

TRANSCRIPT OF PROCEEDINGS

Ref. 029MC543

IN THE COUNTY COURT AT MILTON KEYNES

Silbury Boulevard
Milton Keynes

Before DEPUTY DISTRICT JUDGE SIMPSON

IN THE MATTER OF

DAVID WALFORD (Claimant)

-v-

UK PARKING CONTROL LTD (Defendant)

The Claimant appeared in person

MR TRAVEDI appeared on behalf of the Defendant

WHOLE HEARING

20th AUGUST 2019, 09.52-10.49

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JUDGE SIMPSON: Morning, everybody.

MR WALFORD: Morning.

MR TRAVEDI: Good morning, sir.

JUDGE SIMPSON: I hope you don't (inaudible) me starting early, but you've probably seen the list, there's quite a lot we've got to get through, today. This is a reserve judgment that arises out of a hearing before me on the 29th of May 19 that finished very late in the day. I'm grateful to both parties for their help in dealing with the issues, and, in particular, the voluminous documents that I've since been able to go through.

The witness statement of Mr Walford and the documents produced raise a large number of issues, some of which are not relevant for my purposes, in deciding this claim. I do not propose dealing with each and every aspect of issues raised by Mr Walford, but will limit myself to the relevant aspects for my determination of the claim. Whilst I have subsequently read all the documents produced by the parties, if no specific reference is made to a particular document or a line of communication, it does not mean that I have not taken it into account in determining this claim.

(There followed a judgment – please see separate transcript)

JUDGE SIMPSON: Mr Travedi, do you have any issues with that in principle?

MR TRAVEDI: Just to clarify in terms of the 400, I note the court's position is that it's based on (inaudible) nominal damages. If I can just get the court's clarification - I wasn't able to quickly check the invoice: is it based on the invoice that was presented on the 2nd of July?

JUDGE SIMPSON: It's based on a number of hours respectively that Mr Walford (inaudible)

MR TRAVEDI: Can I ask the court just to repeat that while I just make a note of that so (inaudible) just aware that if I do make any submissions.

JUDGE SIMPSON: Sorry? What are you looking for - the invoice?

MR TRAVEDI: Yes, sir, so we've got 2nd of July invoice ---

JUDGE SIMPSON: So that's 3141.

MR TRAVEDI: I'm sorry?

JUDGE SIMPSON: Tab 3, page 141.

MR TRAVEDI: Yes, so if you can - to just repeat what evidence it were you're allowing, or which ones weren't allowed, just (inaudible)

JUDGE SIMPSON: You've got a number of headings.

MR TRAVEDI: Yes.

JUDGE SIMPSON: The only two that I'm allowing are effectively 05/05/18 and 07/05/18 to 11/05/18.

MR TRAVEDI: But reduced to 400 in total.

JUDGE SIMPSON: Yes.

MR TRAVEDI: To reflect the fact that it - it's an admission to costs, not loss of earnings.

JUDGE SIMPSON: Yes.

MR TRAVEDI: Right, so that's (inaudible) that's clarified (inaudible) thank you. I note the court stated on a previous occasion that quantum be dealt with separately; I note the court's made a decision on quantum; is there any scope for me to make submissions in response to your point on quantum at this stage, or is that - or is that the court's decision?

JUDGE SIMPSON: No, I've made my decision. It was adjourned, part heard, for the court to consider judgment and, if applicable, determination of quantum.

MR TRAVEDI: Yes, sir, so I thought the court ---

JUDGE SIMPSON: So I've determined that it's not a loss of earnings claim because there is no evidence; I've therefore determined that based upon the 40 hours and the nominal damages, I've limited the claim to £400.

MR TRAVEDI: Right, sir, so no submissions can be made - made at this stage on quantum.

JUDGE SIMPSON: No.

MR TRAVEDI: I thought that was the court's position on the last hearing so I'd prepared on that basis; that would have been my position, but if that - if the court has made its - it's adjourned and you're not willing (inaudible) sir, can - may I firstly seek permission to appeal on - on the - on the judgment itself, on the basis of my previous submissions made at the previous hearing, and that it's my submission that there was no contract from the outset for which - from which they suspect the claimant could recover those damages.

JUDGE SIMPSON: That is contrary to the findings I've made, and, therefore, on that basis, I take the view that, based on the facts of this case, you're unlikely to succeed, and, therefore, I refuse permission to appeal.

MR TRAVEDI: In terms of quantum (inaudible) that I thought the court was going to allow the parties (inaudible) to make submissions on quantum, but I believe that's not the court's stance on that so I'll seek permission to appeal on that basis, of what I believe was - what states here and (inaudible) being allowed on (inaudible) made a nominal damages award.

JUDGE SIMPSON: No, I think that's a misinterpretation of my decision of the last occasion. You had ample opportunity and, indeed, your stance has been, throughout, (a) that there's no contract and (b) therefore no damages are payable whatsoever.

MR TRAVEDI: Right, sir, I do understand that (inaudible) so OK, I assume permission to appeal's refused on both counts.

JUDGE SIMPSON: Yup.

MR TRAVEDI: (inaudible) it - whilst I do accept that, the - the claim - oh, sorry, the defence was that there was no contract; therefore, no damages flow; because quantum wasn't being considered, there wouldn't be an opportunity for the - the defendant to make submissions to reduce quantum accordingly, based on the principles of remoteness or mitigation of loss.

JUDGE SIMPSON: You dealt with those as part of your submissions, originally.

MR TRAVEDI: Very (inaudible) sir, only because I was considering ---

JUDGE SIMPSON: Well ---

MR TRAVEDI: --- each element as a set, but, obviously, when the court said quantum, we did consider next time, depending on the decision on liability; that's a basis upon which I thought that the hearing today would have been dealt with.

JUDGE SIMPSON: If I was to accept your interpretation, therefore, was right, what do you want to say in relation to quantum, then?

MR TRAVEDI: The thing was to try and submit (inaudible) nominal damage (inaudible) it's to suggest - the first point would have been there is a lack of clarity between the loss of earnings and the administrative charge, but I do believe the court's dealt with that - made it very clear it's not a - there's no evidence of a loss of earnings. The other point is it's the evidence - there isn't - the loss that had been claimed upon, according to the invoices, on evidence, generally; it's just that invoice that has been relied upon at an arbitrarily set rate of £20 per hour; that would be my first point, there, sir, and then I would have tried to suggest that the claimant has failed to mitigate their loss, because (inaudible)

JUDGE SIMPSON: Well, that's a separate issue. Deal - deal with the quantum issue first.

MR TRAVEDI: Well, effectively ---

JUDGE SIMPSON: Why - why do you say that £400 is not an appropriate figure?

MR TRAVEDI: (inaudible)

JUDGE SIMPSON: You've not denied that Mr Walford has spent, as he asserts, 40 hours in dealing with the appeal.

MR TRAVEDI: I would submit that there's no evidence to suggest that he did; apart from the invoice has been submitted, there's nothing.

JUDGE SIMPSON: He - he has produced a statement endorsed with a statement of truth; you've had ample opportunity throughout the whole of this, to deal with it; at no point has any issue been raised as (inaudible) it's simply been a blanket denial.

MR TRAVEDI: Well, as I was saying, sir, I thought, today, the court was going to deal with quantum, so that's on that basis that I would have dealt with that point of the loss being unevidenced because if - if liability was found in favour of the claimant, then, obviously, quantum's been dealt with separately, and that was what the position of the court at the last hearing.

JUDGE SIMPSON: So what is your argument then, in relation to mitigation of loss?

MR TRAVEDI: I simply - so I've already submitted, sir, that £20 per hour is a rate that's just been plucked out of the air. There is no reference to why it's £20 per hour. I note that it's not a loss of earnings; it's an administrative cost - hourly charge, as (inaudible) says, un-evidenced loss, apart from that invoice, and also that, in my submission, dealing with an appeal would not have taken as long as what the - the defendant - sorry, the claimant's stating he spent on it.

JUDGE SIMPSON: You're - you're mixing up the two heads, Mr Travedi.

MR TRAVEDI: Yes, sir. Well, for - it ---

JUDGE SIMPSON: The - the obligation for a party to mitigate its loss is to ensure that parties simply cannot leave a - a party liable to pick up a tab no matter what; they have a duty to take such reasonable steps as they can to mitigate the loss. What is it that you should say, that Mr Walford should have done, that he didn't do?

MR TRAVEDI: I'm just looking at the two heads which you have approved, effectively: the 5th of May to 7th of May to 11th of May 18 (inaudible)

JUDGE SIMPSON: So what is it you say he shouldn't have done, that he did?

MR TRAVEDI: Well, firstly, I can say that it doesn't state exactly what he did for the period of eight hours, nor does it state that exactly what he did for the - the period of 32 hours, apart from stating, in general terms, that he considered the - the evidence of the defendant's 45-page - 9,400 words - it's very difficult saying what he shouldn't have done; the only point I can make is I understand the court's position that there's not so much I can specifically say on that, apart from that it seems to me excessive, and that, based on the invoice itself, does not state exactly what he has done, and it's only on that basis I can say that it should be refused. On those two heads I don't submit the court hasn't awarded the other heads, so potentially less than (inaudible)

JUDGE SIMPSON: The - the loss I have limited to dealing with the appeal in relation to POPLA. I've not allowed anything in relation to the appeal on the online process, but once the defendant went beyond the bounds of good faith, and started to produce documents which were inaccurate, misleading and wrong, then, a party is entitled to take them to task; that is what he has done.

It is clear from the documents that have been submitted the extent that Mr Walford has gone to, that a substantial amount of time has been committed to it. He has had to go through from since the parking charge notice that was produced by the defendant; he, then, highlighted the differences; each of those take time. You are, effectively, saying that, despite the fact that your clients are, as I found, the authors of their own position; he should have taken steps to do something which he shouldn't do. I don't accept that's the case. He has done something in response to your client's failure to deal with matters appropriately.

MR TRAVEDI: That's fine; I'll just double-check there's nothing further, sir, and just a couple of points, sir: in terms of - the court didn't really make in the judgment the point made in respect of (inaudible) previous hearing, that if - I understand that the benefits and burden (inaudible) respective of contract, but the idea being if the claimant - if the defendant is trying to recover its parking charge, then - and the - the case stating that effectively the reverse is true that we should therefore be entitled to recover our (inaudible) for having to deal with the parking charge, is that not effectively - would not that not effectively have to be (inaudible) liquidated damages (inaudible) of its own and therefore something that would have had to be agreed by ---

JUDGE SIMPSON: No.

MR TRAVEDI: --- the defence specifically.

JUDGE SIMPSON: No.

MR TRAVEDI: Sorry - the defendant specifically.

JUDGE SIMPSON: No.

MR TRAVEDI: The reason for that is (inaudible)

JUDGE SIMPSON: No. I've given you my judgment; if you're not happy with my judgment then the appropriate way is to seek permission to appeal.

MR TRAVEDI: That's fine, sir, so at this stage, £400 for the judgment - permission to appeal is refused, and you - you asked me about costs, sir. The only thing I could say - it's not been a full success, and I note that CPR 44 talks about a situation where there hasn't been a complete success on the part of the claimant, but in principle, whilst the claimant is entitled to their costs, the costs following the event, they are (1) restricted by the - the rules of small claims, and, secondly, it should reflect the fact that it hasn't been a full success.

JUDGE SIMPSON: Why do you say it's not been a full success?

MR TRAVEDI: Well, the claimant's (inaudible)

JUDGE SIMPSON: They succeeded on liability.

MR TRAVEDI: I understand.

JUDGE SIMPSON: I say the - the principle, Mr Walford, is that the - the usual order is for a defendant to pay the claimant's costs; I have the ability to vary that order; in doing so, I have to justify it; nothing I have heard from Mr Travedi gives me any cause to vary the usual order, and therefore the defendants will pay your costs in respect of the claim, and there is an issue fee of £60 and, I think, a hearing fee of £80?

MR WALFORD: Yes (inaudible)

JUDGE SIMPSON: And have you got any expenses - car parking, et cetera?

MR WALFORD: Yes (inaudible) hand you this sheet here.

JUDGE SIMPSON: What ---

MR WALFORD: I have a few.

JUDGE SIMPSON: What's the sheet there?

MR WALFORD: This sets out the mileage - the loss of earnings for attending.

JUDGE SIMPSON: OK, have you given a copy to Mr Travedi?

MR TRAVEDI: I've not seen anything, sir.

MR WALFORD: No, I haven't.

JUDGE SIMPSON: OK, can I - have you got a copy there for Mr Travedi?

MR WALFORD: He can have this one in the meantime. On - on the first page is the costs which I understand are allowed as standard, so in addition to the claim fee and the hearing fee, there's my £95 loss of earnings for attending two hearings and I put my two (inaudible) and the respective mileages (inaudible) car share, so (inaudible) standard costs. Would the court be prepared to consider additional costs for unreasonable behaviour? If not, the additional pages are irrelevant.

JUDGE SIMPSON: Can we deal with the travel expenses? What do you want to say about these, Mr Travedi?

MR TRAVEDI: We - the first thing I'll - I would state is - well, we have here the travel expense for Mr David Walford who is the (inaudible) so did you say car (inaudible) do you share a car together?

MR WALFORD: (inaudible) we - myself and Mr William Walford - we shared a car to - from our home to Oldmead, where we picked up Mr Leafe who travelled from his home in Sharnbrook.

MR TRAVEDI: I don't think I'll see it there, sir, it seems to be a - the travel goes from one area to another, another area to here, and then back, it seems to be ---

JUDGE SIMPSON: What - what he's given you is a breakdown of the journey, isn't it?

MR TRAVEDI: Yes, it - but as I say, sir, usually, it would be for - from, effectively from - from - travelling from home to the hearing and back, and this goes from one area to another.

MR WALFORD: The - that and that mileage is the same as - otherwise Mr Leafe would have travelled from Sharnbrook to Milton Keynes and back, so effectively combine mileages to say - just for convenience Mr Leafe was able to (inaudible) so also I've saved on car parking fees which I've not included.

MR TRAVEDI: Does that include the car park?

MR WALFORD: No, we have not put car park fees (inaudible)

MR TRAVEDI: (inaudible) so it's - it's just set out on - on the document but there's no further evidence of it, apart from the suggestion that this has - what - what happened is - in respect of loss of earnings, sir, Mr Walford's self-employed, but, again, there's no evidence provided as to how much he earns, or anything like that (inaudible) should be entitled to a full - full cap, or at the top end of a cap.

JUDGE SIMPSON: What are you suggesting he is entitled to?

MR TRAVEDI: (inaudible) full report is (inaudible) I could only - I would state that there is no evidence to support that should be £95; that's - there's a maximum he's entitled to, sir.

MR WALFORD: May I address that (inaudible)

JUDGE SIMPSON: Yup.

MR WALFORD: (inaudible) in this document, my situation is I'm self-employed; I make (inaudible) and the nature of that work is I spend some years developing, and I don't know exactly how much time (inaudible) is. However (inaudible) stones take three months' work from time to time, and in that - those documents, I've provided an example of some previous work (inaudible) if you continue through, it was three months' work for a - from an employer (inaudible) system (inaudible) installation of some (inaudible) outdated hydraulic (inaudible) software (inaudible) hardware, and that was a five-day job at a rate of £200 per day, so I've included that as an example of (inaudible) as my income from (inaudible) I'm not sure on the exact page number but I think it's either page 3 or 4 that's (inaudible) so there's the offer from the company (inaudible) my acceptance, and the email from (inaudible)

JUDGE SIMPSON: Mr Walford, Mr Travedi, I'm just reading CPR rule 46.5: Litigants in person. "This rule applies where the court orders that the costs for the litigant in person are to be paid by any other person." And it goes on: "The costs allowed will not exceed, except in the case of a

disbursement, two-thirds of the amount which would have been allowed if the litigant in person had been represented by a legal representative.

The amount of costs be allowed to the litigant in person for any item of work claimed will be (a) where the litigant can prove financial loss, the amount that the litigant can prove to have been lost for time reasonably spent on doing the work; or where the litigant cannot prove financial loss, an amount for the time reasonably spent on doing the work at the rate set out in Practice Direction 46." Practice Direction 46 refers to, at 3.4: "The amount, which may be allowed to a self represented litigant under ... rule 46.5(4)(b), is £19 per hour."

MR TRAVEDI: That's right; I understand that; that's - the rule there applies to special cases, but I do get that there are limits, when it comes to small claims; that limit is not, obviously - the cap being £95, but I'm in your hands, sir, as to what (inaudible)

JUDGE SIMPSON: I'm going to allow £95 in relation to the first hearing and I'm going to allow £57 in relation to today's hearing.

MR TRAVEDI: And can I - may I ask what the 57 - why it's 57.

JUDGE SIMPSON: It's three times' 19.

MR TRAVEDI: Three hours.

JUDGE SIMPSON: Yes.

MR TRAVEDI: I'll just double-check 27.14; I just wanted to make sure - that's fine, sir. May I just talk (inaudible) in respect of the travel expenses?

JUDGE SIMPSON: £54.90.

MR TRAVEDI: (inaudible)

JUDGE SIMPSON: So I make that £206.90 in relation to travel expenses.

MR TRAVEDI: 206.90.

JUDGE SIMPSON: 20609 plus 540 so the total payable is £746.90.

MR TRAVEDI: That includes the issue fees (inaudible)

JUDGE SIMPSON: Issue fee of £60 and the hearing fee of £80.

MR TRAVEDI: Right, so that's 346.90.

JUDGE SIMPSON: 746.90. Yes, I mean the total is 746.90, so it's £400 damages ---

MR TRAVEDI: (inaudible) 400 - I ---

JUDGE SIMPSON: Yeah.

MR TRAVEDI: I was a bit confused, sir, so ---

JUDGE SIMPSON: Yeah, sorry.

MR TRAVEDI: --- that's fine - 746.90. Before we - we move on, taking it further, there's one thing I did notice from the court's decision that was made in respect of nominal damages: isn't nominal damage something that's awarded at a very low rate when there's no financial loss proven? I believe that's what the normal nominal damage generally is.

JUDGE SIMPSON: Which is where I've come from.

MR TRAVEDI: But it's usually a very low amount, say 10, £12, or something like that; not usually 400.

JUDGE SIMPSON: We've dealt with your submissions in relation to that; did I give an opportunity?

MR TRAVEDI: So I mean I understand the court has refused permission to appeal without being (inaudible) basis (inaudible) permission to appeal (inaudible) that - that (inaudible)

JUDGE SIMPSON: I've - I've already dealt with the applications for permission to appeal.

MR TRAVEDI: So I assume it's refused once again if (inaudible) on that basis (inaudible)

JUDGE SIMPSON: Yes, you've already dealt with (inaudible) part of it. So a total of £746.90 is payable by the defendant, which is payable on or before the 3rd of September 2019.

MR TRAVEDI: Is that 14 days, sir?

JUDGE SIMPSON: That's 14 days, yeah.

MR TRAVEDI: May I ask for longer: 28 days (inaudible)

JUDGE SIMPSON: You can do; I see no justification for it whatsoever, and, therefore, no reason for adjusting the normal rule, which is payment within 14 days.

MR TRAVEDI: It's - it's just it may take some time for the order to come out (inaudible)

JUDGE SIMPSON: You will, no doubt, report back to your clients today.

MR TRAVEDI: Yes, so just to confirm the order made, so: judgment for £400; permission to appeal refused on the count - on the counts given, including the nominal damages point, and, thirdly, total costs of 346.90; total therefore payable by 3rd of September 19.

JUDGE SIMPSON: Yup - 4 pm. Thank you all very much.

MR WALFORD: Excuse me, sir, could you clarify if those costs go to the court, or ---

JUDGE SIMPSON: No, no, court don't get involved in any payments at all; they're paid direct to you - yup.

MR TRAVEDI: Just double-checking the issue fee (inaudible) do you know where the issue fee's stated, just for my (inaudible) where ---

JUDGE SIMPSON: Issue fee is stated at section 2, page 6.

MR TRAVEDI: (inaudible) 60, and the hearing fee's 80.

JUDGE SIMPSON: Yes.

MR TRAVEDI: Thank you very much, sir.

JUDGE SIMPSON: Thank you, everybody.

We hereby certify that the above is an accurate and complete record of the proceedings or part thereof.