

## Claiming Defeat

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### *Service of time critical notices including court proceedings, whilst seemingly straightforward, is full of traps for the unwary.*

The case of *Bec Construction Limited v Melt Hythe Limited* considered whether a claim form had been served effectively. The claim itself concerned payments of outstanding sums due under a building contract. An adjudication had found in the Bec's favour, following which Bec had issued court proceedings. Upon the defendant's solicitors failing to file an Acknowledgment of Service within the required timescales, Bec obtained Judgment in Default. The defendant sought to have the judgment set aside on the grounds that the claim form had not been validly served.

The Civil Procedure Rules allow for various methods of service of a claim form which includes "Delivery of the document to or leaving it at the relevant place". The Rules further allow for service upon a company registered in England and Wales at its "principal office of the company; or any place of business of the company within the jurisdiction which has a real connection with the claim".

In this case, a Mr Barlow was tasked with service of the claim form at defendant's registered office. That was also the address given for the defendant in the building contract. However, the defendant shared the premises with a dental practice and one of the directors of the dental practice was also a director of the defendant company. On entering the premises, Mr Barlow went to the reception desk and gave the name of the defendant. The receptionist was employed by the dental practice, not the defendant. It was not clear what the receptionist said in response but Mr Barlow duly left the documents on the reception desk. These were then passed to the defendant two days later, who instructed solicitors to file an Acknowledgement of Service. The deadline fell on a Friday. The solicitors missed this but filed it on the Monday, however on the same day Bec applied for and obtained Judgment in Default. The defendant argued that Bec had effected personal service upon an employee of the dental practice and, as such, it was personally served on someone other than a person connected with Bec. The judge disagreed. He said that the evidence showed that the documents had been placed on the reception desk (although he didn't think leaving the documents with the receptionist would make any difference).

He noted that good service could have been obtained by putting the documents just inside the door, or leaving them unattended on the counter. It was wrong for Bec to be prejudiced because Mr Barlow had, in fact, gone further than this to try to ensure the documents were brought to someone's attention rather than risk being mislaid.

A further argument was that the "*relevant place*" must be the right address and where you have multiple businesses operating out of the same address, documents have to be taken to the right reception desk. An analogy was given of premises with a coffee shop on the ground floor and other businesses above. It would not be good service to leave documents with the coffee shop if serving a business on the fifth floor. The judge recognised that this argument had merit but not on the facts of this case. There defendant's address as recorded at Companies House did not distinguish a separate area of the premises designated to it, nor was there any evidence before the court of such distinction on site.

Aside from being a salutary reminder of the need to comply with the strict time limits of court procedure, occupiers of multi-let premises should ensure accurate and concise recording of their registered office address at Companies House and have a clear policy governing the acceptance of documents served by hand.

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