4PB, 6th Floor,
St Martin's Court,
10 Paternoster Row,
London, EC4M 7HP
T: 0207 427 5200
E: clerks@4pb.com
W: 4pb.com

Haward and others v Fawcetts (a firm) and another

01/03/2006

Facts

On 9 December 1994, in reliance on the professional advice of a partner in the first defendants, a firm of accountants, the first claimant and/or the second claimant acquired a controlling interest in a company by subscribing for 60,000 newly issued £1 shares at par. In addition, the third claimant acquired the freehold of the company's leasehold premises for £100,000. It was forecast at the time of the acquisition that some £100,000 would have to be invested in the company during 1995 to bring it to reasonable profitability. The forecast, however, turned out to be mistaken in that substantial further sums had to be invested by the first, second or third claimants in 1995, 1996, 1997 and 1998 but still failed to bring the company to profitability. In 1998, the first claimant asked a specialist in corporate rescues to investigate the company's losses, and on 6 December 2001 the claimants brought an action against the first defendants in contract and tort for damages for professional negligence. The defendants denied negligence and pleaded that the claims based on breaches of contract or losses prior to 6 December 1995 were statute-barred. In reply, the claimants relied on the three-year limitation period in section 14A of the Limitation Act 1980[1] and pleaded that the earliest date on which they had had the knowledge referred to in section 14A(5) was 17 December 1999, subsequently modified to May 1999. The defendants did not, in response, plead reliance on section 14A(10). The issues of limitation were ordered to be tried as preliminary issues. The judge decided the preliminary issues in favour of the defendants. The Court of Appeal allowed an appeal by the claimants.

On appeal by the defendants-

Held

Held , allowing the appeal, that "knowledge" for the purposes of section 14A of the 1980 Act meant knowing with sufficient confidence to justify embarking on the preliminaries to the issue of a writ; that knowledge that the damage was "attributable" in whole or in part to the acts or omissions of the defendant alleged to constitute negligence within section 14A(8)(a) meant knowledge in broad terms of the facts on which the claimant's complaint was based and of the defendant's acts or omissions and knowing that there was a real possibility that those acts or omissions had been a cause of the damage; that the burden of proof had been on the claimants to show that the date when the first claimant had first known enough for it to be reasonable for him to investigate the possibility that the partner's advice had been defective had been after 6 December 1998; that, whether or not the first claimant had before that date realised that the partner had not investigated matters sufficiently before giving his advice, he had known all the material facts as they had occurred and the causal connection between the partner's advice and the damage had been patent and obvious; and that, accordingly, the claimants had failed to discharge the burden

1 Limitation Act 1980, s. 14A, as amended: see post, para39 .of proof (post, paras 9 -11 ,16 -20 ,23 -24 ,46 -49 , 51 ,53 , 54 , 66 ,73 , 81 ,87 -88 , 90 ,92 , 112 -113 ,118 , 120 , 122 ,127 -128 , 138).

Dicta of Lord Donaldson of Lymington MR in Halford v Brookes [1991] 1 WLR 428, 443, CA, of Purchas LJ in Nash v Eli Lilly & Co [1993] 1 WLR 782, 797-799, CA, of Hoffmann LJ in Broadley v Guy Clapham & Co [1994] 4 All ER 439, 448, CA and Hallam-Eames v Merrett Syndicates Ltd [2001] Lloyd's Rep PN 178, CA applied.

Dobbie v Medway Health Authority [1994] 1 WLR 1234, CA considered.

Decision of the Court of Appeal [2004] EWCA Civ 240; [2004] PNLR 658 reversed.