Sanctions

It was inevitable. At least we had some warning that change was “gonna” come. Well I sense that it is here. “What?” I hear you cry.

The changes to the Royal Court Rules last year and the implementation of the “Overriding Objective” always had the potential to reap further misery upon us litigators. Well, it seems that this has now come to pass. The honeymoon period is over. Of course, for our English and Welsh legal brother and sisters this has been in play for nearly two decades.

I must be very careful with my words. You may recall Woody in Toy Story advising the horrible Sid that: “*We toys can see everything*”. Well, so can the Master of the Royal Court and contrary to Woody’s advice, he may not play nice if I am too critical!

What has come to pass? Sanctions. The Summer ended with the Master giving Judgment on an application to grant an extension of time. He did grant the extension but ordered costs to be paid by the defaulting party on the “indemnity” basis. The reason for such sanction was because of conduct. The Master warned “*the overall conduct of [the party] in relation to non-compliance with the orders... was not acceptable and justifies the Court expressing its displeasure*”. Its displeasure! This is the start litigators. It will get worse. However, do not fear. “*Fear is the path to the dark side*”. Just make sure that you comply with orders (which, of course, you have to in any event). The concern is that such a regime does not let arguments naturally flow and often reach a natural conclusion with the passage of time. This is when it gets costly. If you cannot comply with an order then get in early to make the Court aware of your failings. You do not want to incur the Master’s wrath.

Speaking of the Master, in a recent Judgment in which he threw out a claim because, amongst other factors, it had not progressed quick enough (another sanction), he made an interesting comment on the position of members of the public attending local sport centres. The case involved an unfortunate incident at Springfield Stadium. A poor lady slipped while descending some stairs. One of the issues raised was whether the Plaintiff had a claim in contract against the States as she had paid a fee for the exercise class, for which she was attending the Stadium.

Given that the Plaintiff had finished her class and was leaving the premises when she fell, the Master concluded that she was an “invitee” in that she was someone who was allowed on the premises for a specific purpose i.e. to attend a class for which she paid. He was not persuaded by the contract point.

So for all you gym bunnies and others, be aware when attending States-run premises.

I wish you and, of course, all those working in the Court/Tribunal system a very “Merry Christmas!” What a creep!