

CASE NOTE: *ROBIN TURPIN (1) JANE TURPIN (2) v TUI UK LIMITED (2020)*

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The Appellants had originally brought a claim against the Respondent for damages as a result of food poisoning sustained during their package holiday in Greece. They had observed during their holiday that the hotel they stayed in appeared to have a significant fly problem, which they considered had caused their food to become contaminated. Consequently, the Appellants fell ill approximately five days into the holiday. The First Appellant sought medical attention during the holiday from a medical centre, where he was subsequently provided with antibiotics and diagnosed with viral gastroenteritis. Upon their return to the UK, the First Appellant posted a TripAdvisor review, commenting on the fly problem and their illnesses. That review, as well as reviews by other guests, were responded to by the hotel's management team, who explained in several posts that the '*right pesting*' had since been undertaken and the situation rectified.

Both Appellants obtained medical evidence from a gastroenterologist, who concluded that the likely source of their infection was contaminated food as a result of poor hygiene standards in the hotel. Neither Appellant had a confirmed pathogen. When referred to the diagnosis of viral gastroenteritis by the Greek doctor, the Appellants' medical expert responded in Part 35 questions that it was not possible to make an accurate diagnosis of gastroenteritis from symptoms alone, and that the duration of symptoms after the Greek doctor's consultation made a viral illness less likely.

The Respondent did not obtain expert evidence at trial from a gastroenterologist. However, the Respondent relied on an audit which took place during the Appellants' holiday, which gave a 100% score for food safety and noted no critical defects or evidence of pests.

The Appellants were cross-examined at trial in respect of their illnesses. Criticism was made of the First Appellant, as the date of onset of illness was reported as being the 6th June 2017 in his TripAdvisor review, however was stated as the 5th June 2017 in the pleadings and in his witness statement.

The Respondent's witnesses did not give live evidence. One key issue between the parties concerned a note from the medical centre in Greece, which had only been disclosed in the course of Part 35 questions. That note was dated 23 months after the First Appellant's visit to the medical centre and suggested that the centre had a follow-up phone call with him the next day, where he allegedly said he was '*very much improved*'. The First Appellant denied receiving such a call in his oral evidence. No information was provided as to why the note was dated some 23 months after the First Appellant's illness had arisen.

The claims were dismissed at trial. The trial Judge did not consider causation had been made out and was particularly critical of the Appellants' expert evidence. The trial Judge noted the Appellants' expert had not commented on the audit report and was critical of the same. The trial Judge found, on the basis of the note from the medical centre, that the phone call to the First Appellant did happen as there was '*no good reason why the doctor would seek to place an entry on a contemporaneous medical report if in fact it did not happen*'. The trial Judge further stated that he did not find that the Appellants' illnesses were caused by the Respondent's actions, as the food hygiene report had a score of 100%.

The Appellants thereafter appealed the decision. The appeal came before HHJ Walden-Smith at Cambridge County Court and judgment was delivered after the decision of *Griffiths v TUI* [2020] UKHC 2268 was handed down.

HHJ Walden-Smith found for the Appellants on each of the four grounds of appeal and judgment was subsequently entered for the Appellants. It was noted that it was not appropriate for the Respondent to criticise the Appellants' expert for failing to comment on the audit, when she had not been asked to do so. HHJ Walden-Smith considered that the trial Judge had erred in not giving the evidence of the Appellants' medical expert the weight it deserved and placed too much weight on the note from the medical centre and the audit.

This judgment is an important reminder of the necessary weight which should be attached to live evidence at trial and expert evidence, in comparison to documentary evidence which no witness can attest to at trial. For some time, the decision of *Wood v TUI* [2017] EWCA Civ 11 has led to County Court Judges handing down judgments in food poisoning cases which apply

the obiter in *Wood* so strictly as to produce unjust results. This decision, along with *Griffiths*, is certainly a welcome one for claimants in such claims.

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