



Neutral citation [2017] CAT 18

IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1266/7/7/16

Victoria House
Bloomsbury Place
London WC1A 2EB

21 July 2017

Before:

THE HON. MR JUSTICE ROTH
(President)

Sitting as a Tribunal in England and Wales

BETWEEN:

WALTER HUGH MERRICKS CBE

Applicant/
Proposed Class Representative

- and -

(1) MASTERCARD INCORPORATED
(2) MASTERCARD INTERNATIONAL INCORPORATED
(3) MASTERCARD EUROPE S.P.R.L.

Respondents/
Proposed Defendants

RULING

APPEARANCES

Ms Marie Demetriou QC and Mr Paul Harris QC (instructed by Quinn Emanuel Urquhart & Sullivan UK LLP) appeared on behalf of the Applicant/Proposed Class Representative.

The Respondents/Proposed Defendants did not attend and were not represented.

1. An urgent application has been made at extremely short notice on behalf of the Applicant, Mr Merricks, that the Tribunal should delay handing down its judgment in this matter disposing of the substantive application for a collective proceedings order.
2. This application was made by letter from the Applicant's solicitors received just before 9.30 this morning, and Ms Demetriou QC, who as I understand it has been instructed at very short notice, helpfully attended the Tribunal to pursue that application. The only ground put forward is a concern that because the claims were issued at the very end of the limitation period, if the Applicant should decide to seek permission to pursue proceedings for judicial review of this Tribunal's decision, and if such permission should be granted, and if, thirdly, those proceedings should be successful, it would then be too late to commence fresh proceedings before the Tribunal under sect 47B of the Competition Act 1998.
3. If it were a case of commencing fresh proceedings, no doubt it would indeed then be too late. But the remedy by way of judicial review would be a quashing of the decision of the Tribunal. The decision of the Tribunal will be a decision pursuant to sect 47B(4) of the Act, refusing to grant an order that the collective proceedings "may be continued". Those proceedings had already been commenced under sect 47B(2) prior to the application for such an order. If the Tribunal's decision is quashed, it seems to me self-evident that the matter then may be brought back on the existing claims, as an application before the Tribunal again for an order under sect 47B(4), unless indeed the matter is determined dispositively by the High Court, or any further appellate court, in dealing with the judicial review.
4. Accordingly, it seems to me that this whole application is not only extremely late but also misconceived.
5. I should add that if a party has concerns about the handing down of a judgment, it is the normal practice of the Tribunal to send the judgment in draft to the parties' solicitors for any proposed corrections and so that they can raise any concerns about confidentiality. That practice was followed in this case. An embargoed copy of the draft judgment was made available on 14 July 2017. The Applicant's solicitors responded by letter to the Tribunal on 18 July 2017. There is no suggestion in that

letter, which dealt with various matters in the draft judgment, that there was a problem with the handing down, and the parties' solicitors were informed later on 18 July that the judgment would be handed down at 11 am today. I am told that it was only late last night that any thought that there might be a problem of the kind I have outlined occurred to the Applicant's solicitors. For the reasons I have explained, their initial instinctive reaction that there is no such problem is, it seems to me, correct. The present application was made in a hurry on a mistaken basis, and is dismissed.

6. Accordingly, the judgment will be handed down.

The Hon. Mr Justice Roth
President

Charles Dhanowa O.B.E., Q.C. (*Hon*)
Registrar

Date: 21 July 2017