

UK High Court Rules That “Without Prejudice” Correspondence should be Disclosed

In *Avonwick Holdings Ltd –v- Webinvest Ltd* 2014 Chancery Division concerning a dispute over the terms of a company loan the issue arose during the proceedings as to whether the Claimant could apply for disclosure of certain correspondence which had been marked “Without Prejudice” by the lawyers for the parties.

The Court accepted that the marking of a document “Without Prejudice” was a strong indication that it applied but it was not conclusive. The Court pointed out that in the normal course of events, an experienced litigation solicitor, would only use the expression “Without Prejudice” in circumstances where it was justified to do so. The Court pointed out that as part of a genuine attempt to resolve disputes “Without Prejudice” can be used. However, as pointed out by the House of Lords in *Bradford and Bingley –v- Rashid* in 2006 it was essential for there to be a real dispute capable of settlement in the sense of a compromise. The Court held that discussions as to how an admitted liability was to be paid, for example could not therefore be covered. In this case the Court held that throughout the period of the relevant correspondence no dispute had in fact existed between the parties as the liability had been admitted. It followed accordingly that in accordance with established authority, the relevant correspondence was not covered by the “Without Prejudice” privilege and was therefore admissible evidence which should be disclosed.

This case is a reminder that the phrase “Without Prejudice” should be used with caution.