

## *HERRICK BROWN & Company Ltd.*

Single Joint Expert (SJE) in a dispute between a web site developer and the client.

I was appointed by the parties at the suggestion of the County Court.

The claimant business had entered in to a contract with a web hosting and software development business to have a web sales site created so that it could develop a relationship with its customers and enable them to shop on-line; and had paid part of the agreed price.

The defendant was a director of the web hosting and software development business, which went in to liquidation before the contract with the claimant was completed.

The claimant and the defendant entered in to a second contract; for the defendant and a colleague to complete the development of the web site. Again, the claimant paid part of the fee.

The claimant's case was that the web site was not completed and was not usable.

The defendant claimed: That it was not his responsibility as his colleague, with whom he had lost contact, was supposed to be doing the work. That the defendant had not set up the necessary banking arrangements for processing the on-line payments. That the site was in all other respects complete and operational.

The evidence available to me included:

Printouts of e-mails provided by the claimant. Printouts of e-mails provided by the defendant.

Information from the claimant's Internet Service Provider (ISP) and files that I recovered from the ISP's web server hosting what passed for the claimant's web site.

Responses from the parties to questions put to them by me through their solicitors.

The claimant did not provide me with evidence that it had made banking arrangements for processing on-line payments.

Comparing the two sets of e-mail printouts showed that the majority of the messages were present in both sets, and were therefore genuine. The period covered was six months, and the first message was dated shortly after the date of the second contract. The more technical messages were between the missing colleague and the claimant. The 'progress chasing' messages were between the defendant and the claimant.

The content of the messages showed that considerable progress had been made with the development of the site.

Some of the messages referred to problems with the off-the-shelf shopping cart software that was to be used to process the transactions, and which had been specified and supplied by the claimant.

The development and testing of the web site was done on a development web server identified in the e-mail messages.

The messages also showed that the relationship between the parties became somewhat strained.

The evidence from the claimant's ISP and the ISP's web server computer showed that contrary to the defendants' evidence, the web site at the core of the dispute had not been uploaded to the ISP's web server.

The e-mail addresses used by the claimant showed that he still used an address associated with the failed business. Searches of the internet domain registries showed that the e-mail address was associated with an on-going software business operating in the area of the Court. The domain name of the development web server was also associated with the on-going business.

The Court found in favour of the claimant and awarded it its claim in full; for return of the monies paid, an amount for loss of business, plus interest, and costs.

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