



**IN THE COURT OF APPEAL, CIVIL DIVISION
APPLICATION FOR A SECOND APPEAL**

REF: B3/2017/0083



Wiseman -v- Marstons PLC t/a Marstons Inns & Taverns

Decision on an application for a second appeal. The Judge will not give permission unless he or she considers that (a) the appeal would i) have a real prospect of success; and ii) raise an important point of principle or practice; or (b) there is some other compelling reason for the Court of Appeal to hear it.

ORDER made by the Rt. Hon. Lord Justice Jackson

On consideration of the appellant's notice and accompanying documents, but without an oral hearing, in respect of an application for permission to appeal

Decision: granted, refused, adjourned. An order granting permission may limit the issues to be heard or be made subject to conditions.

Refused.

Reasons

1. The error made by the claimant's solicitor was not an abuse of process. It was quite unlike that in *Lewis v Ward Hadaway*, where there was deliberate conduct designed to avoid paying the correct fee.
2. The claimant applied promptly to amend and tendered the correct court fee. Whilst the court nowadays quite properly adopts a more restrictive approach towards allowing amendments, it was obviously appropriate to grant this particular application, essentially for the reasons given by HHJ Robinson.
3. This appeal has no real prospect of success. Furthermore, it does not satisfy the second appeals test. The proposed appeal does not raise any important point of principle or practice. There is no "other compelling reason" why the Court of Appeal should devote time and resources to dealing with it.

Information for or directions to the parties

This case falls within the Court of Appeal Mediation Scheme automatic pilot categories*. Yes No
 Recommended for mediation Yes No

If not, please give reason:



Where permission has been granted, or the application adjourned

- a) time estimate (excluding judgment)
- b) any expedition

Signed: *Rupert Jackson*
Date: 23.05.2017

Notes

- (1) Permission to appeal will only be granted in respect of second appeals if the court considers that:
 - (a) the proposed appeal would raise some important point of principle or practice, or
 - (b) there is some other compelling reason for the relevant appellate court to hear the appeal.
 In respect of second appeals from the county court or High Court, see CPR 52.7.
 In respect of appeals from the Upper Tribunal, see Article 2 of the Appeals from the Upper Tribunal Order 2008 (SI 2008 2834).
- (2) Where permission to appeal has been refused on the papers, that decision is final and cannot be further reviewed or appealed. See rule 52.5 and section 54(4) of the Access to Justice Act 1999.
- (3) Where permission to appeal has been granted you must serve the proposed bundle index on every respondent within 14 days of the date of the Listing Window Notification letter and seek to agree the bundle within 49 days of the date of the Listing Window Notification letter (see paragraph 21 of CPR PD 52C).

By the Court

**DATED 23RD MAY 2017
IN THE COURT OF APPEAL**

ORDER

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