Legally Blonde

News & Case Law Update

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CONTEMPT OF COURT & FUNDAMENTAL DISHONESTY

Liverpool Victoria Insurance Co Ltd v Mehmet Yavuz and 8 Others (2017) EWHC 2088 (QB) BBD (Warby J) 06/12/17

Nine people who had sought damages for commonly referred to "crash for cash" conspiracies were guilty of contempt of court for repeatedly deliberately telling lies.

London Organising Committee of the Olympic & Paralympic Games v Haydn Sinfield (2018) EWCH 51

The Claimant broke his arm while spectating at the Olympic and Paralympic games. Liability was admitted. The Claimant made a claim for gardening services in the region of £14,000.

When the gardener was investigated by the Defendant, he confirmed that he had worked for the Claimant since 2005, the nature of his work had not changed and he had not produced any invoices. The Defendant sought dismissal of the claim under s57 of the Criminal Justice and Courts Act 2015 on the basis the Claimant had been fundamentally dishonest. The Judge stated that the Claimant had become muddled and confused – there was a genuine claim which "went wrong" and it would have been substantially unjust for the entire claim to be struck out.

On appeal it was held that the Trial Judge was wrong to find the Claimant careless. The Schedule of Loss contained dishonest misstatements which were premeditated and maintained until the truth was uncovered. The entire claim for damages was dismissed.

UK Insurance ltd v Stuart John Gentry (2018)

The Defendant alleged his Rangerover had been involved in a collision with a vehicle insured by the Claimant insurer. The Claimant insurer had previously paid the Defendant £14000 in respect of the value of the car and was then presented with a credit hire clam in excess of £70000. Whilst investigating the credit hire the Claimant uncovered that the parties involved in the accident knew each other and therefore as there was a dishonest element, they brought a

claim against the Defendant alleging the accident was not genuine and seeking damages for deceit.

The Court held that given the parties attempts to hide that they were friends, the accident was staged and the Claimant was awarded Judgement.

EMPLOYERS LIABILITY

Rhonda Stewart (AKA Rhonda White) v Lewisham and Grenwich NHS trust (2017)

The case involved a midwife lifting an oxygen box. It was a commonly used piece of equipment which the Claimant had worked with for some years. No risk assessment had been carried out in relation to handling the box on the basis that the box was designed to be lifted by its handle and had been used for many years without problems.

The Claimant in this case suffered a back injury as a result of lifting the box. It was held that failure to carry out a risk assessment did not amount to breach of the Manual Handling Operations Regulations 1992.

On appeal it was held that a Judge had correctly held that failure to carry out a risk assessment regarding the lifting of the box did not breach the Regulations, in a circumstance where the Claimant had not shown that there had been a real risk of injury. Appeal dismissed.

PORTAL CLAIMS MOVING FROM PART 8 TO PART 7

Lyle v Allianz Insurance Plc Liverpool CC 21 December 2017

The Claimant was injured in an accident in September 2011 and liability was not in dispute. Part 8 proceedings were issued and on 10 July 2014 and a general stay was granted with no limit as to time. Further medical evidence was obtained, and the Claimant obtained an order lifting the stay and that the matter could proceed as a Part 7. The Defendants Application sought to set aside the Part 7 action. The stay was not lifted, and the claim was struck out.

The Claimant appealed the decision, but it was held that the stay could not be lifted. It was the duty of the Claimant to inform the Court of the increased value of the claim when it had become aware. There had been an excessive delay and no reason for this delay had been provided. There was an extensive period where action had been taken by the Claimant but The Defendant had not been notified.

It was found by a Judge that failure to value the claim properly amounted to an abuse of process. The Claimant was able to obtain medical evidence without consulting the Defendant and avoided the damages and costs limits if the claim had remained in the protocol through to trial or settlement.

Once the Claimant was aware of the value of the claim it took two years to apply to lift the stay. It was held that this was not an acceptable way to conduct the proceeding under the CPR. By failing to lift the stay there was no effectively no further course action the Claimant could take therefore the claim had to be struck out. The Claimant argued that this was a draconian measure and should be a last option when there is a valid claim. The Defendant argued that the claim now being brought was valued at £200,000 and they were faced with medical report

from experts whose instruction it had no opportunity to contribute. However, the Claimant's significant and persistent failures and the consequent delay, increased expense and prejudice to the Defendant, was considered enough not to lift the stay and strike out the claim.

RELIEF FROM SANCTIONS

Philip Freeborn (2) Christine Goldie v Daniel Robert de Almeida Marcal (2017) EWCH 3046

A letter sent from the Court asked the parties to exchange cost budgets no less than 7 days before a CCMC. That request was in contrast to CPR 3.13 which states that budgets should be filed no less than 21 days before a CMC. The Claimant followed CPR 3.13 and the Defendant followed the Court's letter. The Claimant's Solicitor took issue with the Defendant's "gross delay" therefore the Defendant made an Application for relief from sanctions.

It was held that the Defendant did not have to apply for relief from sanctions. The letter amounted to a Court Order

and the Defendant had been entitled to rely upon it. In any event relief from sanctions would have been granted because the breach was not serious, significant or deliberate; there was a good reason for the delay and neither party had suffered prejudice.

Crown House Technologies Ltd v Cardiff Commissioning Ltd & Anor (2018) QBD

The Claimant provided a disclosure list together with quantum documentation which was updated two days before a case management hearing. The First Defendant argued it was late and that the Claimant should be limited to what they could claim and/or there should be an unless order striking out the claim until a proper List of Documents was served.

The Claimant needed to apply for relief from sanctions following Denton. The Claimant was granted relief from sanctions with regards to the late disclosure as although it was late there was a comprehensive list. However, the Claimant's claim for quantum was restricted to £9000 instead of the pleaded £200,000.

COSTS

Francois v Barclays Bank PLC QBD (2017)

The Claimant's claim was allocated to the small claims track. After several adjourned hearings the

matter was listed for a two day fast track trial and was dismissed. The Judge inferred from the fact that the claim was listed for two day trial that the matter had been transferred to the fast track and awarded adverse costs against the Claimant. On appeal the Court held that there had been no order re allocating the matter from the small claims track to the fast track and the costs order was set aside.

Whaleys (Bradford) Ltd v (1) Garry Bennett (2) Jonathan Cubitt EWCA Civ 2143

Following a Trial, the Claimant had been awarded their costs on an indemnity basis. The Defendants had failed to pay and failed to attend three further hearings to deal with the issue of costs.

The Claimant argued costs of the additional hearings should be on an indemnity basis. The Judge decided that whilst the Defendants had deliberately avoided paying damages their conduct had not been exceptional, and the Claimant company was awarded costs on the standard basis in respect of these further hearings.

The decision was appealed and the appeal was upheld. The County Court Judge had applied the wrong test in stating that he did not regard the case as exceptional when refusing to order indemnity costs. There had to be "some conduct or some circumstance to take the case out of the norm" which was satisfied.

Christina Ann Mabb v James English QBD 2017

The Claimant brought a claim for medical negligence. The Defendant made an application to strike out and argued the Claimant had no prospect of success. This application was refused but permission to appeal was granted. The Judge noted that it was highly arguable that causation could not be made out. The Claimant went on to file a Notice of Discontinuance. The Defendant applied to set aside the Notice of Discontinuance.

The Defendant argued that the Notice of Discontinuance had only been filed in order to stop the claim being struck out on appeal. If the claim was struck out the exception to QOCS would apply and the Defendant would be entitled to costs. The Defendant argued that the Notice of Discontinuance unfairly deprived the Defendant of their costs.

The Claimant argued that the Defendant was seeking to utilise the resources of the Court in a way that was contrary to the Overriding Objective and that the Claimant was able to discontinue at any time. It was held that there was no inherent unfairness in a Claimant filing a Notice of Discontinuance in order to avoid the effect of QOCS.

ADMISSION OF LIABILITY

Wood v (1) Days Healthcare UK Ltd (2) Secretary of state for health (3) Shropshire Community Health Service (4) Balle A/S (T/A F Reac A/S) (5) Berwick Care Equipment Ltd (2017) EWCA Civ 2097

The Claimant required the use of a wheelchair. At a time when she was using the wheelchair, it was propelled forward into a desk causing injury. She issued proceedings against 5 companies or bodies, the First Defendant being the manufacturer of the wheelchair. The First

Defendant admitted liability however after proceedings were issued they applied for permission to withdraw the admission. The Judge refused concluding that there was no new evidence about the circumstances of the accident and although the value of the claim had increased since 2010 that was a risk inherent in any injury claim. On Appeal, it was argued that the value of the claim had increased significantly and evidence arose where liability would not have been admitted if a report had been seen by the Claimant loss adjusters. Appeal allowed.

LIMITATION

Richards v McKeown & Anor CA 2017

The Claimant, a self employed financial advisor, instructed the First and Second Defendant to bring a claim against a company who she had worked for before her contract was terminated.

It was argued that part of the Claimant's claim was statute barred and therefore there had been allegations of negligence on the part of the Defendants. However it was held a County Court had erred in dismissing the entire personal injury claim on the basis that it was statute barred. It should have been considered whether the time limit could have disapplied under S33 of the limitation Act or severed the personal injury claim element and allowed it to proceed.

CONTRIBUTORY NEGLIGENCE

Lewis Casson v (1) Spotmix Ltd (In Liquidation) (2) Gable Insurance AG (in liquidation) (3) Red Contract Solutions (Back Office Support) Ltd (2017) EWCA Civ 1994

The Claimant's hand became trapped in machinery at work. The Judge concluded that the Claimant should bear some responsibility for moving his hand so close to moving parts when it became trapped. On appeal the Judge had erred in making a finding of contributory negligence. All other employees would have undertaken the same course of action as the machine could not be switched off therefore it could not be supportive that he was contributory negligent.

SERVICE OUTSIDE OF JURISDICTION

ED & F Man Capital Markets v (1) Obex Securities LLC (2) Randall Katzenstein (2017) EWCH 2965

The Defendant argued that the Court had no jurisdiction to permit the

service out of jurisdiction of an application for pre-action disclosure as no proceedings had been issued and it was not a claim in its own right. Also, permission should have been refused as it had not been disclosed that proceedings had brought in the USA. It was held that the Court's jurisdiction to permit claims to be served outside extended to pre-action disclosure.

CASE MANAGEMENT

BDW Trading Ltd v Integral Geotechnique (Wales) Ltd (2018)

The Claimant obtained a report, which it was relying upon to decide whether they should buy a piece of land. The Defendant admitted that they were aware of the existence of the report but relied upon a witness statement from a solicitor which stated that Defendant did not know whether the report had been provided to the Claimant or whether the Claimant had relied upon it. The Claimant made a Part 18 request from the Defendant in light of what it read in the statement. It was held that the statement did not comply with CPR 32 and it needed to be redrafted.

Wright v First Group PLC (2018)

The Claimant had been struck by the Defendant's bus and suffered severe injuries. The issue at trial was whether the driver should have been going slower and could have avoided the accident by swerving. The Claimant accepted that there was contributory negligence on his part as he had crossed in front of the bus when it was unsafe to do so. Both parties instructed a reconstruction expert. The Claimant's expert stated that the Defendant's driver should have been aware of the hazard and on that case the Defendant was contributory negligent. The Defendant's expert stated there was nothing the Defendant driver could do and therefore the Defendant be absolved from liability.

A joint statement signed by both experts stated that the Defendant's driver could not have avoided the accident at his speed and would have had to have been travelling much slower. The Claimant argued that the trial listed to place the following week be adjourned as their expert changed their opinion, which had not been fully explained.

Whilst it was considered that the whole point of a joint expert was to see if there were agreement on issues and this could mean a change of opinion, in these unusual circumstances the trial was adjourned. The Claimant was granted permission to instruct a new reconstruction expert, as there was a lack of clarity from the Claimant's original expert and the Claimant would be at an unjustified disadvantage.

ATE PREMIUMS

Peterborough and Stamford Hospital NHS Trust v McMenemy & Ors

In two separate clinical negligence cases the Claimants took out ATE insurance as soon as solicitors were instructed, then subsequently settled their cases. The insurers tried to recoup £5000 for the insurance premiums from the Defendants. The Court of Appeal has ruled that Claimants should be able to take out and subsequently recover insurance premiums as soon as they enter a Conditional Fee Agreement. The concern was that Claimants may not be able to afford upfront costs of medical reports and access

to justice would be restricted.

MISCELLANEOUS

Lord Howard of Lympne v Director of Public Prosecutions (2017)

A conviction under the Road Traffic Act for failure to provide information as to the identity of the driver following a speeding offence was quashed. The individual did not know whether he or is wife was driving, and there had been no option on the form to provide the information. The District Judge should have considered a defence that he did not know and could not with reasonable diligence have ascertained who the driver was.

Jaqueline Smith (suing in her own right as the surviving partner of John Bulloch Deceased) v (1) Lancashire teaching Hospitals NHS Foundation trust (2) Lancashire Care NHS Foundation Trust (3) Secretary of state for Justice (2017) EWCA Civ 1916

The Claimant lived with her partner for more than two years before he died as a result of the First and Second Defendant's negligence. The Claimant was classed as a 'dependant' under Section 1 of the Fatal Accidents Act however the bereavement damages provision only applied to spouses and civil partners. The issue before the Judge was in relation to the compatibility of the act with the ECHR. The Judge found that there was no infringement on Art 8 ECHR because the absence of a right to compensation for grief was not linked to her private life. As it was not within the ambit of Art 8 he dismissed the claim. On Appeal the decision was overturned and to not provide damages for bereavement for cohabitees breached Art 14.

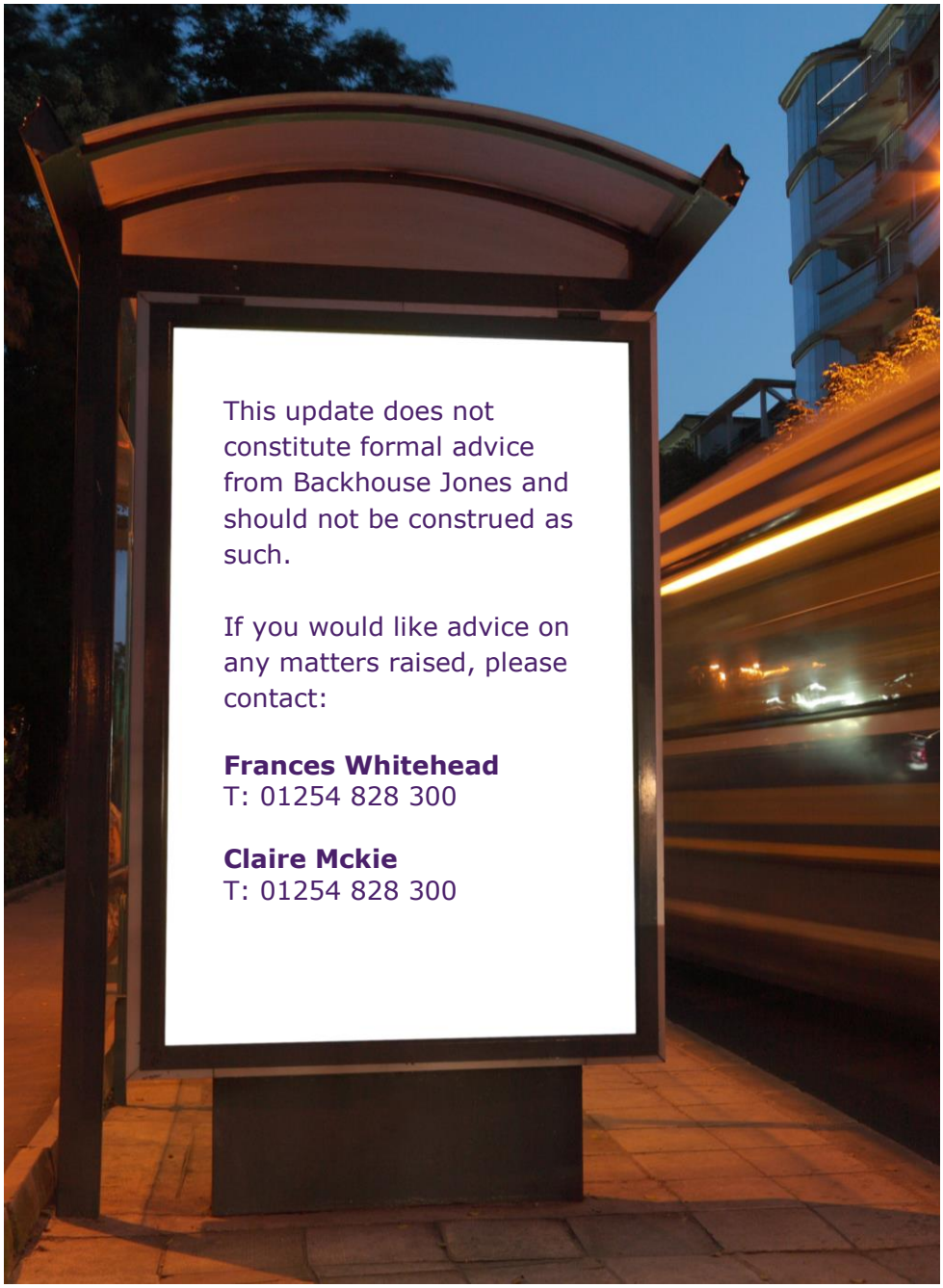
Barley v Muir & Thames Valley Police Force (interested party) QBD 2017

Along side a criminal investigation for fraud, a civil action was being brought for fraudulent misrepresentation.
Permission was given by the police to interview witnesses for the purposes of the civil proceedings and these statements were given to the police. However, when the Claimant asked for the police statements from the witnesses the police refused stating that the statements were police material and advised the Claimant she would have to go through the correct channels of evidence.

The Claimant made an application for disclosure. It was held that there were competing public interests. There was a public interest in there being as much relevant material before the trial judge but not at the expense of the public interest in the police investigating a serious crime and bringing criminals to justice. The Application was refused.

R v Abdul Khalik (2018)

Walsall Magistrates Court found a Sandwell taxi driver guilty under the Equality Act 2010 S170(3)(b) of refusing to carry a blind person and his guide dog. He was given a 12 month conditional discharge and ordered to pay costs.



This update does not constitute formal advice from Backhouse Jones and should not be construed as such.

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