

What is a 'reasonable' disclosure search?

Atrium Training Services Ltd (In Liquidation) [2013]
EWHC 2882 (Ch)

Simon Davenport QC and **Daniel Lewis** appeared for the respondent liquidators in this matter regarding the obligations under an unless order requiring disclosure.



The liquidators had brought actions against the former company directors in respect of alleged fraudulent trading and trading whilst insolvent. There had been many documents that were potentially relevant for disclosure. The liquidators had thus proposed an e-disclosure method, to which the applicants had not objected. An e-disclosure document provider (U) scanned and uploaded hard copy documents into a database which was subsequently searched for relevant documents. U's paralegals then produced a list of relevant documents. The court made an unless order requiring disclosure by a certain date, and the disclosure lists were served on time.

It then transpired that two categories of relevant documents were mistakenly missing from the liquidators' disclosure list. The liquidators produced a supplementary list after the disclosure date.

The Court refused the company directors' application to strike out the claim. It held that the primary obligation imposed on the liquidators by the order had been to conduct a reasonable search and list the relevant documents, namely those complying with CPR r.31.6, found in that search. That was to be done in a reasonable manner, reasonableness depending on the factors in r.31.7(2). Although a search not carried out in good faith would not be reasonable, a search conducted in good faith which was fair and proportionate given the number of documents, the nature and complexity of the case, the ease and expense of retrieval and the significance of any document likely to be located, would be reasonable and compliant.

To show that a disclosing party was in breach, it was not enough merely to show that it had within its control relevant documents which were not mentioned in the list. It would have to be established that no reasonable search had taken place. The deficiencies relied on had to be significant enough to support this conclusion.

The Court also rejected the applicant's contention that PD31B did not apply because the documents were in fact hardcopies uploaded for an e-search. Whilst a document held as a piece of paper was not an electronic document, here the applicants had not objected to e-disclosure or the method used. PD31B applied.

This case provides welcome clarification on when the courts may find that a disclosing party in its breach of its disclosure obligations. It also provides guidance on the application of CPR Practice Direction 31B regarding disclosure of electronic documents.

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