

CIVIL FRAUD

The Caledonian Club, Halkin Street, London SW1

Thursday 21st November 2019

Steven Gee QC

Monckton Chambers

Example Case: UK Insurance v Gentry [2018] EWHC 37

CHRONOLOGY

Date	Event
2011	Facebook records show that G was aware of the loss of M's son in circumstances of Sudden Death Syndrome
23 February 2013	Charity run in which G participates. A Friend of G also participates called Sullivan.
16 March 2013	Charity run in which G, Sullivan and M participated
Prior to 17 March 2013	G and M were both engaged in cross country running.
17 March 2013	Alleged collision involving G's Range Rover and M's Peugeot, at which V was an independent witness. The Peugeot is almost valueless having done 152,000 miles. G's Range Rover had travelled 807 miles between 3 May 2012 and 11 June 2013.

<p>18 March 2013</p>	<p>M reported the collision to his liability insurers (UK Insurance) during a 23 minute telephone call.</p> <p>M does not mention that G was previously known to him. M explained that a deer had jumped out from the other side of the road and had run across causing Mr. Miller to swerve in order to miss it. He then hit a car which was waiting at the junction. M said "the bloke I hit had a guy in his car" and that he had the name of the driver "on a bit of paper". M gave UK Insurance the name, address and telephone number of Mr. Gentry. M said he thought Mr. Gentry was younger than him. He described Mr. Gentry as "really pee'd off because it was his car and he was screaming at me". M said there was a male passenger in the front seat who looked "quite young, mid 20s."</p> <p>G's Range Rover was taken to Ebbs' unit no. 32 at Folly Farm, where it was stored until 6 April 2013</p> <p>Green Flag issued an invoice in respect of the recovery of M's Peugeot</p>
<p>24 March 2013</p>	<p>UK Insurance write to G accepting that M was at fault for the accident and offering to supply G with a free hire car.</p>
<p>26 March 2013</p>	<p>G enters an independent car rental agreement and incurs car rental charges for 56 days ending 22 August 2013. Hire charges amount to £56,540 in total.</p>

26 March 2013	Assess Direct survey damage to G's car
27 March 2013	<p>G's solicitors provide to UK Insurance a Claim Notification Form TRA 1, in which he claimed to have suffered whiplash and to have been off work for 4 days .</p> <p>The TRA form includes Section G, brief description of the accident, and Section M - other relevant information.</p> <p>G does not state on his claim form that he had known M prior to the alleged collision.</p>
28 March 2013	V's solicitors issue a Claim Notification Form TRA 1, in which he claims to have suffered whiplash, attended hospital after the incident, and to have been off work for 4 days
3 April 2013	Assess Direct sent to Professional and Legal Services Limited a document detailing the damages to G's car and an assessment of the repair costs at £15,000
5 April 2013	The Claimant paid M £225 in respect of the value of his car
10 April 2013	Green Flag were invoiced in respect of a collection and storage fee for M's Peugeot
1 May 2013	Dr Tidy examined G and issued a medical report stating he had suffered whiplash
2 May 2013	The registration number of G's Range Rover changed
11 June 2013	G's Range Rover passes MOT

<p>19 June 2013</p>	<p>M telephone conversation with Privilege Damage Management, related to UK Insurance.</p> <p>M informs PDM that he had seen "the guy that I hit" in the supermarket and that the latter had asked what was going on with the insurance company; he was "still in a hire car".</p> <p>PDM state that they had had difficulty contacting G. In fact prior to the conversation, G's solicitors had written a number of letters to UK Insurance</p>
<p>3 July 2013</p>	<p>G issues a Claim Form in the Liverpool County Court against M claiming damages between £50,000 and £100,000 He stated on the form that he had comprehensive insurance but that he was not making a claim on it. This remains the position</p>
<p>29 July 2013</p>	<p>UK Insurance pay G £14,000 in respect of the value of his Range Rover</p>
<p>8 August 2013</p>	<p>G obtains judgment in default of acknowledgment of service</p>
<p>17 October 2013</p>	<p>Damages assessed in the sum of £75,089 covering physical damage to the Range Rover and hire charges for a replacement Mercedes for 56 days. Costs assessed at £12,945</p>
<p>13 November 2013</p>	<p>Keoghs acting for M, on instructions from UK Insurance, state they are going to apply to set aside the default judgment</p>

13 February 2014	V's claim for damages for personal injuries agreed in the sum of £1600 and the Claimant agreed to pay costs of £1240
February 2014	UK Insurance conducts social media searches Face Book, Twitter, Linked In and Experian. These indicate that G and M knew each other before the alleged collision and had taken part in cross country running events together
February 2014	UK Insurance inform V's solicitors that "information had come to light" and that previous offers had been withdrawn. The two cheques in respect of V's claim for personal injuries, were stopped
26 February 2014	UK Insurance apply to set aside default judgment
15 March 2014	<p>G makes a witness statement in which:</p> <ul style="list-style-type: none"> (i) G denies that he had known M before the alleged collision; (ii) G alleges that M had told him at the scene of the Accident about the death of his son in circumstances of Sudden Death Syndrome; (iii) G produces a photograph of Sullivan and claimed that the photograph was of the " M" who had participated in cross country event predating the collision
17 March 2014	District Judge (DJ) sets aside default judgment and judgment assessing damages

	on ground that there may have been fraud by G
4 February 2015	Appeal from DJ dismissed by recorder
25 February 2016	<p>Appeal to Court of Appeal heard from the decision of the recorder [2016] 1 WLR 2696: Judgment in default reinstated by the Court of Appeal reversing the Recorder on the ground that under the CPR there should not be relief from sanctions because the default was inexcusable and the fact that fraud was now alleged did not justify setting aside the judgment in default, applying Mitchell v News Group Newspapers Ltd (Practice Note) [2014] 1 WLR 795 , as explained in Denton v TH White Ltd (De Laval Ltd, Part 20 defendant) (Practice Note) [2014] 1 WLR 3926.</p> <p>A stay of execution is ordered on terms that the Claimant commences an action seeking damages for deceit</p>
15 March 2016	Notice of a claim by V given. No proceedings served
22 March 2016	UK Insurance commences an action against G, seeking damages for deceit, alleging that G had fraudulently represented to the UK Insurance that his Range Rover had been in collision with a Peugeot motor car driven by M and that UK Insurance in reliance on this had paid the claim. (UK Insurance were not parties to the action brought by G against M

	and so were not bound by the default judgment)
20 May 2016	G files a defence alleging that the collision had taken place and admitting that he had in fact known M prior to the alleged collision. G states in his defence that he had not disclosed his "prior knowledge of Mr. Miller" so as "not to slow down the very genuine claim."
December 2016	Bellis, an investigator, unable to trace M. Bellis speaks to V who said that he had already made a statement and that he had been advised not to speak to a private investigator. He said he could not name the person ("a personal friend") who had advised him. He said that it was not Mr. Gentry.
May 2017	The trial of the deceit claim vacated because of injuries received by G in another collision
14 December 2017	G writes a letter to the court in which he "offered to wave the white flag in the proceedings in relation to the Tort of Deceit"
18 December 2017-19 December 2017	The trial of the deceit claim. G represents himself . Trial lasts 2 days. UK Insurance have issued contempt proceedings for the admitted false statement in the WS of 15 March 2014 that he had not known M pre-collision. UK Insurance call (i) a solicitor who gives a summary of the proceedings and the reasons why UK Insurance suspected that the collision was staged; and (ii) Bellis (B) on

	<p>his investigations in December 2016: B had not been able to trace M, V had refused to speak to B; B had obtained a signed statement from the person who had recovered the damaged Range Rover.</p> <p>G does not give evidence. V who has not provided a WS gives oral evidence (see below). M and Dr Tidy are not called as witnesses.</p> <p>At the trial G accepted that his WS of 15 March 2014 contained untruths and he apologised for his dishonesty. G accepted that he had known M pre collision, they had participated together in cross country racing pre collision, his explanation in his WS of how they had become friends after the collision was untrue, and the photograph of the other M was in fact that of another friend, Sullivan who as it happened had taken part in the cross country event with G on 23 February 2013 (pre collision)</p>
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V's oral evidence at the trial

- (1) V was a fireman part time and worked part time behind the till at Halfords.
- (2) V had last spoken to G 9 months previously. V had then been asked about his shift patterns in December 2017 (which determined when he was available to give evidence at the trial) as a firefighter. He had not been asked about them in the last week.
- (3) V said that Bellis in December 2016 was quite rude to him. B had asked whether he would make a new statement which could be used against G in court. V said that B had laughed at him when V said that he had already made a statement and that he had been

advised not to speak to a private investigator. V said he could not name the person ("a personal friend") who had advised him, but it was not G.

- (4) V said because of his injuries suffered in the accident he had taken some 4-5 days off from being on call as a firefighter but that he had not taken off time from Halfords where he worked behind a till. He said he did not attend a hospital but did see his physiotherapist at his rugby club.
- (5) V was annoyed at the cheques being stopped. V was told that he would have to sue G at his own expense but he could not afford to do so.
- (6) V said that at the collision although he heard G and M speaking he was not involved in the conversation and was concerned to make sure the engines of the cars were switched off. The only thing he heard was that "something ran across the road". V left to return to his unit to get a torch. He returned in his car (the one he had been working on) and he drove G home.
- (7) V was asked whether he knew that the driver of the other vehicle was a friend of G. He said he did not. That was not mentioned. V added that it may have come up later.
- (8) When it was put to V that he had conspired with G to make a false claim he denied that allegation. He said that there had been an accident. He could not remember the air bags going off.

Questions

1. What are the issues? What is the burden and standard of proof?
2. Are the mileages of the Range Rover and Peugeot relevant?
3. Was it significant that two friends had had a collision? Was it a coincidence?
4. Is it significant that G's then solicitors did not disclose to UK Insurance in the Claim Notification Form TRA 1 of 27 March 2013 that G knew M prior to 17 March 2013?
5. In February 2014 when the two cheques in respect of V's claim were stopped after the social media searches, was there enough evidence to substantiate a fraud claim?

6. Was it significant that M, Dr Tidy, and the recovery personnel were not called to give evidence by G? Was an adverse inference to be drawn?

Wisnewski v Central Manchester Health Authority [1998] PIQR P324 at p.14:

"(1) In certain circumstances a court may be entitled to draw adverse inferences from the absence or silence of a witness who might be expected to have material evidence to give on an issue in an action.

(2) If a court is willing to draw such inferences, they may go to strengthen the evidence adduced on that issue by the other party or to weaken the evidence, if any, adduced by the party who might reasonably have been expected to call the witness.

(3) There must, however, have been some evidence, however weak, adduced by the former on the matter in question before the court is entitled to draw the desired inference: in other words, there must be a case to answer on that issue.

(4) If the reason for the witness's absence or silence satisfies the court, then no such adverse inference may be drawn. If, on the other hand, there is some credible explanation given, even if it is not wholly satisfactory, the potentially detrimental effect of his/her absence or silence may be reduced or nullified."

7. What is the significance of the admitted lies? Were they to bolster and not to slow down the payment of a genuine claim, in circumstances where G had personally incurred hire charges of in excess of £50,000, or was there another explanation?

Were the lies told to "mask guilt or fortify innocence"; see R v Lucas [1981] QB 720 at p.724, The Grecia Express [2002] 2 Lloyd's Reports 88 at p.119 col.2 ; The Atlantik Confidence [2016] 1 Lloyd's Reports 525 at paragraph 30

8. Was there any motive?

9. Was there any direct evidence of fraud? Was deceit proved at trial by inference?