



21 May 2021

PRESS SUMMARY

Matthew and others (Appellants) v Sedman and others (Respondents)

[2021] UKSC 19

On appeal from: [2019] EWCA Civ 475

JUSTICES: Lord Hodge (Deputy President), Lady Arden, Lord Sales, Lord Burrows, Lord Stephens

BACKGROUND TO THE APPEAL

This appeal concerns the calculation of limitation periods. The issue is whether, where a cause of action accrues at, or on the expiry of, the midnight hour at the end of a day, the following day counts towards the calculation of the limitation period.

The appellants are the current trustees of a trust (the “**Trust**”). They replaced the respondents, who were the trustees of the Trust until their retirement in 2014. The Trust had a shareholding in Cattles plc, a listed company. In April 2008, Cattles plc published an annual report and a rights issue prospectus containing misleading information. Trading in Cattles plc’s shares was subsequently suspended, and in February 2011, schemes of arrangement were approved in respect of Cattles plc and a subsidiary, Welcome Financial Services Ltd (“**Welcome**”). A scheme of arrangement, in this context, is a court-sanctioned agreement between a company and its creditors. Because of the misleading information in the annual report and prospectus, the Trust had a claim against Cattles plc and Welcome under the schemes. Under the scheme of arrangement in relation to Welcome (the “**Welcome Scheme**”), a valid claim could have been made up to midnight (at the end of the day) on Thursday 2 June 2011.

The respondents did not make a claim in the Welcome Scheme on or before 2 June 2011. The appellants therefore commenced proceedings in negligence and breach of trust against the respondents (the “**Welcome Claim**”) by a claim form issued on Monday 5 June 2017. Under the Limitation Act 1980, actions brought in tort, contract, and breach of trust cannot be brought after the expiration of six years from the date on which the cause of action accrued. The respondents contend that the Welcome Claim was issued out of time and is therefore statute-barred.

The issue in this appeal, therefore, is whether Friday 3 June 2011, the day which commenced immediately after the expiry of the midnight deadline for bringing a claim in the Welcome Scheme, counts towards the calculation of the six-year limitation period. If Friday 3 June 2011 is *included*, the limitation period expired six years later, at the end of Friday 2 June 2017. In that case, the Welcome Claim was brought out of time. If Friday 3 June 2011 is *excluded*, then the limitation period expired six years later, at the end of Saturday 3 June 2017. However, in order to bring the Welcome Claim, a claim form must be issued. That can only be done when the court office is open. The office is shut at the weekend. The parties therefore agree that if Friday 3 June 2011 is excluded, the final day on which proceedings could be brought is Monday 7 June 2017. In that case, the Welcome Claim was brought within the six-year limitation period and is not statute-barred.

The Court of Appeal held that Friday 3 June 2011 should be included in the limitation period. It accepted that in cases where a cause of action accrues part-way through a day, that day is ignored in the calculation of time for limitation purposes. But a different rule applies where the cause of action accrues *at*, not *after*, midnight (a “**midnight deadline case**”). In a midnight deadline case, the day following the expiry of

the midnight deadline should be included for limitation purposes, as it is a whole day. The Welcome Claim was therefore brought out of time. The appellants appeal against that decision.

JUDGMENT

The Supreme Court unanimously dismisses the appeal. In a midnight deadline case, there is a complete undivided day following the expiry of the deadline, which should be included when calculating the limitation period. The Welcome Claim was therefore brought out of time. Lord Stephens gives the only judgment, with which all members of the Court agree.

REASONS FOR THE JUDGMENT

The appellants primarily relied on four authorities to establish what they submitted was a long-standing rule that the day on which a cause of action accrues should be excluded from the calculation of a limitation period. On analysis, those cases indeed establish a general rule that where a cause of action accrues part-way through a day, that day is excluded for limitation purposes. However, none of them considered the position in relation to midnight deadline cases, where in practical terms the day of accrual is a complete undivided day [25]-[29].

The only midnight deadline case is *Gelmini v Moriggia* [1913] KB 549. In *Gelmini*, the High Court held that as a cause of action could be brought throughout the day following the expiry of the midnight deadline, that day should be included for limitation purposes. *Gelmini* therefore ought to be viewed as an exception, applicable in midnight deadline cases, to the general rule that the day of accrual is normally excluded for limitation purposes [30]-[33]. *Gelmini* was correctly decided. To the extent it was disapproved in later cases, it ought to have been distinguished as laying down an exception to the general rule [34]-[41].

There are conflicting views as to the date on which a cause of action accrues in a midnight deadline case. But whether the cause of action accrued at the expiry of 2 June 2011 or at the very start of 3 June 2011 there is no significant difference, in that 3 June 2011 was for practical purposes a complete undivided day [46].

The reason for the general rule that the day of accrual of the cause of action should be excluded from the reckoning of time is that the law rejects a fraction of a day. The justification for that rule is straightforward; it is intended to prevent part of a day being counted as a whole day for the purposes of limitation, thereby prejudicing the claimant and interfering with the time periods stipulated in the Limitation Act 1980. However, in a midnight deadline case, even if the cause of action accrued at the very start of the day following midnight, that day was, for practical purposes, a complete undivided day. Realistically, there is no fraction of a day. The justification in relation to fractions of a day therefore does not apply in a midnight deadline case [47].

The effect of excluding a full undivided day in a midnight deadline case from the calculation of time would be to give the claimant the benefit of a limitation period of six years and one complete day. That would distort the six-year limitation period laid down by Parliament, and would prejudice the defendant by lengthening the statutory limitation period by a complete day. Accordingly, here, because Friday 3 June 2011 was a whole day, it should be included in the calculation of the limitation period. The Welcome Claim was therefore brought out of time [47]-[49].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

<http://supremecourt.uk/decided-cases/index.html>