

The Shorter Trials Scheme pilot: First case determined

The Shorter Trials Scheme (STS) pilot, which commenced on 1 October 2015, is operating in the Rolls Building Courts until 30 September 2018. Judgment has now been given following the first trial to take place under the scheme. The value of the dispute was US\$68M and it concerned discrete issues of contractual interpretation which were resolved by the Commercial Court within just nine months of the claim being commenced. The Judgment, which was handed down just two weeks after the trial, indicates that even for high-value disputes, lengthy litigation and significant costs are not always necessary for a resolution to be reached.

The Shorter and Flexible Trial Procedure Guide notes that the aim of the STS (together with the Flexible Trial scheme, also operating in the Rolls Building for the same period) is to achieve “*shorter and earlier trials for business related litigation*”, at a “*reasonable and proportionate cost*”. The pilot is intended to be a step in the direction of what is hoped will be a wider cultural change in the way in which litigation is conducted. Indeed, as noted in the Guide, full disclosure and a full, oral trial is not always necessary to achieve justice between the parties.

Disputes in the STS pilot are conducted in accordance with CPR Practice Direction 51N and are to be case managed by docketed Judges.

Applicability of the Shorter Trials Scheme Pilot

There are cases which are obvious candidates for taking advantage of STS pilot. PD 51N (paragraph 2.3) expressly excludes certain categories of cases which are eminently unsuitable for the scheme, which includes cases involving fraud and dishonesty.

The disputes which may benefit from the STS pilot are those concerning either a single or small number of issues (usually involving just two parties) which potentially can be determined without a requirement for extensive disclosure and/or reliance on extensive

witness or expert evidence. Consequently, preparation for trial should be relatively straight-forward and parties should be ready for trial within eight months of the case management conference. Trial of the issue(s) should be complete within four days.

The case of *National Bank of Abu Dhabi PJSC and BP Oil International Ltd [2016] EWHC 2892* is the first case to have been to trial in the STS pilot and Judgment was handed down at the end of November. The case has all the hallmarks of a dispute which might benefit from the scheme.

The National Bank of Abu Dhabi PJSC (“**the Claimant**”), claimed compensation for breach of warranty and representation against BP Oil International Ltd (“**the Defendant**”), in the sum of US \$68,881,854.62. The facts were reasonably simple and not disputed. The Defendant sold to the Claimant 95% of a receivable due to it from a third party debtor. The sale was recorded in a purchase letter, pursuant to which almost all of the credit risk of the third party passed to the Claimant and the Defendant received a cash advance in respect of the receivable in advance of the due date of payment.

In the purchase letter, the Defendant agreed that it had made an irrevocable equitable assignment of the receivable to the Claimant. Further, it represented and warranted that it was not prohibited by any “*security, loan or other agreement*” from disposing of the receivable and that in doing so, it did not “*conflict with any agreement binding on*” the Defendant. In fact, there was a prohibition on assignments of rights or obligations in the terms of the agreement between the Defendant and the third party debtor, without the debtor’s written consent.

The case concerned a single issue of interpretation, which was whether or not the existence of the prohibition on assignment (which was not in issue and common ground between the parties) meant that the representation given by the Defendant to the Claimant in the purchase letter was false. In order to determine

this issue, the Court had only to look substantively at two contractual documents - the purchase letter and the underlying agreement with the third party debtor. In fact, the Court had to consider just three clauses in the documents - namely, the prohibition on assignment, the purported assignment to the Claimant and the representation and warranty given by the Defendant. Consequently, there was no need for witness evidence and disclosure was very limited.

The Judge held that the Defendant was liable to the Claimant for a breach of warranty and false representation in circumstances where there was a clear prohibition on assignment of the debt in issue and the Defendant was ordered to pay to the Claimant US\$68,881,854.62 together with interest to date. The Judge directed that the parties should try and agree costs so far as possible, failing which costs will be generally assessed on a summary basis.

How do you start or transfer a claim to the Shorter Trials Scheme pilot?

Claims in the STS must be issued in the appropriate registry in the Rolls Building - the Chancery Division, the Admiralty and Commercial Court or the Technology and Construction Court. At pre-action stage, the letter of claim should notify the proposed defendant of the intention to adopt the STS scheme. The defendant must then confirm, within 14 days, whether it agrees or opposes (or whether in fact it does not wish to commit either way at that early stage).

There are also provisions in PD 51N which enable parties to apply to transfer a case into the STS by way of a Part 20 application, normally not later than the first CMC. The Court might, of its own initiative, “suggest” that a case should be transferred into the STS. In deciding whether to transfer a case, a judge will consider not just the suitability of the case for the scheme but also the wishes of the parties.

If statements of case have already been served at the time of transfer, they may need to be amended so they are in a form appropriate for the STS (which notably, limits Particulars of Claim to no more than 20 pages).

Was the case under the Shorter Trials Scheme pilot a success?

If the success of the case is to be measured against the aims of the scheme, it should be heralded as a success. The dispute appears to have been resolved as envisaged by the STS and on a much more commercial timescale than would otherwise be possible in the RCJ. It took just nine months from commencement of the action for it to come to trial and the dispute was heard in one day, on 7 November. Judgment was delivered within two weeks of the hearing.

Each party’s costs in the proceedings are estimated at approximately £350,000, seemingly both reasonable and proportionate, particularly in circumstances where the sums in dispute exceed US\$68million.

Mrs Justice Carr congratulated the parties on their “*co-operative spirit*” which she said resulted in an “*effective and speedy process*”. The willingness of the parties to identify the real issues in dispute and to ensure they are dealt with in the most efficient way, is crucial to the success of the scheme.

For more information about this update, please contact:

Ruth Malone

Of Counsel, London

E: rmalone@mayerbrown.com

T: +44 20 3130 3207

Gemma Rochelle

Senior Associate, London

E: grochelle@mayerbrown.com

T: +44 20 3130 3473

Americas | Asia | Europe | Middle East | www.mayerbrown.com

MAYER • BROWN

Mayer Brown is a global legal services provider advising many of the world’s largest companies, including a significant portion of Fortune 100, FTSE 100, CAC 40, DAX, Hang Seng and Nikkei index companies and more than half of the world’s largest banks. Our legal services include banking and finance; corporate and securities; litigation and dispute resolution; antitrust and competition; US Supreme Court and appellate matters; employment and benefits; environmental; financial services regulatory and enforcement; government and global trade; intellectual property; real estate; tax; restructuring, bankruptcy and insolvency; and wealth management.

Please visit www.mayerbrown.com for comprehensive contact information for all Mayer Brown offices.

Mayer Brown comprises legal practices that are separate entities (the “Mayer Brown Practices”). The Mayer Brown Practices are: Mayer Brown LLP and Mayer Brown Europe-Brussels LLP, both limited liability partnerships established in Illinois USA; Mayer Brown International LLP, a limited liability partnership incorporated in England and Wales (authorized and regulated by the Solicitors Regulation Authority and registered in England and Wales number OC 303359); Mayer Brown, a SELAS established in France; Mayer Brown Mexico, S.C., a sociedad civil formed under the laws of the State of Durango, Mexico; Mayer Brown JSM, a Hong Kong partnership and its associated legal practices in Asia; and Tauil & Chequer Advogados, a Brazilian law partnership with which Mayer Brown is associated. Mayer Brown Consulting (Singapore) Pte. Ltd and its subsidiary, which are affiliated with Mayer Brown, provide customs and trade advisory and consultancy services, not legal services.

“Mayer Brown” and the Mayer Brown logo are the trademarks of the Mayer Brown Practices in their respective jurisdictions.

© 2017 The Mayer Brown Practices. All rights reserved.

Attorney advertising. Prior results do not guarantee a similar outcome.