

Neutral Citation Number: [2017] EWHC 1421 (QB)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

The Royal Courts of Justice
Strand
London
WC2A 2LL

Date: Wednesday, 12th April 2017

BEFORE:

MRS JUSTICE O' FARRELL DBE

BETWEEN:

EUI LTD

Claimant/Respondent

- and -

SHAFIQ SULTAN

Defendant/Appellant

MR A RHYS-DAVIS (instructed by Clyde & Co) appeared on behalf of the Claimant

MR G NAIK (instructed by Olivers) appeared on behalf of the Defendant

JUDGMENT
(As Approved)

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1. MRS JUSTICE O' FARRELL: There is an application before the court today on behalf of the defendant, Mr Sultan, for these committal proceedings to be adjourned to await the outcome of other committal proceedings, which appear to have some overlap with these proceedings, and to be dealt with at the conclusion of those proceedings.
2. Mr Naik, on behalf of Mr Sultan, makes the submission to the court that it would be fair for this court to adjourn this matter to await the outcome of the other proceedings. Mr Sultan is a defendant in the associated case, The Liverpool Victoria Insurance Company Limited v Khan & Ors [2016] EWHC 2590 (QB). In addition, the defendant solicitor in that case, Mr Khan, was also the solicitor who handled the claim that is the subject of these committal proceedings. It is said that that solicitor was the one who signed the claims notification form, the claim form and particulars of claim, the witness statement and the further information, all of which are documents that are the subject of this committal. Mr Sultan wishes to have the opportunity, first of all, to cross-examine the solicitor and examine his involvement in relation to both claims; secondly, it would give the defendant an opportunity to consider whether he would purge his contempt and / or assist Liverpool Insurance Company so as to gain credit in relation to any sentencing.
3. Mr Rhys-Davis for the claimant opposes the application to adjourn. Even if the documents that are the subject of this claim were initially signed by the solicitor, as has been made clear by Mr Naik before the court this morning, the defendant admits that he adopted them, and in any event was clearly involved right from the outset. This is not simply a claim of a defendant exaggerating his injuries or the costs claimed, but this is a staged accident that was clearly organised from Mr Sultan from the outset.
4. There is also the interest of finality and the public interest in dealing with fraudulent claims speedily and robustly. There would be some additional costs to the claimant if this matter were to be adjourned and there would be uncertainty as to what the outcome of the second set of proceedings might be.
5. I have considered the issue of convenience and fairness in deciding whether or not this matter should be adjourned to be dealt with with the second set of proceedings, but I have come to the conclusion that there should be no adjournment and that this matter should go ahead today. Although the other set of proceedings have in common this defendant and the solicitor who handled both claims, they are proceedings about which this court knows virtually nothing, save that it appears to be a similar sort of case.
6. The court in that case gave permission for committal proceedings to be commenced on 14 October 2016. However, no doubt because of the number of defendants and perhaps the greater complexity of that case, it has not yet been listed for a hearing and I am told it is likely to come on between the summer and autumn of this year. The problem that arises is that I have no way of knowing what part this defendant is going to accept and / or contest in those proceedings. The mere fact that permission was given does not in any way indicate that the court will find any contempt proved, and it seems to me that that would leave the court in the very unsatisfactory position of perhaps dismissing those contempt proceedings but then having to deal with this case in a vacuum.
7. It seems to me that the interests of justice are served by dealing with this matter now. It concerns an accident that occurred in 2012 and therefore is already very old. I also

do not think that it is in the interests of this defendant to have this hanging over him for what might be another six or seven months simply with the prospect that it might enable him to gain a little bit more credit with the second court dealing with it.

8. Insofar as he wishes to purge his contempt and assist the insurer in that case, there is no reason why he cannot do so, regardless of the sentence that might be passed by this court today. However, there are real arguments in terms of fairness and speed of justice in having this matter dealt with today so that it can be finally put behind the defendant. So for those reasons I refuse the application for an adjournment.
9. This is a claim for the committal of Mr Shafiq Sultan to prison for making false statements in documents verified by statements of truth. The facts giving rise to this claim can be summarised as follows. Mr Sultan's claim concerned an alleged road traffic accident that he said had occurred on 19 July 2012. He contended that the accident occurred on Collum Green Road near Slough at its junction with Windsor Road. He stated that he was in a Mercedes S63 AMG motor vehicle. He was stationary at the junction and another vehicle, driven by Ms Szkurlat, negligently drove into the back of his car, causing him injury, damage to the car and other losses.
10. Mr Sultan claimed that the negligent driver who collided with him was Ms Szkurlat, and Ms Szkurlat admitted fault for the accident. Mr Sultan issued his claim on 10 June 2013. Ms Szkurlat was the first defendant to the proceedings and the insurer applicant in this case was the second defendant. Ms Szkurlat provided a witness statement initially but played no active part in the proceedings.
11. The insurer was granted permission to file an amended defence in which it pleaded that the claim was a fraud, that any collision between the cars was not accidental and that Mr Sultan's claim was brought dishonestly in order to defraud the applicant, EUI. The claim was heard by District Judge Graham Jones in the county court at Slough on 20 November 2015. For the purposes of those proceedings, Mr Sultan signed or procured the signature on the claim, the particulars of claim, his witness statement dated 18 June 2014 and responses to part 18 requests dated 20 July 2014.
12. Following the hearing at which Mr Sultan gave evidence and relied on witness evidence, the District Judge adjourned the proceedings in order to enable both sides to file and serve written submissions. EUI duly filed and served its submission but, on 17 November 2015, Mr Sultan filed a notice of discontinuance. On 30 November 2015 EUI applied to set aside the discontinuance. The judge, having heard argument from counsel for both parties, ordered that the discontinuance be set aside and gave Mr Sultan further time to file and serve his closing submissions.
13. Mr Sultan filed submissions with the court but did not serve them on EUI. On 11 May 2016 the District Judge gave his judgment in the case in which he found that the claim was fraudulently made and dismissed the claims. The claims made in the trial by Mr Sultan were for general damages for pain, suffering, loss of amenity based on whiplash injury in the sum of £1,000; the cost of repairs to his car in the sum of £15,995.16; credit hire charges for a replacement vehicle in the sum of £15,180; and storage and recovery charges of £445.

14. At the trial, Mr Sultan gave evidence and he called one witness, Mr Zakender, who had been a passenger in the car. EUI relied upon the intelligence analyst evidence of a Mr Kevin Hocter and the expert forensic engineer report of Mr Watchorn dated 2 November 2002.
15. Mr Watchorn's evidence at the trial was that the damage to both vehicles was not consistent with the alleged accident that was contended for by Mr Sultan. In summary, Mr Watchorn found that the damage sustained by both vehicles was the result of impact from differing directions. There was damage to the nearside face of Mr Sultan's bootlid and nearside quarter panel which could not have been caused by contact with Ms Szkurlat's car. The maximum height of the front panels of Ms Szkurlat's car was approximately 68 centimetres from the ground, whereas the damage to Mr Sultan's bootlid and quarter panel ranged between 71 centimetres to 96 centimetres from the ground. The majority of the damage to Mr Sultan's car had been sustained by a force of impact in a front to rear direction, which was inconsistent with the collision circumstances alleged by Mr Sultan. The remainder of the damage to the offside rear area of Ms Szkurlat's car and the nearside rear area of Mr Sultan's car had been caused either by Ms Szkurlat's car colliding with the rear of Mr Sultan's car or the other way round but with differing alignments. The evidence indicated that there were multiple impressions made by Mr Sultan's nearside exhaust tailpipes to Ms Szkurlat's painted plastic front bumper. All of that resulted in the conclusion that both vehicles had sustained damage as a result of impacts, leaving large amounts of contact abrasions and damage to both vehicles.
16. In Mr Watchorn's view, the damage had been caused by the two vehicles colliding with at least four differing alignments which was inconsistent with the circumstances relied on by Mr Sultan. That evidence was accepted by District Judge Graham Jones in reaching his conclusion at trial, that this was in fact a fraudulent claim. It has been admitted today on behalf of Mr Sultan that the claim was fraudulent.
17. The judge's conclusions in relation to the fraud are set out at paragraph 112 of his judgment. Firstly, he found that Mr Sultan was an unreliable witness. His evidence was inconsistent, unsatisfactory and dishonest. The erroneous description of the road layout, as shared by Mr Sultan and Ms Szkurlat, arose as a result of collaboration between them. The erroneous reference to traffic lights, shared by them again, arose as a result of collaboration between them. The damage to the two vehicles could not have been caused as described by them. The damage was caused by multidirectional, multiple impacts between the two vehicles. The findings in respect of the damage to the vehicles could only be explained by the conclusion that the damage was deliberately caused.
18. Secondly, the medical evidence in support of Mr Sultan's claim was inconsistent and unreliable. The principal reason for this unsatisfactory evidence was that Mr Sultan was describing fabricated symptomology. The judge accepted that there was no evidence that Mr Sultan's previous claims were dishonest, but he did find that maintaining a claim for repairs to the vehicle that Mr Sultan knew had been sold before the repairs were undertaken was a deliberate attempt to deceive the insurer and the court.

19. Further, the credit hire evidence was unsatisfactory and therefore insufficient to establish need, or the origins and ownership of the vehicles, which were allegedly hired. Mr Sultan's explanation as to why he initially claimed storage and recovery costs were untruthful.
20. The false statements that are relied upon are, firstly, a claims notification form dated 24 July 2012, secondly, the claim form, thirdly, the particulars of claim, fourthly, Mr Sultan's witness statement dated 18 June 2014, and fifthly, his responses to part 8 requests dated 20 July 2014. Permission to pursue these committal proceedings was granted on 2 February 2017.
21. At today's hearing on behalf of Mr Sultan, Mr Naik has very frankly accepted that a false claim was made; that the accident relied upon was a staged accident; and that Mr Sultan maintained a false claim before the court in the county court. It is said that the statements in question were not in fact physically signed by Mr Sultan but signed by his solicitor, who encouraged him and urged him on to make and maintain the false claim.
22. However, it is accepted that Mr Sultan adopted those statements and maintained that they were his evidence throughout the trial. I accept that there does appear to be evidence that the solicitor acted, at least in some part, in preparing the claims and signing off of them. However, I do have to take note of the fact that after the discontinuance was set aside by the county court judge and submissions were filed, they were in fact filed by Mr Sultan on his own behalf, his legal representatives having come off the record.
23. The test in relation to committal proceedings is whether the claimant in this matter, EUI, can establish beyond reasonable doubt not just that the statements were untrue but that they were knowingly untrue and intended to mislead the insurer and the court. By reference to the admissions that have been made this morning, it is clear that that case has been proved, and so I do no more than summarise very briefly the nature of the allegations relied on by EUI.
24. Reliance is placed on the expert engineering evidence provided by Mr Watchorn to which I have already referred, which showed that the evidence of damage to the cars indicated deliberate actions in order to cause that damage. It has been accepted that this was a staged accident.
25. Further, the evidence given by Mr Sultan and his witnesses, in describing the location of the road as constituting an obscured bend giving rise to the accident, and the fact that the traffic lights caused him to come to a stationary position just prior to the accident, are also clear indications that this was a contrived claim. Mr Sultan must have known that the statements were false when he pursued his claim through the court.
26. In addition, Mr Sultan's evidence about his alleged injuries was materially inconsistent. The judge found as a fact that not all of his injuries could have been attributed to the contrived accident. Finally, Mr Sultan's deceit extended to the quantum of his claims. I note that although he was claiming just under £1,600 for repairs to the car, in fact as it turned out at the trial he had already sold the car.

27. It is clear to this court therefore that the allegations have been proved to be false and dishonest and that the defendant, Mr Sultan, must have known that they were dishonest at the time that he made them or at the time that he adopted the statements. Therefore in my judgment the contempt of court has been established.
28. I now turn to sentencing. As Mr Sultan has no doubt been advised, this is a serious fraud. Insurance fraud is not victimless. There is of course the immediate fraud on the insurer, but, perhaps more importantly, the nature of this fraud is such that it leads to significant increases in premiums for ordinary, honest and hardworking people who have to insure their cars and other vehicles. Therefore it does have an impact, a very wide impact, on many members of the public.
29. In this case there is evidence of collusion with other witnesses. There is also some degree of planning to stage the accident, provide the false evidence, including false medical evidence and damages evidence. The value in this case is more than minimal: some £30-35,000. In those circumstances, it is clear that there does have to be an immediate custodial sentence.
30. In terms of mitigation, first of all I do give Mr Sultan credit for the fact that he has admitted the contempt this morning before the court. I also take into account significant personal mitigation. He is 40 years old. He has no previous convictions. I have read a number of character references this morning from members of his High Wickham community, where he is a well-respected and long-term member of the community.
31. He has agreed that he will surrender his Ministry of Justice licence, which will prevent him from carrying on in future his claims management business. Therefore he will have no business and no source of income. He has two children, aged two and nine years. He has been through a costly and acrimonious divorce. I have seen a copy of the child arrangements order which ensures that he will have some contact with his children.
32. He has a new wife. He looks after his elderly and infirm parents. I accept that he did not act alone in this matter and that it required the assistance and active participation of a number of others. However, I cannot ignore the fact that he was a significant, if not the significant, player in this fraud.
33. It seems to me that in this case the starting point should be a custodial sentence of 18 months. From that starting point, I give credit for the fact that Mr Sultan has admitted his contempt this morning, and so I reduce that initially to 12 months. I then give him further credit for his personal mitigation, to which I have referred, and therefore I will impose a sentence of nine months' imprisonment.