

Neutral Citation Number: [2022] EWHC 2413 (Ch)

Case No: H44YX065
Appeal Ref. CF004/2022CA

IN THE HIGH COURT OF JUSTICE
ON APPEAL FROM THE CARDIFF COUNTY COURT
JUDGMENT OF DISTRICT JUDGE MORGAN DATED 27.1.22

Civil Justice Centre, 2 Park
Street, Cardiff
CF10 1ET

Date: 25th May 2022

Before:

THE HONOURABLE MR. JUSTICE ZACAROLI

Between:

BETHANY HARDSTAFF

Claimant/
Appellant

- and -

FRED SHERWOOD & SONS (TRANSPORT)
LIMITED

Defendant/
Respondent

MS. HELEN RUTHERFORD (C) for the Claimant/Appellant

MR. PRING (C) for the Defendant/Respondent

Approved Judgment

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MR. JUSTICE ZACAROLI :

1. This is an appeal against the decision of District Judge Morgan of 27th January 2022 in which he dismissed the claimant, Ms. Hardstaff's claim for damages against the defendant Fred Sherwood & Sons (Transport) Limited arising out of a car accident in 2018.
2. The appeal is brought on one ground only with the permission of His Honour Judge Harrison given in writing on 29th March of this year. The one ground is whether the judge was correct to dismiss that part of Ms. Hardstaff's claim for damages which comprised the charges for hiring a replacement vehicle on the basis that the hire contract was unenforceable.
3. There is no dispute that Ms. Hardstaff needed a replacement car for her work and for travel, but the judge concluded that she could not recover for the cost of the hire. As I read his judgment, his sole ground for doing so was that the contract of hire was unenforceable and his reason appears to have been as follows, and this is at paragraphs 11 and 12 of the judgment.
4. "First, Ms. Hardstaff was given no explanation as to her prospective liability under the terms of the agreement at the time of contracting, that is, at the time of entering into the hire contract. Secondly, she had alternative insurance available to her which would have provided her with a courtesy car and she thought that that was indeed what she was getting". The judge noted at 12 that: "Had she had that alternative courtesy car, then this claim would not have been made".
5. In my judgment, those reasons, as I have articulated them, do not amount in law to a valid ground to find that the hire contract was unenforceable. It is common ground that Ms. Hardstaff signed the contract and it is clearly established law that the contract is not rendered unenforceable merely because the person who signed it did not read it and did not understand its terms or implications when they entered into it. There is no evidence that anything said by the hire company at the time or before she entered into it constituted any misrepresentation, and that is not the way it is put on appeal anyway.
6. Nor do I see how it can be said that the fact that she had an alternative insurance car available to her, the courtesy car, makes the contract unenforceable or that that is what she thought she was getting, mistakenly. As Ms. Rutherford who appears for Ms. Hardstaff submitted, a defendant cannot benefit from the claimant having an alternative source of recovery under their own policy of insurance (see, for example, *Bee v Jenson* [2007] EWCA Civ 923 at paragraph 11).
7. Mr. Pring, who appears for the defendant, points out that in his submission the defendant is not benefiting from the claimant having alternative insurance, but that submission is based upon a contention which I will come to in a moment, that Ms. Hardstaff had no intention to create legal relations when she entered into the contract, so there was no contract of hire. As I say, I will come to that in a moment. In so far as my conclusions are based on my understanding of the judge's reasoning at 11 and 12, I accept Ms. Hardstaff's submission on this point.
8. Accordingly, for those reasons, I consider the judge was wrong in law to dismiss the claim on the grounds that the contract of hire was unenforceable. Mr. Pring contends

that the judge's decision was actually a decision that the claimant lacked the intention to create legal relations or that there was no consideration provided to her for entering into the hire agreement.

9. The first problem with that, as it seems to me, is that I do not think, even by a process of careful interrogation and interpretation of paragraphs 11 and 12 of the judgment, that the judge determined either that there was no intention to create legal relations, a defined and separate question of fact, or that there was no consideration in law for the entry into the hire agreement.
10. As to the lack of intention to create legal relations, that was not a point taken by the defendants in the defence, and even though that too can be said about the question of unenforceability, when the judge raised the question of enforceability for himself, it was not argued on behalf of the defendant at that point that the claimant lacked intention to create legal relations, neither was it argued that there was no consideration for the entry into the hire contract.
11. So far as lack of intention to create legal relations is concerned, in any event I do not accept that a mistaken belief that Ms. Hardstaff was already entitled to the car that she thought she was getting, negates the intention to create legal relations with the hire company when she entered into the contract by signing it.
12. Given that is my conclusion as to the judge's reasoning, the only way in which this point could now be raised on appeal is by way of a respondent's notice to seek to uphold the judgment on the basis of a different legal argument. That is in fact not what the defendant seeks to do here, but it could not be cured here in any event because the question is one of fact and if the judge has not made a finding of fact that the claimant lacked the intention to create legal relations, it is not open to the appeal court to do so in his place.
13. As to consideration, I do not think that the judge in paragraph 12 goes so far as saying there was no consideration for the contract which Ms. Hardstaff entered into with the hire company. What he said was, had she had the alternative courtesy car under her own insurance policy then the claim would not have been made here. That may well be true. It would not have been made by her. It may well have been made by somebody else, but it would not have been made by her.
14. However, as between her and the hire company, I have no doubt that there was consideration. She was obliged to pay. The hire company was obliged to provide the car, which it did, and so it seems to me that as between those two parties for that bilateral contract there was proper consideration. So for those reasons I do not accept Mr. Pring's submissions that the judge reached a decision that there was no intention to create legal relations or there was no consideration. Accordingly, I remain of the view that the judge was wrong on the question of enforceability and therefore his judgment on that point should be set aside.
15. There then arises a question as to what the quantum of the claim is. The claim was for a period of hire of 34 days reduced by concession to 32 days below. The judge at paragraphs 8 and 9 concluded: "In my judgment, with regards to the period of hire, the period of hire for the works to be carried out should have been no more than eight or nine days". At paragraph 14 he returned to this: "So far as the period is concerned, it

seems to me that again is far too long”. He then discusses the length of time taken between the car being provided to the garage for repair and it being repaired, and concluded that at most it should be no more than nine days.

16. Taking those two paragraphs together, it seems to me the judge did indeed conclude that the appropriate period of hire if the contract had been enforceable was one of nine days.
17. In giving permission to appeal, His Honour Judge Harrison gave permission only on the point of enforceability. He noted that the judge had reached other conclusions *inter alia* in relation to the delay. He concluded those findings were open to him on the evidence and they do not appear to be the subject of appeal. If they were, then a separate permission to appeal application would have been necessary.
18. Ms. Rutherford, who appears today as I say for the claimant, frankly accepts that if that is the right construction of the judgment, then she is not pursuing an application for permission to appeal against that part of it now. So for those reasons I will allow the appeal and substitute for the amount claimed by the claimant the amount of hire to be referable to a period of nine days.

Discussion re amount

MS. RUTHERFORD: I get £1,491.47.

This judgment has been approved by the Judge.