

BETWEEN:-

MISS BIANCA CAMERON

Claimant

-and-

MR NAVEED HUSSAIN

First Defendant/
First Respondent

LIVERPOOL VICTORIA INSURANCE
COMPANY LIMITED

Second Defendant/
Second Respondent

SKELETON ARGUMENT OF THE APPELLANT

1. This is the Appellant/Claimants (hereafter “Appellants”) appeal from the order of District Judge Wright made on the 16th July 2014 wherein he refused permission to the Appellant to substitute the First Defendant with the individual known as

The person unknown driving vehicle registration number Y598 SPS who collided with vehicle registration number KG053 ZJZ on the 26th May 2013.

and further went on to direct that the Appellant’s Solicitors show cause as to why they should not pay the costs of the action on a wasted costs basis.

Permission to Appeal

2. For the reasons set out below in this Skeleton Argument the Learned District Judge was wrong to refuse the Appellant’s application to amend the proceedings to

the new title and he should further have granted Summary Judgment on the proceedings in favour of the Appellant and wrong in any event to direct a show cause as to why the Appellant's Solicitors should not pay wasted costs.

The Facts

3. On the 26th May 2013 the Appellant was driving her motor vehicle, registration number KG03 ZJZ.

4. She was struck by another motor vehicle, registration number Y598 SPS when driving along Torres Road, Leeds, West Yorkshire.

5. She suffered personal injury, damages and consequential loss including claims for the pre-accident value of her Ford Fiesta which was written off and special damages including credit hire charges.

6. The First Respondent, Naveed Hussain is the registered keeper of the Nissan motor vehicle which struck the Appellant's vehicle.

7. The Second Respondent wrote a policy of motor insurance in respect of the Nissan motor vehicle. It has an interest in these proceedings pursuant to the Road Traffic Act 1988.

8. It is apparent that the actual driver of the Nissan at the time of the accident was not Naveed Hussain. The Appellant does not know the full name of that individual and neither does the Second Respondent.

9. The Second Respondent applied for Summary Judgment against the claim alleging that since a named individual could not be identified as Defendant the proceedings were bad in law.

10. The Appellant contended as a matter of law that there is no need to give the fore and surname of a particular individual provided a tortfeasor can be identified with precision by reference to a description.

11. It is accepted by the Second Respondent that the Appellant is a blameless victim of a tortfeasor and liability on the facts of the accident is not in dispute. Everything hinges upon the identity of the Defendant.

12. District Judge Wright ruled against the Appellant. Her claim was accordingly dismissed.

The Issue

13. The issue can be stated simply.

14. Can the Court entertain a claim for damages arising from a tort of negligence when the description of the Defendant is not a forename and surname “Joe Bloggs” but by reference to a description in these terms.

The person unknown driving vehicle registration number Y598 SPS who collided with vehicle registration number KG03 ZJZ on the 26th May 2013.

15. If the Court cannot then this appeal must fail.

16. If the Court can then conversely the merits of granting the Appellant permission to amend the proceedings and to grant Summary Judgment thereafter on the claim in favour of the Appellant become overwhelming.

The Law

17. This is a question of civil procedure which has very little to do with the substantive tort of negligence. Accordingly, the Court is directed first of all to the Civil Procedural Rules 1998 and what they have to say about the issue of proceedings and the naming of Defendants.

18. The starting point is Rule 7.2 which provides for proceedings to start with the issue of a Claim Form. There is no provision in the Rules themselves requiring the naming of a Defendant. Instead one turns to the Practice Directions.

19. Practice Direction 7, paragraph 4.1 directs the headings that should be used in the Claim Form and further cross refers to Practice Direction 16, paragraph 2.6 which says as follows:

The Claim Form must be headed with the title of the proceedings, including the full name of each party. The full name means, in each case where it is known:

(a) *In the case of individual, his full unabbreviated name and title by which he is known;*

(b) *In the case of an individual carrying on business in a name other than his own name, the full unabbreviated name of the individual, together with the tile by which he is known, and the full trading (for example, John Smith trading as or T/A “JS Autos”);*

(My emphasis)

20. This in turn begs the question as to how proceedings should be entitled where the full name of an individual who it is desired to sue as a Defendant is not “known”.

21. Can it really be the case that the Court lacks jurisdiction to entertain proceedings in circumstances where an individual’s name may be unknown or an individual may be actively concealing his true name ?

22. This is not the law. It is common for actions to be brought against individuals or organisations where the true name of the individual or organisation is not known. As will be seen from a survey of the case law in due course, the Court regularly entertains claims for possession against persons unknown, claims against tortfeasors who are persons unknown, violators of copyright who are unknown and those who engage in defamation anonymously who by definition are unknown.

23. Certain parts of the Civil Procedure Rules exist where it could be viewed as the norm for proceedings to proceed against persons who are unknown make specific reference to this. See in particular Rule 55.3 which applies to possession claims. Also Rule 8.2A which deals with instances such as applications for Beddowe Orders and also Rule 19.7 which deals with representative proceedings.

24. The Court in other Part 7 and Part 8 proceedings has been adept at permitting claims to proceed against persons unknown and indeed to grant remedies in respect of them.

Analysis of the Claim

25. The claim in this action has the following features:

- (i) It is a claim brought in negligence.
- (ii) It is therefore an action in tort.
- (iii) The remedy claimed is damages.
- (iv) The Judgment that will be given in this action is a Judgment in personam not a Judgment in rem.

26. The analysis also raises the following points:

- (i) Actions in tort include intentional torts such as action for trespass to land or trespass against the persons, negligence, actions for breach of statutory duty, actions for breach of copyright and actions in defamation to name but a few.
- (ii) The remedies for tortious claims include but are not limited to claims for damages and can include injunctions made in mandatory or prohibitive terms and on an interim or final basis.
- (iii) All remedies claimed in tort will be Judgments in personam as distinct from being Judgments in rem.

27. Logically therefore if it can be demonstrated that the Court is prepared to award a remedy constituting a Judgment in personam due to tortious conduct on the part of a person unknown in other context there is no reason in law, logic or procedure why it cannot amend these proceedings to allow an award in damages in negligence.

The Case Law

28. The case law demonstrates that the Court has adopted precisely the course envisaged in this action in other context. It is accordingly necessary to consider the chain of authority which establishes the Court's jurisdiction.

29. Two points might be thought to be trite. First that the Court will for good and proper reasons exhibit determination to assert the Court's jurisdiction on those who break the law within the territorial jurisdiction of England and Wales.

30. Secondly that the Court has never been dissuaded from granting a remedy by attempts by a wrong doer to avoid the Court's jurisdiction: see in particular Rule 6.16 which is the Court's power to dispense with service in exceptional circumstances, the paradigm example being where someone is attempting to avoid service of the Court's process.

31. In the case of Bloomsbury Publishing Plc and J.K. Rowling -v- Newsgroup Newspapers Limited (2003) EWHC 1087CH a case came before the court in the form of an application seeking what was described as an unusual order.

32. At paragraph 9 he noted the issue before him in these terms.

Had the identity of the Vendor and any of his accomplices been known, the Court would, without hesitation, grant the without notice relief which the Claimant's seek not only to preserve confidentiality, but also to prevent infringement of copyright and the conversion of stolen property. Further, such an injunction be effective not just against identified Defendants, but also against anybody else who is informed of the terms of the injunction and who assist or tries to assist (directly or indirectly) the addressee to breach its terms....

33. He went on to comment on the problem in these terms:

The problem here is that the identity of the Vendor and any accomplices is not known. Because of that, at first blush, it appears that it is not possible for the Claimant's to obtain an effective relief against a person who, quite clearly, is engaged on a course of activity which, on the evidence before the Court is a breach of the Claimant's rights and which from the very manner in which he is trying to conduct his trade, is known to him to be a breach of the Claimant's rights. The result is that Mr. Kitchen Q.C, who appears on this Application on behalf of the Claimants, asked for the injunctive relief against a Defendant referred to as follows:

The person (or persons) who has offered the publishes of the Sun, the Daily Mail and the Daily Mirror newspapers a copy of the book Harry Potter and the Order of the Phoenix by J.K. Rowling.

The Court commented on that Application in these terms at paragraph 11.

This is effectively a John Doe Order made against a person whose identity cannot be described by the usual methods adopted for describing individuals, that is to say by name.

34. The Court went on to consider the matter noting various authorities and also the application of the principle **ubi jus ibi remedium**: where there is a right there is a remedy.

35. The Court went on to grant the injunction and said this at paragraph 21:

An injunction granted against a Defendant is effective in personam. Where possible which will be the overwhelming majority of cases, the Order will identify the target by name. In most cases that will mean that the most ready and convenient means of identification of the Defendant will be used so as to ensure the Defendant knows that he is subject of an injunction. Where somebody was to be known by an alias, it would be satisfactory to sue him under his alias. Where somebody to be known only by a photograph, it seems to me it would be appropriate to sue him by reference to his photograph. If somebody can be identified clearly enough, it seems to me, that in a suitable case the Court should do what it can to allow injunctive relief to be ordered against it even if it is not possible to identify him by name. If the Court can be confident that the Order is directed at particular wrongdoers and those assisting them then the targets will understand that the injunction is directed at them, in the third and fourth factors referred to above are met.

36. It will be observed that this was an application based upon a claim in tort. It will also be noted that the injunction is in personam. It might be argued by the Defendant that this is not a principle of wider application other than to applications for interim relief. But this is not a position as borne out by subsequent authority.

37. In the later case of Hampshire Waste Services Limited and Others -v- Persons Intending Trespass and/or Trespassing upon Incinerator Sites (2003) EWHC 1738CH the Vice Chancellor adopted his own reasoning in the earlier at paragraphs 6, 7 and 9. This case concerned again an application without notice for an injunction but again was based upon a claim in tort, namely trespass. It is interesting to note at paragraph 4 that part of the reason for granting the injunction was the inadequacy of an award in damages: not that damages could not be awarded against a person unknown.

38. In another context that of a claim for an injunction pursuant to statutory power, pursuant to Section 187B of the Town and Country Planning Act 1990, the Court of Appeal in the case of South Cambridgeshire District Council -v- Persons Unknown (2004) EWCA Civ 1280 dealt with the power of the Court to grant relief against persons unknown referring to the other cases. It was not the case that Brooke LJ was critical of the approach taken at all.

39. In the case of Astellas Pharma Limited and Others -v- Stop Huntingdon Animal Cruelty and Others (2011) EWCA Civ 752 claims were brought seeking injunctions under the Protection from Harassment Act 1997. That statute provides not only for the making of injunction orders but also includes a right to claim damages.

40. The propriety of bringing proceedings against persons unknown rather than representative persons as had been done in that case, was discussed by Ward LJ at paragraph 33 to 36. But the point that concerned Ward LJ was how to frame a description of a Defendant giving due regard to the rights of others under Article 8 and Article 10 of the ECHAR rather than to cast any doubt upon the principle that persons unknown can be sued in tort.

41. The case of Harlan Laboratories UK Limited and Another -v- Against Persons Unknown and Others (2012) EWHC 3408 is on point. This was not an application for an interim injunction: that had already been granted by the High Court, see paragraph 3 of the Judgment but rather was an application for Summary Judgment under Rule 24.2 and for permanent injunctions.

42. The cause of action was under the Protection from Harassment Act 1997 and one of the issues was the propriety of suing persons unknown as Third Defendant. This was commented upon by Mrs. Justice Lang at paragraphs 20 to 23 where again

the issue was the width of the description rather than whether persons could be properly sued as referenced by their description.

43. Crucially at paragraph 61 the High Court Judge noted that there was an entitlement to damages and that she should not grant a permanent injunction where damages were an adequate remedy but for the reasons set out and elaborated in her Judgment was persuaded that permanent injunctions were the appropriate remedy to bring the case to a conclusion. At paragraph 79 she granted a permanent injunction.

44. The approach taken by Mrs. Justice Lang was adopted by Mr. Justice Jay in the case of Astra Zeneca UK Limited -v- Vincent and Others (2014) EWHC 1637, see paragraph 43 of the Judgment.

45. In summary what the cases establish is that in a variety of contexts, all of which are tortious, the Courts will entertain actions against persons unknown including both interim applications made with or without notice and also applications for Summary Judgment and for permanent injunctions.

46. In the torts featured in these cases injunctive relief is not the only remedy: the Courts have given specific consideration as part of the reason for granting the injunctions, the fact that damages exist as a remedy but are inadequate.

47. Accordingly, where a Judgment in personam is given on a tortious claim there is no basis in logic or reason why a Judgment in personam for damages cannot be given in this tortious claim.

48. Set against that the Defendant's argument that the Second Respondents' arguments to the contrary lack all force.

49. It was advanced below that the Court's jurisdiction to join persons unknown and to grant remedies against them should be viewed through the prism of the Road Traffic Act 1988. Such an argument is misconceived.

50. First, that the Court's jurisdiction to grant a remedy against persons unknown cannot hinge upon the consequences for the motor insurance industry in circumstances where the jurisdiction is of general application. This jurisdiction applies to every sort of tort in every context. It is a jurisdiction which applies to the named parties to the proceedings and not those who have subrogated rights or not in respect of them.

51. Secondly even on the Defendant's own analysis the conclusion contended for by the Appellant runs with the grain of the Road Traffic Act 1988 rather than against it: namely if the scheme of the Road Traffic Act 1988 contemplates that the Claimant will be satisfied by an insurer concerned by reason of the statute even though he would have no remedy at common law against the insurance company concerned. It is mere bad luck that in this case the fore and surname of the driver is not known.

52. Moreover it must be the case that in many instances the right of recovery contained in Section 151 will prove illusory due to the fact that the tortfeasor from whom recovery might notionally be sought will be insolvent or without assets to pass to the insurance company who is under the primary liability to satisfy the Judgment.

53. Thirdly the Untraced Drivers Agreement continues to apply and have value to cases where a driver is truly untraced and the identity of his insurers is unknown: the archetypal hit and run case. But in this case, the insurer is known.

54. The fact that there is no reported case dealing with this precise point is neither here nor there: in a sense such cases are self selecting. There would be little point in many actions for damages in pursuing a claim against a person unknown, untraceable and against whom an award of damages cannot be enforced or an insurer identified.

But the fact that there might be practical difficulties to enforcing an award is no basis for determining whether or not there is a right to such an award in the first place.

55. The appeal should accordingly be allowed.

56. In terms of the merits of the application to amend it is submitted that they are overwhelming. The District Judge having misdirected himself as to his jurisdiction to permit the amendment, his decision cannot stand.

57. It should be noted that there is no prejudice in the sense of evidential prejudice or procedural prejudice caused to the Second Respondent: the only point that they advance is that they will have to satisfy a Judgment that they could otherwise escape doing so.

58. But that is not prejudice, rather it is justice when in law they are clearly bound to do and would have done so but for the fact that the Appellant is unable “to name Joe Bloggs”.

59. Moreover on the strength of the Second Respondent’s own evidence the position effectively being agreed that the driver of the Nissan Micra was responsible for the Appellant’s injury and damage there is no reason why they should not be Summary Judgment for damages to be assessed.

Wasted Costs

60. If the main appeal succeeds then costs follow the event and it is not necessary to address the matter further. But even were the decision of the District Judge below Judge to be the correct one he was plainly wrong when going on to make a direction there should be a show cause wasted costs order.

61. Pursuant to the authority of Ridehalgh -v- Horsefield and Another (1994) CH205, even pursuing a hopeless case does not constitute conduct which involves a breach of duty to the Court.

62. There is no duty owed to the other side to litigation. Neither is there impropriety neither is there unreasonableness when viewed in this context. The fact that a case fails is not enough to invoke the wasted costs jurisdiction and this order should be discharged in any event.

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24th July, 2014

Cameron(B) Armstrong Sol Skeleton Argument of Appellant 297670 (amm)

Claim No. A19YJ567

IN THE LIVERPOOL COUNTY
COURT

MISS BIANCA CAMERON

-v-

MR NAVEED HUSSAIN

LIVERPOOL VICTORIA INSURANCE
COMPANY LIMITED

**SKELETON ARGUMENT OF THE
APPELLANT**

Ref:
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