

RTA / Nos RTA?

IN THE CHESTER COUNTY COURT

Case No: 9CH02877

Wednesday, 24<sup>th</sup> November 2009

Before:

DEPUTY DISTRICT JUDGE COOPER

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Between:

PETER VINCENT EDGE

Claimant

- and -

WHITE ROSE ENVIRONMENTAL

Defendant

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MR J OWEN appeared on behalf of the claimant  
MR G THOMPSON appeared on behalf of the defendant

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**JUDGMENT (as approved)**  
**And subsequent proceedings**

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1. This court is concerned with a costs issue which arises from a claim which has been compromised and which in itself arose from an accident on the 10<sup>th</sup> May 2006 when the claimant was injured whilst unloading Sharpsmart transporters filled with waste from the box van which he had been driving. He was employed by the defendant as a driver.
2. The court has to decide whether the facts of the case lead to a conclusion that this is a case to which section 2 of CPR Part 45 applies, i.e., is it effectively a road traffic accident case, or whether this is a case to which section 4 of CPR Part 45 applies, i.e., a dispute between an employee and his employer.
3. The court's decision will have consequences in terms of the amount of costs recoverable by the claimant whose claim has been compromised in the sum of £5,000.
4. The facts insofar as they are known and as in part conceded by counsel for the claimant are that the claimant had driven the vehicle in question to the scene of the accident, which it is accepted was a public place. The claimant was then required in the course of his employment to unload Sharpsmart transporter units from the van. The claimant says that whilst attempting to move those units, or perhaps one in particular, he was required to use excessive force which caused him to twist and injure his knee. The court has to decide whether the claimant's injury was caused by or arose out of the claimant's use of the vehicle.
5. The court has been referred to various authorities which assist in making this decision. The case of *Dunthorne* relates to a driver who had run out of petrol and crossed the road to seek assistance and was sadly knocked down and killed. The Court of Appeal decided that there was a sufficient causal connection between the use of the vehicle, which had run out of petrol, and the accident for the court to find that this was a road traffic accident.
6. The *Betty Green* case involved a lady alighting from a bus onto a step placed by the coach driver. The step moved and the claimant fell and suffered injury and again the court found that this was a road traffic accident.
7. *Cardiff City Council v Thomas* was a case which arose from a defective engine in a vehicle which resulted in a piece of hot metal penetrating the floor of the vehicle, causing injury to Mr Thomas. The court found that this was a road traffic accident.
8. The application of the test of whether the injury was caused by or arose out of the claimant's use of the vehicle depends on the facts in each case. The court has to be satisfied that there is a causal relationship between the use of the vehicle and the injury. There needs to be a direct or proximate relationship of cause and effect. The term "arising out of" extends this to a result which is less immediate but it still carries a sense of consequence. To quote Windeyer J in an Australian High Court decision in *Government Insurance Office of New South Wales and Green v Lloyd*,

"it excludes cases of bodily injury in which the use of the vehicle is a merely causal concomitant not considered to be in a relevant causal sense a contributing factor."

9. On the particular facts of this case the court does not find that the use of the vehicle is a contributing factor to the injury suffered and therefore does not find the necessary causal relationship to bring this case within the definition of a road traffic accident.
10. The court notes that in all the cases referred to by learned counsel there was some defect or failure of the vehicle or, in the case of *Green*, the step which was effectively added to the vehicle. Although it is possible to imagine cases where a defect was not necessary to bring the accident within the definition of a road traffic accident, this case is not, in the court's opinion, one of those cases.
11. The court therefore finds that this case falls within section 4 of CPR45 for the purposes of assessing costs.
12. The court is grateful to both counsel for their assistance in determining this matter.

MR OWEN: Thank you, sir. Sir, in terms of the further conduct of this matter, the preliminary issue has been disposed of but that still leaves essentially the assessment of the claimant's bill.

DEPUTY DISTRICT JUDGE COOPER: Yes.

MR OWEN: I understand from those instructing me that points of dispute have not yet been lodged and that I think would need to be done before there were a detailed assessment, so I suggest that one of the directions of the court would be....

DEPUTY DISTRICT JUDGE COOPER: I was going to ask if you were in a position to move to a detailed assessment but that is not the case.

MR THOMPSON: Sir, no.

MR OWEN: I do not think so.

DEPUTY DISTRICT JUDGE COOPER: So we need some directions.

MR OWEN: We do, sir. I suppose the first paragraph will have to deal with the preliminary issue, sir.

DEPUTY DISTRICT JUDGE COOPER: Okay, so I direct:

- (1) The court having determined the preliminary issue by deciding that section 4 of CPR45 applies to the assessment of costs in this case.

MR OWEN: Sir, yes.

DEPUTY DISTRICT JUDGE COOPER: Okay. So the claimant's bill has been served? Yes?

MR OWEN: Yes, sir, it is just points of dispute.

DEPUTY DISTRICT JUDGE COOPER: Okay.

(2) The defendant shall serve points of dispute....

How long do you need?

MR OWEN: 21 days, sir?

DEPUTY DISTRICT JUDGE COOPER: Okay.

....by 4 p.m. on 15<sup>th</sup> December?

MR THOMPSON: Sir.

DEPUTY DISTRICT JUDGE COOPER: By 4 p.m. on 15<sup>th</sup> December 2009. Response to the points of dispute?

MR OWEN: I think so, sir, yes.

DEPUTY DISTRICT JUDGE COOPER:

(3) Any response to the points of dispute shall be served....

We are into Christmas then really, are we not? Three weeks would take us to the 5<sup>th</sup> January, if I make it the 12<sup>th</sup> January would that be okay?

MR OWEN: Yes, please, sir.

DEPUTY DISTRICT JUDGE COOPER:

....should be served by 4 p.m. on the 12<sup>th</sup> January 2010.

MR OWEN: Then set it down.

DEPUTY DISTRICT JUDGE COOPER: List?

MR THOMPSON: Certainly, yes.

DEPUTY DISTRICT JUDGE COOPER:

(4) The detailed assessment hearing shall be listed on the first available date after....

Is there likely to be any scope for negotiation after the response to the points of dispute, do you want to say after the 1<sup>st</sup> February?

MR THOMPSON: Well, sir, yes, I think in the light of the scope for negotiation prior to the service of the points of dispute in this case, sir, first available date 1<sup>st</sup> February.

DEPUTY DISTRICT JUDGE COOPER:

...,after 1<sup>st</sup> February 2010.

With an estimated length of hearing of?

MR THOMPSON: Three hours, sir?

MR OWEN: Yes, three, half a day, three hours.

DEPUTY DISTRICT JUDGE COOPER: There is not likely to be anything in those which would take this to the regional cost list?

MR THOMPSON: Sir, certainly not.

MR OWEN: No, it is very routine I think now, sir.

DEPUTY DISTRICT JUDGE COOPER: Okay.

(5) The claimant lodge a bundle seven days prior to hearing?

MR OWEN: Yes, sir.

MR THOMPSON: Sir, is that forming part of paragraph 4?

DEPUTY DISTRICT JUDGE COOPER: Well, I was making it paragraph 5.

The claimant shall file a bundle of relevant documents,  
just so that we can have the points of dispute response and everything all in one  
bundle. Bundle of relevant documents with the court seven days before the hearing?

MR OWEN: Yes, sir.

DEPUTY DISTRICT JUDGE COOPER: Anything else, gentlemen?

MR OWEN: That only leaves costs, sir.

DEPUTY DISTRICT JUDGE COOPER: Of today?

MR OWEN: Yes. Really of the preliminary issue, the claimant would submit. The matter has specifically been listed to deal with this particular legal point. I anticipate the defendant's stance may be – and I do not mean to pre-empt – that offers are in play in this case, offers which really largely relate in terms of their outcome as to whether or not it is a predictive costs case but offers are in play and the defendant might say that this matter should be left over to the end once the overall financial outcome is known. The claimant would invite the court to make an order in principle at this stage rather than reserve the costs on the basis....

DEPUTY DISTRICT JUDGE COOPER: Yes, so if we had an order that the defendant shall pay the claimant's costs of and in connection with the preliminary issue, such amount to be subject to detailed assessment if not agreed.

MR OWEN: We have got a schedule, sir, so the court could in principle, if it was going to make that order, could assess that order.

MR THOMPSON: Sir, I am probably on weak ground to say that if the defendant beats its offer at the detailed assessment it should receive its costs of the preliminary issue when one bears in mind that the defendant has been unsuccessful today on the preliminary issue. However, there are matters within the schedule that deals with the preliminary issue which will have to be reserved over, such as success fee and the like. What I would invite the court to do is to reserve – well, perhaps, sir, I will be on weak ground saying that the claimant should not receive their costs of the preliminary issue but I would invite the court to have those assessed at the conclusion of the detailed assessment.

DEPUTY DISTRICT JUDGE COOPER: Having conceded the point they are entitled to?

MR THOMPSON: Well, sir, I do not....

DEPUTY DISTRICT JUDGE COOPER: You see, I do not want to – well, it would cause you difficulties if I reserved the issue of those costs because I am dealing with this as a deputy.

MR THOMPSON: Sir, yes.

DEPUTY DISTRICT JUDGE COOPER: And the chances of it being able to come back before me would probably cause you undue delay, I am not saying it is impossible.

MR THOMPSON: Indeed, sir, yes. Sir, if you wish to deal with the costs of the preliminary issue today....

MR OWEN: He can.

MR THOMPSON: I have only just seen my learned friend's schedule but in the main it is not for substantial sums. There are one or two aspects of it which I have to take issue with.

MR OWEN: Sir, I would invite the court to make an order in principle because it seems the only right result rather than reserving it, and in terms of assessment, I think my learned friend is right that there is actually – there will be a number of challenges to it and there will be substantial challenge in terms of the amount but it is not hard to adjudicate upon simply because there is only a few items on the cost schedule. There is a lot of money, sir, and the court may reduce it but it would not actually be a hard process. I do not know if that states it fairly.

DEPUTY DISTRICT JUDGE COOPER: So you want to deal with that today?

MR THOMPSON: Well, sir, yes.

DEPUTY DISTRICT JUDGE COOPER: Okay.

MR OWEN: Does the court have a copy of the cost schedule on file because if it does then I can give this to my learned friend.

DEPUTY DISTRICT JUDGE COOPER: I am not sure that I do, let me have a look.

MR OWEN: *(To Mr Thompson)*: I think you must be right about that, the assessment point, the more I think about it. I think that that is something I have to concede that it should be....

MR THOMPSON: The success fee itself?

MR OWEN: Yes, which then accordingly reduces - I am sorry, sir, that I am talking....

DEPUTY DISTRICT JUDGE COOPER: Oh! no, if it helps you talk. I do not think I do have a - I have got the main bill but I have not got anything for today.

MR OWEN: Right. Sir, in that case perhaps - sir, I do not know whether or not - thinking how best to deal with this, sir. I could pass it up to you but then it would have to go back to my learned friend. Would it perhaps help if I read out to you, sir, the key figures and then the court can make its rulings and then my learned friend and I could calculate the financial outcome in light of the court's rulings?

DEPUTY DISTRICT JUDGE COOPER: Okay. I suppose I would need to also know the overall total.

MR OWEN: Or shall we obtain a photocopy?

DEPUTY DISTRICT JUDGE COOPER: Why do we not adjourn, I can have a sandwich, you can get some copies, you can talk about it, see how close you can get to agreeing that.

MR OWEN: Quite.

DEPUTY DISTRICT JUDGE COOPER: And this afternoon's list is purely, as you have probably seen, a preliminary disclosure most of which is settled so I am not particularly pushed for time. So if I take you back at two o'clock or just thereafter with the copies and you can address me on the assessment then and I will leave the order open until then.

MR OWEN: Yes, sir.

DEPUTY DISTRICT JUDGE COOPER: Is that okay?

MR OWEN: Thank you very much, sir.

Short adjournment

MR OWEN: Sir, we have a copy of the costs schedule and it is amended and I will explain the amendment in opening if I may. May I pass a copy to you first, sir. *(Handed)*.

DEPUTY DISTRICT JUDGE COOPER: Thank you.

MR OWEN: Sir, the amendment is on the second page and the court will see that the total has been brought down to 3,673.11 and that the amendment solely relates to counsel in the way indicated.

DEPUTY DISTRICT JUDGE COOPER: Okay.

MR OWEN: The reason for that, sir, is a concession. My learned friend has rightly pointed out that on a proper and strict reading of the rules, because this does arise out of an employers liability accident, it means that....

DEPUTY DISTRICT JUDGE COOPER: (Laughter).

MR OWEN: ....what was to be my 100% uplift – and there is no answer to the point, sir, it is as simple as that, having looked at it.

DEPUTY DISTRICT JUDGE COOPER: Okay.

MR OWEN: So the success fee has to come down to 25% and that is what accounts for....

DEPUTY DISTRICT JUDGE COOPER: It reflects that, okay.

MR OWEN: Yes. With that introduction, sir, may I leave my learned friend to indicate his challenges.

MR THOMPSON: Yes, I start at the top. Grade of fee earner: this is a case which has been dealt with throughout by a grade B fee earner. I say, sir, that this is in reality grade C work, with a modest amount of supervision but nevertheless work that a grade C earner could undertake. The grade C rate in this court is £144 an hour. Conceding, sir, that there should be a degree of supervision by a grade B fee earner, sir, I would invite the court to adopt a composite rate of £150 an hour throughout.

DEPUTY DISTRICT JUDGE COOPER: Okay. Are we going to deal with these one at a time or....

MR OWEN: Sir, it is a matter for you, sir.

DEPUTY DISTRICT JUDGE COOPER: Yes. Any response to that?

MR OWEN: Yes, sir, simply that it is an interesting and complicated legal case where a grade B fee earner, which is I think a solicitor or legal executive with over four years post-qualification experience including at least four years litigation experience, is an appropriate fee earner to deal with that kind of issue, and that 189 is the Chester rate, I think, for a grade B, so I would invite you to....

MR THOMPSON: Just hold on. Sorry.

MR OWEN: So I would invite you just to allow 189, sir.



MR THOMPSON: Sir, the grade B rate for Chester is 174 but, sir, the reason I say to an extent I can justify it being a grade C rate is that, sir, as you will see as we come down through the bill we will see my learned friend has done the majority of the work in this case.

DEPUTY DISTRICT JUDGE COOPER: But he has lost part of his fee.

MR THOMPSON: Sir, given a degree of reliance on counsel, sir, I say that the grade C rate is the appropriate one. Nevertheless, sir, if it is a grade B rate, sir, then it is 174.

MR OWEN: Sir, on a mere point of fact, I think I am right in saying it is 189, simply because it...

MR THOMPSON: Ah! yes, that is right, it is that, sir.

MR OWEN: Yes, it is, the grade B is 189. The only point I would say, sir, is, I will deal with my learned friend's point about reliance on counsel, well, I can deal with it now if it helps, sir. If the point is right that counsel has done a lot of work so therefore it requires less work on the part of a solicitor, the appropriate way to deal with that is probably in terms of the hours done on the work rather than saying that a less experienced person should deal with it because it still takes an experienced person to deal with the issues, even with assistance. But in terms of that point, sir, the hours claimed by the solicitors are not great or excessive, 4.2 hours attendance in relation to documents and I think it is just over 2.5 hours in attendance on others when you add it up.

DEPUTY DISTRICT JUDGE COOPER: Do you accept that some of this work could have been done by a grade C fee earner?

MR OWEN: No doubt, sir, I think that is probably right in relation to any file that there is always some work that can be delegated down.

DEPUTY DISTRICT JUDGE COOPER: As a compromise, I will allow an hourly rate of 175 throughout, which takes into account the fact that a grade C fee earner could have done some of the work. Sorry, you will have to do a recalculation on that.

MR THOMPSON: Sir, not at all. I take no issue, sir, with the level of attendances on the claimant, one letter to advise what is happening, sir, is plainly right. Attendances on opponents: well, sir, I have seen a number of letters but, sir, certainly not eight. Two letters, that is all I have been provided with, sir, but it is difficult to see how such a simple, straightforward and narrow issue could give rise to a requirement for 1.4 hours of work. It states that some of the telephone calls are timed and some would have gone over an hour, some would have come under an hour. It is always difficult, sir, to put forward a straightforward suggestion as to what it should be, an hour overall is my suggestion. Attendances on others, court and counsel, does not appear excessive at first because there would have actually been a request for the hearing and an indication to the court what is going to be required, but then we look over the page and see that under Documents, conference with counsel is claimed there as well, so it is a wonder what communication has been with counsel, apart from my learned friend's

clerk. I would invite the court to reduce that to an hour, it is only a reduction of one unit. It is the work level of work done on documents.

DEPUTY DISTRICT JUDGE COOPER: Let us stick with page 1.

MR THOMPSON: Sorry.

DEPUTY DISTRICT JUDGE COOPER: Do you want to come back to me on the attendances?

MR OWEN: Yes, sir. In relation to opponent/insured, I submit that it is enough for the court to find that the 1.4 hours were in fact undertaken by the fact that the solicitors have executed a regular bill of costs and that the fact that the work is done should not be an issue. But in terms of what the reasonable level is, which is always a matter for the court, I simply say, sir, that ultimately it is for your discretion but that 1.4 hours is fair. In relation to attendance on others, dealing with the counsel point, sir, I am not aware of there being any competent counsel other than discussion between me and the solicitor about the case briefly, but that is not a form of conference or anything, sir. No doubt there has been some communication between the solicitor and my clerk also relating to arrangements in this case. 1.1 hours is not unreasonable for attendance on others.

DEPUTY DISTRICT JUDGE COOPER: Okay. I am going to reduce attendance on opponents to £200 and the attendance on others to one hour, which means that it will be 175, on my figures. Okay? Documents?

MR THOMPSON: Sir, reviewing file: no doubt the matters set out here are matters which it is reasonable to undertake. Reviewing points of dispute, I cannot find the points that have actually been served yet but if one takes the broad interpretation of that it is looking at what the claimant has said about the preliminary issue.

DEPUTY DISTRICT JUDGE COOPER: What they might dispute, yes.

MR THOMPSON: Sir, one can see that is fair enough. The matter which jumps out, really, is the 4.2 hours that are claimed for doing it, bearing in mind that the claimant's solicitors had a draft of the skeleton argument. What would be reasonable in a case such as this? Review the documents, see what is the issue that is being taken, preliminary investigation into what the relevance of that issue is, 2 hours, in my submission, to include within that half an hour – three-quarters of an hour for drafting my learned friend's brief.

MR OWEN: Sir, I accept 175 is a rate of at least some experience, I think that point should be taken into account by the court and it is a fair point to make against the claimant but, although counsel has been involved in the case, solicitors do have to consider the things which they have detailed and 4.2 hours dealing with a preliminary point of some importance on an interesting and fairly novel point, I would say it is not outside of the order of things, sir.

DEPUTY DISTRICT JUDGE COOPER: 3 hours.

MR THOMPSON: Sir, in relation to my learned friend's fee, I do not take any issue with the claim that is made in respect of the skeleton argument, 2.7 hours is entirely

reasonable – sorry, £270 is entirely reasonable for the skeleton argument they produced. Sir, I cannot agree my learned friend's fee for the hearing but the base fee is £1,000. It is a matter for you, sir, as to what you consider to be reasonable. I do not put forward an alternative figure, sir, because I do not want to embarrass myself, I do not know what my fee is so I do not want to put my foot in it.

DEPUTY DISTRICT JUDGE COOPER: No. You can be assisted by looking at your bill.

MR THOMPSON: I do not know whether the court has a copy of my bill.

DEPUTY DISTRICT JUDGE COOPER: No well, if it has I have not looked at it at the moment.

MR THOMPSON: Sir, reluctant as I am to challenge my learned friend's fee, sir, it is a matter for you.

MR OWEN: No, my learned friend need have no reluctance, it is a matter for the court in the end.

DEPUTY DISTRICT JUDGE COOPER: I am satisfied with the amount as claimed.

MR OWEN: Thank you, sir.

DEPUTY DISTRICT JUDGE COOPER: So you need to do a recalculation, do you, or have you been able to do that as we have been going along?

MR OWEN: Largely, sir, if you would just give us a moment I think we can finalise it.

DEPUTY DISTRICT JUDGE COOPER: Yes, stay there and work it out.

MR OWEN: I get 3,144.54.

MR THOMPSON: Correct.

DEPUTY DISTRICT JUDGE COOPER: Right, 3,144.54?

MR OWEN: Yes, sir.

DEPUTY DISTRICT JUDGE COOPER: So paragraph 6 of this order that I drafted this morning is:

(6) the defendant shall pay the claimant's costs in connection with the preliminary point referred to at (1) above in the summarily assessed amount of £3,144.54....

MR THOMPSON: Sir, 15<sup>th</sup> December, please, 21 days?

MR OWEN: Yes, sir.

DEPUTY DISTRICT JUDGE COOPER:

...by 4 p.m. 15<sup>th</sup> December 2009.

Anything else? You have not thought of any other directions we need? No?

MR THOMPSON: Sir, no.

MR OWEN: No, sir, I think that deals with everything, subject to my learned friend's views.

DEPUTY DISTRICT JUDGE COOPER: Okay, thank you both very much indeed.

MR OWEN: Thank you, sir.