, in reality, with TD which subsequently became insolvent. TD was later added in to S's claim as second defendant and an order made that both DJ and TD were jointly and severally liable to compensate S. DJ appealed, contending that (1) BM had never had actual authority to make an admission of liability, and (2) that the company should have been permitted to resile from the admissions made on the basis that S had not suffered any prejudice.

Held, dismissing the appeal, that (1) BM had had actual authority to make admissions, having been instructed by the insurers and having liaised with the general manager of DJ. Even if BM had not had actual authority they would in any event have had ostensible authority to make admissions on behalf of DJ, and (2) there had been serious prejudice to S because in reliance upon the admissions made, S did not avail himself of the opportunity to ascertain the true situation and protect his interests accordingly, *Gale v. Superdrug Stores Plc* [1996] 1 W.L.R. 1089, [1996] C.L.Y. 759 considered.

SOLLITT v. DJ BROADY LTD [2000] C.P.L.R. 259, Lord Bingham of Cornhill, L.C.J., CA.