Ref. KB-2022-003990

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

The Royal Courts of Justice
Strand
London

Before HER HONOUR JUDGE CARMEL WALL
SITTING AS A JUDGE OF THE HIGH COURT

IN THE MATTER OF

AVIVA INSURANCE LIMITED (Claimant)

-v-

KELVIN SAKYI (Defendant)

MR EDWARD HUTCHIN appeared on behalf of the Claimant
MS GENEVIEVE MOSS appeared on behalf of the Defendant

JUDGMENT
6th JUNE 2023
APPROVED

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JUDGE WALL:

Costs of the application

1. Before addressing penalty, the disputed issue on costs that I have to decide is what is the appropriate order where an application is made by the claimant for committal for contempt of court based on the signing of false particulars of claim and a false witness statement; and the allegation on which the application is made is ultimately admitted by the defendant, Mr Sakyi.

2. The claimant seeks its costs on the grounds that these are proceedings brought in the public interest. Costs have been incurred. The general principle (that the successful party should be entitled to a costs order) should apply.

3. The defendant reminds the court that it has a discretion to exercise. It is argued firstly, that if a costs order is made it should not be enforced without further order of the court because the defendant has limited control over the costs expended in a committal application. He cannot, for example, settle the application to mitigate the costs incurred. Secondly, the Defendant has the benefit of criminal legal aid. Thirdly, it is argued that the penalty that the court is likely to impose would serve as sufficient punishment without the addition of a costs order.

4. My decision is that a costs order should be made in this case and that there should not be a restriction as to the enforcement of it. Whether it is an order that can practically be enforced is, as in most cases, a matter for the claimant.

5. My reasons for reaching that conclusion are these.

6. Firstly, the claimant has occurred costs in bringing this application. The defendant has ultimately accepted the truth of the allegations made against him. The general principle is that costs should follow the event.

7. Secondly, although Mr Sakyi is legally aided he is in receipt of criminal legal aid. Parliament has decided that should not provide the protection that civil legal aid provides against enforceable costs orders pursuant to LASPO. Had Parliament intended differently that could have been made clear in the legislation. To extend the protection provided to recipients of civil legal aid to Mr Sakyi would go behind the plain wording of the statute.

8. Thirdly, I bear in mind the significance and importance of contempt proceedings. Claimants should not be dissuaded from bringing applications in appropriate cases because of costs. The purpose of a costs order is to compensate a claimant who brings proceedings such as these in the public interest. It is not the purpose of a costs order to punish. If Mr Sakyi had defended these proceedings successfully there is no doubt that the claimant would have had to compensate him for costs incurred in defending them; the same approach should apply to the other side.

9. I therefore see no principled reason to disapply the general approach to costs, namely that the unsuccessful party should pay the successful party's costs to be assessed if not agreed and I so order.

Penalty

10. I now deal with my ruling on the penalty to be imposed.

11. Kelvin Sakyi, you may remain seated.

12. On 19 December 2022, Ms Sarah Crowther KC sitting as a Deputy High Court Judge granted permission to Aviva Insurance (whom I will refer to as "Aviva") to make a committal application against you on two grounds.

13. The first ground was that your witness statement dated 10 March 2020 was not true and known by you not to be true at the time when you signed it in three particular ways. Contrary to the contents of your witness statement you did not come to a stop and wait for the VW Passat to pass you at the edge of the bus lane; you did not pull up stationary to the lights in the left hand lane and wait; and you were not struck on the rear of your motorcycle by the VW Passat as you claimed.

14. All of those matters relate to the circumstances and mechanism of the accident in which you were involved and to issues of liability in the claim that you brought.

15. The second ground was that your particulars of claim and witness statement at paragraphs 38 and 39 were not true and that you knew at the time that you signed each of those documents that they were not true. That is because, contrary to the contents of those documents, your motorcycle was not in fact unroadworthy during the period you claimed for hire of use of an alternative vehicle; from 18 February 2019 to 14 January 2020 you did not have the need of a replacement vehicle; you did not need to store your motorcycle; and you had not lost the pre-accident value of your motorcycle.

16. Those matters all related to the amount of damages that you claimed.

17. Before today's hearing, you notified Aviva that you were admitting those allegations of contempt of court. There was, though, some confusion at the start of the hearing today as to precisely what your position was. The position set out in your mitigation statement was somewhat different. But ultimately you have accepted responsibility for those matters.

18. I have already indicated that on your own admission and having read the papers I am satisfied that the allegations of contempt have both been proved to the criminal standard.

19. The issue that I must now decide is the appropriate penalty for those admitted contempts of court and whether they must result in an order for your committal.

20. Before dealing with that issue I set out the relevant facts and procedural history of these proceedings.

21. On 16 February 2019, there was a collision on the A4 Newington Causeway between your motorcycle and a car driven by Aviva's insured. That was a genuine accident. There is no suggestion that you deliberately caused the collision between these two vehicles. It is now accepted that the accident was caused by your negligence. You cut across the other vehicle and the front and side of your motorcycle clipped the front offside of the car.

22. On 19 June 2019, you issued what has proved to be an opportunistic and dishonest claim. You alleged that the accident was caused by the negligence of Aviva's insured. Your particulars of claim allege that their insured had driven into the rear of your motorcycle. Your claim for damages was substantial.

23. In addition to a modest personal injury claim about which I make no comment and no finding, special damages were claimed under these heads. You claimed just over £900 for the recovery and storage of your motorcycle and £1,706 for the pre-accident value of your motorcycle. Far and away the greatest part of your claim was for credit hire costs of a replacement motorcycle that you said you had hired on 18 February of 2019 and for which hire was continuing at the time your particulars of claim were drafted. At the time you issued your claim that head of loss alone amounted to almost £25,500 and was rising at a rapid rate.

24. In the body of the defence, the true circumstances of the accident were pleaded and the damages disputed.

25. On 30 September 2019 and unbeknownst to Aviva then, you were involved in a second accident. You were riding the same motorcycle as on 16 February. You made a claim arising out of that accident claiming damages including damages for credit hire.

26. I see from the affidavit of Mr Clayton that on 4 March 2020, the same motorcycle passed its MOT test. Its recorded mileage showed that it had been in use between the date of the index accident and the MOT test. That was at a time when you said later in your witness statement that your motorcycle was not roadworthy and you needed to hire a replacement.

27. On 10 March 2020 you made the witness statement that is the subject of this application. It was served pursuant to standard directions that a judge had issued on 3 January 2020, which allocated the claim to the fast track and gave directions to trial which was listed with a hearing date of 9 October 2020.

28. When you made your witness statement, you signed a statement of truth attesting to the circumstances of the accident which turned out to be false and to these matters which are also relevant to this application. You said that you could not afford to replace your vehicle until you received the pre-accident value of your damaged motorcycle. You confirmed that you had no available income to replace it independently. You said that for that reason you had hired a replacement vehicle from Motorcycle Accident Management Limited and that you had done that because your vehicle was damaged and not roadworthy following the accident.

29. Those were all matters that were false and were known by you to be false at the time you made the witness statement.

30. In fact on 14 January 2020 Aviva made an interim payment. Once you had received it, the credit hire came to an end but by that stage it was of the order of £75,000, which equated to 190 days of hire of a series of motorcycles. Had your claim proceeded to trial, there is some likelihood that you would have recovered substantial damages because of your false statements.

31. In about July 2020 Aviva disclosed CCTV footage which showed conclusively the circumstances of the collision. Those circumstances were consistent with the defence case and exposed your claim as being at the very least inaccurate. You could have discontinued your claim at that stage. Instead, your solicitors on your behalf made an application to debar

the claimant from relying on that evidence on the grounds that it had been served late. That approach was not consistent with an honest approach to the litigation or indeed with remorse for having made the false witness statement in the first place.

32. That application was dismissed on 7 July 2020. The claimant (defendant to the claim) was then entitled to rely on the CCTV evidence. You were given permission to file a further witness statement setting out your position with regard to this new evidence. Even at that stage you could have but did not discontinue your claim; nor did you take the opportunity offered to provide any explanation as to why your account was so different from the CCTV evidence now disclosed.

33. On 19 August 2020 you had a third accident, now on a different motorcycle. The motorcycle involved in that collision was one in respect of which you had become the registered keeper on 12 December 2019. At that time you were still in hire because you were still claiming that you could not afford to replace your motorcycle until you had received payment for the damage caused to it.

34. In the week before the trial date, Aviva became aware of the subsequent accidents. It disclosed insurance data records to that effect. Finally, at 4.20pm on the evening before the day fixed for trial you discontinued your claim. It would appear that you were allowed to do so without permission of the court, despite the fact that an interim payment had been made because neither side brought that fact to the attention of the court.

35. That discontinuance must have been on the basis that you realised by that stage that the game was up.

36. On 13 November 2020, Aviva made an application for the court to make a finding of fundamental dishonesty against you because Aviva wanted an enforceable costs order made against you. That application was granted on 20 May 2021 when Deputy District Judge White decided that your claim was, on the balance of probabilities, fundamentally dishonest. He made an enforceable costs order on the indemnity basis against you.

37. Of course the standard of proof that he was applying was the balance of probabilities, which does not necessarily mean that any contempt application would have succeeded.

38. There was then a delay of 17 months after which Aviva made an application for permission to bring a contempt application. That application was served on 22 November 2022. I accept that that was the first time that you became aware of it.

39. I have considered Ms Sarah Crowther KC's judgment when she granted permission for the contempt application to proceed. She was not able to identify any reasonable explanation for that delay, which is a factor which counts in your favour. She granted permission and then the committal hearing was listed.

40. It is only today that you have formally accepted responsibility and liability for the committal application that has been made against you. I have already referred to the confusion earlier today about the matters that were initially put forward on your behalf in the mitigation note.

41. I now deal with my powers and the approach that I take to this case.

42. The court's powers when imposing a penalty for contempt of court are to make no order to all, to adjourn disposal, to impose a financial penalty or make a committal order, either immediate or suspended. The maximum term for a committal order is one of two years.

43. Where a contempt of court consists of the making of a false witness statement which means that the witness has no honest belief in its truth at the time the statement is made and knows of the likelihood of that false statement to interfere with the course of justice, the contempt lies in the interference with the due administration of justice. That is a particularly serious form of contempt, all the more so where the witness statement is made by a claimant in proceedings where a dishonest claim is initiated and then supported by a dishonest statement.

44. I have been referred to authority which underline the seriousness of this type of contempt. The cases include but are not limited to decisions of the High Court in *Barnes (t/a Pool Motors) v Seabrooks & Ors* [2010] EWHC 1849 (Admin), *South Wales Fire and Rescue Service v Smith* [2011] EWHC 1749 (Admin), and much more recently of the Court of Appeal in *Liverpool Victoria v Zafar* [2019] EWCA Civ 392.

45. In the circumstances of this case and having regard to what has been said in those decisions I am satisfied that the threshold for a committal is passed. A financial penalty would not be a sufficient punishment. The contempt is too serious.

46. In considering my starting point when deciding on length of sentence, I take the approach of the criminal courts. I balance factors of culpability and harm.

47. Dealing first with culpability, in this case the proven allegations go to both liability and the most substantial elements of quantum. In other words, the dishonesty extends to almost every aspect of the claim. Further, this was a claim that you were initiating and bringing in your own name.

48. The false statements were maintained until almost the last possible moment before trial. The dishonesty was not fully conceded until today.

49. All of those factors indicate a high level of culpability.

50. When I consider harm, there is a belief amongst many that insurance companies are fair targets for dishonest claims because what is perpetrated is thought to be a victimless crime. But the contrary is in fact the case. When insurance companies are deceived or have to expend sums investigating the integrity of claims rather than only their accuracy, consequences are widespread. Premiums rise and honest claimants are subjected to an expensive level of scrutiny that can be felt to be oppressive in order for insurers to ensure the honesty of the claims made. And of course for the court, the consequences are serious because the administration of justice depends on honesty, openness and transparency.

51. The harm intended by you was to obtain damages that are very substantial indeed. I know not whether that money would have gone into your pocket or into the pockets of the credit hire company. But what is known is that the insurance company, Aviva, would have been losing in excess of £75,000.

52. I do though draw back from treating this as a high level of harm because the claim was, albeit at the last possible moment, discontinued. Because of the discontinuance, the harm that was originally intended could not have come about.

53. Balancing those factors of culpability and harm, my starting point is one of 10 months.

54. I then consider the one aggravating factor in this case.

55. In both the second and third accidents to which I have already referred, you made claims for credit hire charges concurrently with those claimed in these proceedings. In both of those later accidents you were riding different motorcycles from those you purported to hire as a consequence of the index accident.

56. In the second accident you were using the same motorcycle as in the index accident. In the third, you were using a motorcycle you had acquired and in respect of which you had become the registered keeper.

57. I do not know and make no finding about the circumstances of those later accidents. There is no reason for me to think that they were other than genuine accidents. However, your conduct in making concurrent credit hire claims; and claiming credit hire charges even after becoming the registered keeper of another motorcycle leads me to the unavoidable inference that your dishonesty in the index claim was not a one off incident but part of a pattern of dishonest behaviour. That is a significant aggravating factor.

58. I now turn to the factors of mitigation for me to take into account.

59. Firstly and importantly is your age. You were born on 23 October 2000. You were aged 18 at the time of the accident and at the time you made your false witness statement. You were an adult but only just. There is no doubt that you must have known what you were doing was dishonest but you may not have had the maturity to think through all of the seriousness of its consequences.

60. I am told that part of the reason you maintained your credit hire claim was your fascination with motorcycles and that that was an immature fascination. But what you must have realised when you signed the particulars of claim was that even at that stage your claim meant that £25,500 had to be paid by somebody; and by the time of trial that sum had risen to something like £75,000.

61. The second factor in your favour is your character. You have no criminal convictions or any other stain on your character.

62. Thirdly, I have referred to there being some unnecessary delay in the bringing of this application. It is now three years since you made your witness statement. That is a long period of time for somebody particularly of your age. That delay counts in your favour to some limited extent, although you could have reduced part of that period where it was within your power to do so. You could, for example, have promptly admitted dishonesty when the matter came before the deputy district judge.

63. I am told that a custodial sentence is likely to have some detrimental effect on the progress you are making towards British citizenship although the detail is not clear. I bear

that in mind when deciding on the length of sentence so that you are not, I hope, punished twice for the same wrongdoing.

64. In your mitigation note, there was reference to you discharging caring responsibilities. I am told that no longer applies. Your note refers to an injury that you have, but I do not see that as having any relevance to the matters that I must consider.

65. I am told that you have expressed genuine remorse. I am not able to accept that submission. If your remorse had been genuine, there was ample opportunity for you to have acted differently at much earlier stages. I suspect that what is now being expressed is regret that you find yourself in this position.

66. So far as credit for your admission is concerned, after permission for the application was given and after receiving legal advice you notified Aviva it was your intention to admit these matters well in advance of this hearing. That has saved Aviva's costs to some extent and also saved some court time.

67. Although there was some confusion earlier today in what exactly you were accepting, I have decided that I can extend you credit to the extent of a 20 per cent reduction in penalty.

68. The least period that I could have imposed, before taking account of that credit, would have been a term of nine months concurrently on each ground. I reduce that to seven months after allowing 20 per cent credit.

69. I have considered whether I am able to suspend your sentence but I am not able to do so. In making my decision I have had regard to the Sentencing Guideline Council's definitive guidelines for imposition of custodial sentences. What you have done is too serious. In my judgment an appropriate punishment can only be achieved by immediate custody. Had you not maintained your position in the index claim until such a late stage, then the position might have been different.

70. The effect of my sentence is that you will serve half of it and then be entitled to be discharged.

71. I am told that you will have responsibilities as a father next year. You will be released from custody in good time for you to undertake those responsibilities fully.

72. I must inform you that you have a right to appeal without permission. The time limit to appeal is 21 days from today. The route of appeal is to the Court of Appeal Civil Division.

73. I direct that there be a transcript obtained at public expense; and this judgment must be published on the website of the Judiciary of England and Wales.

74. Now you must go into custody.

This transcript has been approved by the Judge