

IN THE CARDIFF COUNTY COURT

2 Park Street,
Cardiff
CF10 1ET

Date: Tuesday, 16th June 2015

Before:

HIS HONOUR JUDGE JARMAN QC

Between:

EUI LIMITED

Claimant

- and -

(1) DAMIAN HAWKINS
(2)SAMANTHA PRESDEE-HUGHES

Defendants

MR COUPE appeared for the **Claimant**

MR EDWARDS appeared for the **First Defendant**

MS WALTERS appeared for the **Second Defendant**

Approved Judgment

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HIS HONOUR JUDGE JARMAN QC:

1. By a claim form dated 15th October 2014 EUI Limited bring proceedings against Damian Hawkins and Samantha Presdee-Hughes for committal to prison for making a number of untrue statements in the course of proceedings between Mr Damian Hawkins and their insured, a Ms Marks.
2. There are as many as 31 grounds in all. Grounds 1 to 15 relate to allegations against Damian Hawkins. The remainder of the grounds relate to allegations against Samantha Presdee-Hughes. In essence, what it comes down to is that each of them lied about an accident which occurred on 20th March 2012 between a car owned by Samantha Presdee-Hughes and driven, as it is now accepted, by Damian Hawkins and a Ms Marks, whose vehicle went into the back of Samantha Presdee-Hughes' vehicle at a roundabout.
3. In Damian Hawkins' claim, supported by Samantha Presdee-Hughes, each of them said that it was she who was driving on that occasion and that it was Damian Hawkins who was in the passenger seat with his two children in the rear seat. Each of them now accepts that that was not the case.
4. The genesis of the course of lies which each of them now admit to have taken part in appears to be that there was some doubt about whether at the time Damian Hawkins had a valid driving licence. He had been the subject of previous proceedings in respect of various motor offences, and at one stage had been banned from driving. It is said on his behalf, and indeed on behalf of Samantha Presdee-Hughes, that the failure to have a valid driving licence at the time was as a result simply of an administrative error on his part in not applying for it. Whatever the reason, it appears (and this is how it is advanced on behalf of each of them) that it was the doubt about whether he had a valid driving licence that caused each of them to agree that Samantha Presdee-Hughes would say that she was driving the car at the time of the accident and that that would be supported by Damian Hawkins.
5. A claim on his behalf was issued in July 2012. That was after Samantha Presdee-Hughes had received payment for the physical damage to her vehicle. A defence was issued, clearly on the basis that the claim as put forward was fraudulent and that Samantha Presdee-Hughes was not in the vehicle at the time and that it was driven by Damian Hawkins.
6. In January 2012 the insurers issued a claim for declarations to that effect. In due course a request was made for further information in respect of the claim and, in a response signed by Damian Hawkins on 2nd January 2013, he maintained that there were four people in the car at the time and it was driven by Samantha Presdee-Hughes. He filed a witness statement to a similar effect on 29th July that year, and many of the grounds in the claim relate to the lies which he now accepts he told in that written statement.
7. Samantha Presdee-Hughes also filed a witness statement also telling the same lies. They maintained those at trial. It is important to emphasise that at trial Damian Hawkins was represented by counsel. Ms Marks was cross-examined on the basis that she was not telling the truth when she said that she plainly saw only one adult get out of the car immediately after the accident. Samantha Presdee-Hughes also asked

questions of Ms Marks. Whilst not putting it quite as clearly as that, nevertheless the questions were also on the basis that it was she, Samantha Presdee-Hughes, who was driving the car.

8. In the end, I rejected that evidence. I found, on the balance of probabilities of course, that it was Damian Hawkins who was driving the car at the time. His two children were in the car with him. Samantha Presdee-Hughes was not in the vehicle. The accident, I found, was a very low impact accident at a roundabout when another vehicle came around quickly or unexpectedly. Damian Hawkins braked sharply and that caused Ms Marks' vehicle to collide with the rear of the vehicle driven by him.
9. It is clear that the accident did occur in that way and it is clear that no fault lies with Damian Hawkins. Either the fault is that of the other driver coming round the roundabout or Ms Marks, or a combination of both.
10. The insurers then instituted these contempt proceedings. Permission was given in May after some difficulties caused by the fact that initially both Damian Hawkins and Samantha Presdee-Hughes were unrepresented in the committal proceedings, but I granted legal aid and they are both represented by counsel today. I have been greatly assisted, not only by Mr Coupe who appears for the insurers, but also by Mr Edwards on behalf of Damian Hawkins, and Ms Walters on behalf of Samantha Presdee-Hughes.
11. As soon as they received legal aid in May, they made witness statements in essence accepting the allegations against them. I thought it was prudent this morning to have that reduced to writing. Both counsel helpfully did that. In the case of Damian Hawkins, he admits Grounds 1 to 15 in the grounds of claim. I put that to him. He accepted that.
12. So far as Samantha Presdee-Hughes is concerned, she admits Grounds 16 to 28 and Grounds 30 to 31 of the grounds of claim. In respect of Ground 29, that relates to the extent to which she rang Admiral insurers and intimated that she too wished to bring a claim for personal injury. This was after the damage to the vehicle claim had been settled. In respect of that, this is the extent of her admission, which is accepted on behalf of the insurers:

"Ground 29 is admitted to the extent that she admits the telephone conversations with Admiral on 23rd April 2012 and 25th April 2012 involved discussions as to the making of a personal injury claim, but that she did not go on to take any further action in respect of this."

As I say, that is now agreed.

13. It is clear that, in a telephone conversation shortly before that to Admiral, the impression she gave was that she was not making a personal injury claim for herself. In those conversations on 23rd and 25th April 2012 this changed somewhat and she did then indicate that she had suffered some symptoms in her neck as a result of the accident. This is now put on her behalf on the basis that the change came as a result of solicitors then acting for Damian Hawkins asking questions of her as to why it was that she suffered no symptoms if she was in the same vehicle at the same time as

Damian Hawkins. She did not have legal representation then, or indeed, as I have indicated, at any stage before May 2015 when legal aid was granted in these present committal proceedings. The reason for the change of stance has the ring of truth about it and I accept it.

14. I now have to sentence them, and each of them, for their admitted contempt of court. I was referred to a number of authorities by the parties, starting with *South Wales Fire and Rescue Service v. Smith* [2011] EWHC Admin 1749 where Moses LJ set out the impact of fraudulent claims on the administration of justice. He said this:

"5. Those who make such false claims if caught should expect to go to prison. There is no other way to underline the gravity of the conduct. There is no other way to deter those who may be tempted to make such claims, and there is no other way to improve the administration of justice.

6. The public and advisors must be aware that, however easy it is to make false claims, either in relation to liability or in relation to compensation, if found out the consequences for those tempted to do so will be disastrous. They are almost inevitably in the future going to lead to sentences of imprisonment, which will have the knock-on effect that the lives of those tempted to behave in that way, of both themselves and their families, are likely to be ruined.

7. But the prevalence of such temptation and of those who succumb to that temptation is such that nothing else but such severe condemnation is likely to suffice."

15. That passage was cited with approval by the Supreme Court in *Summers v. Fairclough Homes* [2012] UKSC 26. It has been applied with approval in a number of cases since, including *Havering Borough Council v. Bowyer & Ors* [2012] EWHC Admin 2237, and *Liverpool Victoria Insurance Company v. Bashir & Ors* [2012] EWHC Admin 895.

16. In the latter case, the then President of the Queen's Bench Division, Sir John Thomas, set out the extent of the fraud and the cost to the motor industry and the added cost to the insurance bill for every policy holder in the United Kingdom. In that case the President went on as follows:

"The detection of such fraud is very difficult. The diligence of the insurers in this case is to be highly commended. We were told that, until relatively recently, the police did not have the resources to investigate this type of fraud. Although, as this case illustrates, this type of fraud involves relatively small sums of money in each claim, together such claims give rise to the very large figures to which we have referred. At the beginning of this year the City of London Police have been funded by the insurance industry to set up a Motor Insurance and Insurance Fraud Enforcement Department which has the capacity to deal with 100 cases per month."

In that case, notwithstanding the fact that the defendants admitted contempt, terms of immediate custody were imposed.

17. There are a number of aggravating features in this case, in my judgment. The lies were made up, as I have indicated, to cover the possibility that Damian Hawkins did not have a valid licence to drive at the time of the accident. Secondly, Samantha Presdee-Hughes used to work for Admiral and knew of the procedure, it is said. On her behalf, Ms Walters emphasises that she worked in a different capacity and not in a claims handling capacity. I accept that.
18. Also there was a further lie by Damian Hawkins that he had not had a previous road traffic accident. That is something which I rejected. Finally, in this case he has previous appearances before the court - in fact a long list of appearances - starting in 1995 in Cardiff Youth Court. The offences are for violence and criminal damage, but also offences of dishonesty. He was sentenced to ten weeks in a young offenders institution as long ago as 1997 for handling offences. Mr Edwards on his behalf submits that that sentence was so long ago that I should nevertheless find that any immediate sentence of imprisonment now is likely to have a severe effect upon him, and I accept that submission. Nevertheless the convictions continued for theft, drug offences and also of violence.
19. The offences continue up until May 2010, where he was given a suspended sentence of imprisonment in respect of an intent to supply controlled drugs. It was only after the present road traffic accident on 17th July 2012 that he was found guilty of using a vehicle while uninsured, driving a motor vehicle with excess alcohol.
20. On the other hand, in respect of each of them there are, in my judgment, mitigating circumstances. In respect of Damian Hawkins I have read a letter to the court from him and his father. I accept that he shows genuine remorse. Mr Edwards submits that this case is different to the bogus or contrived accident cases, and I accept that. There was a genuine accident and, as I have found, it was not the fault of Damian Hawkins. The lies came about, as I have indicated, because of concern as to his driving licence status.
21. Although I found that I could not be satisfied on the civil standard that he had suffered personal injury, it is nevertheless submitted on his behalf that, to a criminal standard, it cannot be said that this was an entirely bogus claim. There was expert evidence to suggest that, plausibly, he had some restriction of neck movements. I am prepared to accept that, although, as I have indicated, I have found that it was a low impact accident and I can be satisfied to the criminal standard of proof that, whatever injury he suffered, it was at the very low end of the scale.
22. I am also asked to take into account that there was a contact with his solicitors to ask about withdrawing the proceedings; but he was given warning, as was Samantha Presdee-Hughes, about the consequences, including cost consequences and possible contempt proceedings. As I have indicated, the admissions made were made promptly after legal aid had been given. He is entitled to credit for that.
23. The proceedings have also been hanging over his head for some time. This was a factor which in *South Wales Fire and Rescue Service v. Smith* persuaded the Court of Appeal that it was not right to impose an immediate custodial sentence, and so the

sentence was suspended. The facts there are somewhat different. There, there was an admitted contempt early on in 2009. Permission to bring contempt proceedings was given in July 2010. For various reasons unconnected with any fault by either of the parties, there was then a ten month delay in hearing the contempt proceedings. It was that reason which the Court of Appeal gave for not imposing an immediate custodial sentence.

24. The matter here is different, in my judgment. The proceedings have been brought very quickly after permission was given. There were delays, but it was at a time when neither of them were accepting any contempt, and there were delays in respect of the obtaining of legal aid. But, as soon as that was achieved, admissions were made quickly and these contempt proceedings have been brought quickly. So, although there has been an element of these proceedings hanging over the heads of each of them, it is not, in my judgment, on the scale seen in *South Wales Fire and Rescue Service*.
25. The next point made is that this was a low value claim. There was no loss of earnings as there was in many of the other authorities, but a low impact whiplash injury. As for his personal circumstances, it is said on his behalf that he had an unhappy childhood in care. He has two children which he sees every weekend. I take all those matters into account.
26. On behalf of Samantha Presdee-Hughes it is said that this was not a planned fraud; that the accident happened; that it was not the fault of Damian Hawkins; and that it was he who had issues with the driving licence. She and Damian Hawkins had been together for just over a year before the accident. Accordingly, it is submitted that she would not be fully aware of the full history. She had to respond in a split second to what was agreed and she did not know how to stop the ball rolling, as it has been put. I remind myself that she at this time did not have legal aid.
27. In respect of her personal circumstances, she is mother to an eight-year-old son living with her on a full-time basis. I have read letters from her and her father, who has illness and whom she cares for. Again I am satisfied that she has shown genuine remorse. She is in employment and I have a letter from her employer. She, unlike Damian Hawkins, is a person of clean character.
28. I take all those matters into account. In respect of Damian Hawkins, in my judgment the proper sentence and the proportionate sentence is one of immediate imprisonment. Having regard to his admission, and a very speedy admission after legal aid was granted, I take the view that that can be shorter rather than longer. In my judgment, the appropriate sentence is one of two months' imprisonment.
29. In the case of Samantha Presdee-Hughes, her position, in my judgment, is different for a number of reasons. Firstly, as I have indicated, there was a genuine accident, but she was not involved at all. Secondly, the genesis of the lies was doubt over the licence status of Damian Hawkins. Thirdly, I am satisfied that the motivation for her lying was not money for her. The damage to her car had been paid for. As I have indicated, initially in her telephone call to the insurers there was a suggestion that she would not make a personal injury claim for herself. That changed later, I am satisfied, because of the difficulty in her saying that she had no symptoms when Damian Hawkins was saying that he had. Fourthly, she had no solicitors until permission was

given to bring these contempt proceedings, unlike Damian Hawkins. Fifthly, she has a clean record, unlike him. Finally, in his letter to the court Damian Hawkins makes a particular plea that she should not be sent to prison.

30. In all those circumstances, I nevertheless find that the appropriate sentence is one of imprisonment, but, for the reasons I have given, I suspend it. That shall be a term of one month imprisonment suspended for two years.
