IN THE MANCHESTER COUNTY COURT

Claim No. 2IR63011

1 Bridge Street West
Manchester

Tuesday, 25th June 2013

Before:

DISTRICT JUDGE MATHARU

Between:

HOWARD DOYLE

Claimant

-v-

MANCHESTER AUDI

Defendant

Counsel for the Claimant: MR. COLBECK

Counsel for the Defendant: MISS S. ROBSON

JUDGMENT APPROVED BY THE COURT

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APPROVED JUDGMENT

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1. THE DISTRICT JUDGE: Today is the hearing date for a detailed assessment in the matter of *Howard Doyle v Manchester Audi*. I am asked to make a finding on a preliminary issue. The preliminary issue is identified in the joint statement received at court on 18th March in this way: the defendant says proceedings did not need to be issued and issue by Part 7 proceedings was because of the claimant's conduct.

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2. The claimant's position is they did what was properly required of them by providing the requisite ID, namely, the driving licence, in June 2011. It is these defendants who delayed matters and did not communicate their concerns to them until November, whereupon it became crystal clear that this case was to be defended. So, both liability and quantum remained in issue and, therefore, they should recover their reasonable costs of and as a consequence of detailed assessment.

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3. It is helpful to set out some facts or matters that, perhaps, are not in dispute, namely, that the RTA took place on 29th January 2011. I am provided with a chronology by Miss Robson, which Mr Colbeck does not take significant issue with insofar as he says it contains some pertinent information but not everything, but what is contained therein is not challenged.

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4. What appears to have transpired is that on 3rd February 2011, five days later, liability is admitted by the brokers, or the claims management organisation of the Defendants, writing directly to this claimant at the address that he provided of 4 St Paul's Court, St Paul's Street, Bury. What Miss Robson says is that this is a trigger for various questions and concerns that they raise. Mr Colbeck tells the court that he has not seen that letter before. What has come to light is that this claimant does have a connection with that address and to accurately quote Mr Colbeck he "surmises" that it is the claimant's girlfriend's address because that very address was given to the defendant on 11th November 2011. What is not challenged or cannot be challenged is that this is proper service at an address given by this claimant. So a concession of liability is made on 3rd February 2011 to a Mr Ben Doyle, who identifies himself as Ben Doyle at that address.

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5. The claimant's solicitors were instructed some time in January 2011. The nature of the accident was such that it fell within the portal proceedings. A claim notification form is submitted via the portal, I understand, on 5th February 2011 in the name of Howard Doyle with a different address: 573 Bury Road, Bolton.

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6. On the bill of costs itself it is recorded that the claim exited the portal on 31st March 2011 because the defendant failed to respond; that is what the bill of costs says. What Miss Robson says is that the Defendant had 15 days to admit liability, otherwise the case automatically drops out, and on 20th April 2011 they emailed the claimant asking for confirmation of the claimant's name and a copy passport photograph as both the name and address of the Claimant were different to what they had. She says that proceedings dropped out of the portal process on 5th May, which is the 15 working days. She says the claimant's solicitors only replied on 25th May 2011 when they provided an explanation that this gentleman is known as "Ben". That is the only response that is provided.

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7. So how did the matter continue? Part 7 proceedings are issued on 14th February 2012 and it is the period of time before then that the court needs to consider because it is the

defendant's position that proceedings were not necessary under the Part 7 process as set out in the joint statement. What the defendants say is the only thing that was in issue was proof of identity. What the claimants say is that that proof of identity was provided and enclosed in their letter of 19th December 2011 and what Mr Colbeck was good enough to do was to read the following, "We enclose *identification*." We must not lose sight of the fact that the defendants say they wanted passport ID, but I will leave that in abeyance for the moment.

8. What the claimants assert is that the defendants should have accepted the photo card ID that they disclosed (that is in June 2011), and also the description that they provided in their Part 18 replies in June 2012 matches both the description that has already been given or the photo on the photo card.

9. It is relevant that it be mentioned that it is the defendant who mentions to the claimant on 20th June 2012 that, perhaps, the claimant could obtain more up to date photographs from social network accounts because that would categorically resolve the ID issue. They had also raised on 11th April 2012 what else could be provided, i.e. medical records, because that would confirm that this claimant had gone to the GP or hospital shortly after the accident, as apparently referred to in the medical report. What happens is that this photograph that the defendant could identify the claimant from was eventually received on 9th July 2012. The photo card ID that had previously been provided had caused the defendant to reject that this was the person in issue ie that had been involved in the accident. Identity was crucial in this case.

10. How has all of this come about? How has it become an issue? Because of the actions of this claimant. He gives his name as Ben; Ben Doyle. What Mr Colbeck tells the court is, that his legal name is Howard but he adopted the name "Ben" since the age of seven, and what Mr Colbeck submits to the court is the claimant faced this problem of how to prove what it was that the defendant was looking for. They had sent all that they had, i.e. photo card ID. He also tells the court that a number of references were made by the claimant that proceedings were going to be issued because there had been an inordinate period of time being taken by these defendants in their investigations, yet they refused to accept the identity of this particular claimant. So as far as they are concerned, unless and until liability is formally accepted, liability remains in dispute as does quantum.

11. What has the defendant done in the background? As I have said, they have admitted liability on 3rd February 2011 at the address the claimant had provided. They also go on to admit liability on 29th February 2012, some nine days after Part 7 proceedings are issued, on the basis that the only dispute is as to who was driving.

12. I am told that the claims notification form, which was completed, with the name Howard Doyle, did not include the "also known as Ben". As early as 20th April 2011 identity is the key issue in this case. On 5th May 2011 the claim is timed out of the portal and the information that is being sought has still not been provided. It is only on 25th May that an explanation is given of this gentleman Howard, being known as Ben.

13. Also it is not until 16th June 2011 that the photocopy of the driving licence card is provided. I am told by Mr Colbeck that that may well be the only document that they have to prove identity, there may not even be a passport. This is provided by the defendant's insurers or defendant's solicitors to their client who, upon receipt of this photo card, says it is not the same person involved in the accident, and so, of course, the defendant embarks on background checks.

14. The matter before the court here is what costs this claimant should recover because the defendant's starting point is they did all that they were required to do: admitted liability in writing directly to the very person who was involved in the collision. I have also been told that it is perfectly reasonable to seek confirmation as to identity of an individual. There are issues of insurers having to investigate fraud. Identity being established on the balance of probabilities is not unduly onerous. They needed to be certain that this person was the individual who the defendant identified and what they say is that the failure to provide or comply with their reasonable requests over such a sustained period of time, i.e. on 9th July 2012, his Facebook page, is unreasonable on the part of this claimant. Their argument is twofold. They say that the failure to provide satisfactory or reasonable confirmation as to identity engages CPR 45.36 that the claimant provided insufficient information under 45.3(6) of section 2(a), or under 45.36 (1) was an election not to continue with that process.

15. The starting point on costs is that they are at the absolute discretion of the court. This discretion arises under CPR Part 44.3 and when considering what order to make about costs we take into account all of the circumstances. Conduct is also a matter to take into account before, as well as during the proceedings, and, in particular, the extent to which the parties follow the Practice Direction on pre-action conduct.

16. What the defendants contend here is that the claimant should be limited to portal costs, they say it is because identity was the only issue and had they provided this, where they had already admitted liability, it is probable, in fact Miss Robson goes even further than that, she says the claim would have settled within the portal stage two.

17. What they say is under the RTA protocol CPR 45.36(2)(a) this claimant provided insufficient information on the claim notification form, i.e. Howard Doyle. Absolutely no mention of this aka Ben. That this gentleman has been using this moniker since he was seven years of age, against a background of an entirely different address that this claimant had given to the defendants. They say because of this insufficient information provided by the claimant's solicitors it is that which has prompted them to make the enquires that they did. They also say, in the alternative, if I do not make that finding, this claimant elected not to continue with the protocol process by not providing requisite ID to their satisfaction. Through this election I should order no more than fixed costs as provided for under CPR 45.36. A decision is therefore required from me on whether CPR 45.36 is engaged with the sanctions provided for therein based on what I have heard from both representatives.

18. Did this claimant provide insufficient information and/or otherwise elect not to continue with "the protocol"? The real issue is this: the only step that was required by this claimant was to confirm the name/names and addresses of Mr Ben Doyle. All that the defendants needed, asked for or required was to satisfy themselves that Ben Doyle, Howard Doyle, was known as Ben Doyle since the age of seven, living at these two addresses, was the one and same individual that this defendant collided with.

19. I will turn to the chronology in a moment, but what is important is that I consider the actual document that is provided that the claimants say is more than sufficient to satisfy them as to identity. They ask that this be provided to me. It is a black and white photograph, 1.5 centimetres by two centimetres. It is a photocopy. It is blurred. There is an entirely different address to that which this claimant had given to the defendants.

20. I did ask Mr Colbeck to go through the correspondence, there then follows the chronology that is provided to me, although I entirely accept that Mr Colbeck has today brought additional material to my attention- file notes and other chase-ups by both sides. All that was required by this claimant was a more legible proof of identity. A simple, brief witness statement, with a statement of truth, explaining all that it is that appears to have been rehearsed in correspondence would have sufficed.

21. Mr Colbeck says that the defendant accepted that this is the name that the claimant went under. Correspondence, unless formally accepting what one party has to say, is not binding on anybody. For example, what is binding is the letter of 3rd February 2011 admitting liability to Mr Ben Doyle. This admission was a prompt step by the Defendant. The pleadings even record in this case when the Part 7 proceedings are issued that the sole issue is identity, i.e. who was driving? Liability is admitted 29th February 2012 and, quite frankly, I am at a loss to understand how this claimant can justify its stance in any way.

22. It was even submitted to me by Mr Colbeck that this form of ID is the only form of ID that this gentleman had. He said the defendants were given plenty of time to investigate and were refusing to accept the identity of this individual. This is an individual who uses two names, has had two addresses already and he says the matter of the address of the claimant was only raised once. He says that they asked for identification, which is provided on 22nd November, when they come back and say, "This is not the driver." So they had to proceed in the manner in which they did by issuing proceedings.

23. He says it was an unfortunate set of circumstances and what Mr Colbeck also said is there has to be a "degree of sufficiency". He poses the question, how else are they meant to prove his identity? Well, certainly far more than they did by sending a blurred photographic form of ID which I have been shown. It is almost illegible and to sit back and rely on that and to say that Part 7 proceedings were properly issued against that background is, quite frankly, unacceptable. They completely miss the point. The information that the defendants sought is against the background of their having admitted liability on 3rd February 2011, whether or not this claimant, or his advisers, had knowledge of it, service has taken place at an address under the relevant provisions of the CPR to which this gentleman has a nexus and there are repeated requests for information confirming ID. A letter is then sent by the Claimant's on 19th December, which says, "We enclose identification." It does not say whether it is new identification or different identification, just "identification," and it is not enclosed because they are chased on that omission by the Defendants.

24. The information that was sought of either names, or however this gentleman chooses to prefer to be known, should have been given in the claims notification form. It took 15 months to provide this detail as to identity from when the defendants first requested it and only then just before the exchange of witness statements. The issue was extremely straightforward, "Is this the same person as Ben Doyle, to whom we have already admitted liability? He's got a different name and a different address?"

25. The purpose of the RTA portal is to expedite and reduce costs with low value personal injury claims arising out of road traffic accidents. What happened here is that the claimant chose not to respond to the defendant's reasonable request so that it fell out of the protocol. When that happens, the claimant is at risk on costs which is why you

consider and scrutinise the facts. Either the claimant unreasonably refused or was unwilling to comply with a perfectly reasonable request on the part of the defendant.

26. "Degree of sufficiency"; the point made by the defendants is that it is for the claimants to prove their claim. This was the only issue but it is the defendants who are doing the Claimant's job for them by suggesting they provide medical records, or the provision of Facebook materials, and as for not amplifying what they had already said on 20th April 2011 that they needed the name and address it is there in black and white; they wanted it, the address.

27. The burden in bringing a claim such as this is on the claimant on the balance of probabilities. That is all that needed to be satisfied. It is not until 9th July 2012 that the claimants do what they should have done in the first place, that they had been directed to do and assisted by the defendant telling them what may otherwise suffice.

28. Is Part 45.36 engaged? Did they elect not to continue with that process? Their silence speaks volumes. A request is made on 20th April 2011. Silence until 25th May 2011. The claim has already dropped out of the portal.

29. Let us look at the rest of their behaviour because 45.36(2) raises the issue of acting unreasonably. Did they behave unreasonably by discontinuing this portal process? I refer to the starting point of the claimant which is as follows; they set it out in their replies:

> "It would not have been necessary to issue proceedings had the defendant accepted the photographic ID in June 2012."

30. I have made the point very clear on what it is that they provided: ie by any reasonable view I am satisfied that on an objective basis what they provided was less than clear; dimensions; size; and the information that was provided was at odds with what this gentleman had provided. He has not assisted his own case. The Defendants are not obliged to have to accept whatever this gentleman purports to be proof of his identity. What I am also required to consider is the pre-action conduct before the issue of proceedings, paragraph 4.3:

> "When considering compliance, the court will be concerned about whether the parties have complied in substance with the principles and requirements. Consider proportionality."

Examples of non-compliance are also provided under 4.4(1):

> "Not provide sufficient information to enable the other party to understand the issues."

Identity was the issue. At 4.4(4):

> "Without good reason not disclose documents requested to be disclosed."

A document that clearly identifies the driver would have been of help.

31. The parties were clearly in a course of dialogue and even though they have dropped outside of the RTA protocol there was a duty to engage and provide sufficient information which the Claimant repeatedly failed to do. I am at a loss, as I have said, to

understand why a simple photograph and statement or anything along those lines was not provided. As far as I am aware, there is nothing in correspondence to suggest that a passport does not exist. Litigation is a matter of last resort. Liability had been confirmed on 3rd February and again on 29th February 2012 after proceedings have been issued; 15 days after issue. On the facts of this case the defendants do the claimant's job by telling or suggesting what they could provide to satisy them.

32. The Claimant, however, sits back effectively saying, "There's your photo card. That's all you're going to get." The claimants submit there must be a "degree of sufficiency". All that these defendants wanted to be satisfied upon, on the balance of probability, was the identity of this gentleman. As I have said, the claimant's submission to me was how else are they meant to prove it? With a modicum of initiative; that is how. Proportionality requires such a step. The protocol that I have mentioned earlier in my decision and its engagement being a consideration under one of the criteria when applying the overriding interests of justice is there for a reason, to save time and costs. Their explanation today for not so engaging in any positive or proper way with "it" is simply unacceptable.

33. On the particular facts of this case, liability was admitted directly to this claimant, proper service in that respect had taken place and is not challenged, at an address that he provided. The facts are that there are two different names for this claimant , two different addresses and the ID that is provided is illegible and unclear. So the defendants reasonably asked for more and unless and until, on the balance of probabilities, they are satisfied that it is one and the same person they were right to do so.

34. The claimants decide that liability and quantum is clearly in dispute and issue proceedings without doing all that is required under the protocol. Even after admission of liability, subject to some form of photo ID being provided on 29th February 2012, it is not until July that they do what the defendants suggest. Mr Colbeck submission that Facebook is relied upon by defendants as and when it suits them attracts no merit whatsoever. All that arose is entirely as a consequence of the claimants not complying with reasonable requests made by the defendants. Same issue: identity.

35. They elected not to turn their minds to it. Therefore, I make the following findings: insufficient information in respect of both names on the claim notification form, they elected not to continue with the process by not responding to the requests made by the defendants and when the claim timed out of the portal issuing proceedings against that background of an issue that was still not complied with by these claimants constitutes wholly unreasonable behaviour. Litigation is a measure of last resort. Therefore, the order that is made, where I have an extremely wide discretion, is that on these facts that the defendants pay no more than the fixed costs, with disbursements and success fee as appropriate.

(End of judgment)