

High Court strikes out economic tort claim

03/08/2017 (EU/Competition)

On 2 August 2017, Roth J handed down judgment in *The Secretary of State for Health and Ors v Servier* [2017] EWHC 2006 (Ch), in which he struck out the Claimants' claim based on the tort of causing loss by unlawful means.

The Claimants allege that Servier took various steps to delay generic entry into the market for the supply of the pharmaceutical known as perindopril. They allege that those various steps infringed EU and UK competition law. In addition, they also alleged that some of those steps – the application for, defence and prosecution of a particular patent in respect of a particular form of perindopril - amounted to deceit of the European Patent Office (the “EPO”) and the English Courts. They claimed that this gave the Claimants a cause of action because Servier's alleged deceit of the EPO and English Courts interfered with those bodies' actions and caused the Claimants to suffer loss.

Servier applied to strike out that claim on the basis that the majority of the House of Lords in *OBG v Allen* [2007] UKHL 21 decided that the tort of causing loss by unlawful means only arises where the defendant acts unlawfully as against a third party, thereby interfering with that third party's freedom to deal with the claimant. It was not alleged that the EPO or English Courts had any economic dealings with the Claimants in this case at all, so the tort was not made out. The Claimants argued, however, that it could be sufficient that the defendant unlawfully interfered in the actions of a third party in whose actions the claimant had some kind of economic interest.

Roth J accepted Servier's analysis of *OBG v Allen* and struck out the claim, noting that the majority in *OBG v Allen* had sought to confine the tort to a narrow ambit, whereas the Claimants' interpretation would have had the opposite effect.

The judgment appears under external links.

Kelyn Bacon QC and Daniel Piccinin appeared for Servier, instructed by Bristows.

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