IN THE STOKE-ON-TRENT COUNTY COURT

CASE NUMBER: 3YS55042

BETWEEN:

MR SHAMRAZ HUSSAIN **Claimant**

and

MR RUSSELL WARDLE **Defendant**

JUDGMENT

Background

1. The substantive claim involved an RTA which began with the sending of a Claim Notification Form (CNF) on 3/4/2012. The insurer rejected this claim on the Portal on 19/4/2012, alleging failure by the Claimant to provide the Defendant's name, a mandatory requirement. Liability was subsequently admitted on 9/5/2012, and apart from assessment of costs, concluded with acceptance by the Claimant on the 21/5/2014, of a Part 36 offer of £10,000.

2. The Claimant's Bill of Costs was provisionally assessed by District Judge Ilsley on the 25/9/2015, who rejected the Defendant's assertion that costs should be limited to those allowed under CPR 45 Section III, and allowed costs in accordance with CPR 36.10.

3. The Defendant objected, as a consequence of which the matter was listed for Hearing on 16th December 2016. Mr Perry appeared for the Claimant, and Ms. Robson for the Defendant. I had before me two Bundles, including copies of relevant authorities and written submissions from both parties. I also kept extensive notes from which I have refreshed my memory. In view of the unusual circumstances of this case, and having regard to the developing case-law, I reserved Judgment to a later date.

The Issues

4. The main issue is the costs consequence arising from the Claimant submitting a CNF without providing the Defendant's name. In fact, two CNF's were submitted, the first in March 2012, followed by re-submission of a CNF on 3/4/2012. It is clear that details of the Defendant's name is a mandatory requirement, not least because an insurer cannot be expected to progress the claim until this vital detail has been supplied. Unless **exceptional circumstances** exist, the Defendant submits that costs should be limited to those awarded under CPR 45. As part of their case, the

Defendant's Points of Dispute asserts that once the name of the Defendant had been obtained, the Claimant should have re-submitted a fresh CNF, instead of issuing proceedings.

5. In reply the Claimant submits that steps taken to compromise matters between August to October 2013, before proceedings were issued, should be taken into account in their favour, and that overall the facts of this particular case are exceptional, such as to justify an award of costs under Part 36.10.

Chronology

6. Although there are some discrepancies between the two Chronologies filed, I have had regard to both documents when considering outcome. The key dates are as follows.

3/2012- CNF submitted and later rejected by the Defendant (stating wrong insurer);

4/2012-CNF re-submitted; later description of Defendant given;

5/2012-Liability admitted by Defendant;

6/2012 -15/5/2014, numerous documents and offers exchanged, including Part 36 offers in July and August 2012, and April and May 2014;

15/10/2013-Part 7 proceedings commenced by the Claimant.

21/5/2014-Claimant accepts Defendant's Part 36 offer in the sum of £10,000.

Relevant Procedural Provisions and Case-Law

7. It is clear to me that the Claim started under the 2010 version of the RTA Protocol (later amended), and it is this version which I have applied to the facts of this case. The old version of Part 36 also applies because of the date that the offer was made. It is equally clear to me that the CNF breached a mandatory requirement of the Protocol, namely by failure to provide the Defendant's name, so that the Defendant was entitled to reject this claim, which it did on 19th April, 2012.

8. In respect of failure to comply with the Protocol, CPR 45.24 (was CPR 45.36) is engaged; it provides:

(l)This rule applies where the Claimant-

(a) does not comply with the process set out in the relevant Protocol;

Or

(b) elects not to continue with that process, and starts proceedings under Part 7.

(2) Where a judgment is given in favour of the claimant, but-

(a) the court determines that the Defendant did not proceed with the process set out in the relevant Protocol because the claimant provided insufficient information on the Claim Notification Form;

(b) the court considers that the claimant acted unreasonably-

(i) by discontinuing the process set out in the relevant Protocol and starting proceedings under Part 7*...*

(iii) except for paragraph (2)(a), in any other way that caused the process in the relevant Protocol to be discontinued…….

The court may order the Defendant to pay no more than the fixed costs in rule 45.18 (was 45.29) together with the disbursements allowed in accordance with rule 45.19 (was 45.30)...'.

9. Paragraph 6.8 of the RTA Protocol also provides:

' Where the defendant considers that inadequate mandatory information has been provided in the CNF, that shall be a valid reason for the defendant to decide that the claim should no longer continue under the Protocol..'.

Conclusions

10. I am satisfied that the Claimant breached a mandatory requirement of the Protocol by failing to provide the name of the Defendant. Whilst it probably is the case that the Defendant did not give his name at the time of the accident, I accept the submissions of Ms Robson that there were well established means of obtaining that information, but that no serious steps were taken to correct the deficiency.

11. As a consequence, it follows that CPR 45.24 (1) was engaged because the Claimant did not comply with the process, and later started proceedings under Part 7.

It equally follows that the Defendant was not obliged to continue the Protocol process and was entitled not to proceed, if they so chose (CPR 45.24 (2). I therefore have to consider whether the Claimant acted unreasonably '(i) by discontinuing the process.....and starting proceedings under Part 7...', and if so, whether I should order the Defendant to pay no more than the fixed costs in rule 45.18 together with disbursements allowed in accordance with rule 45.19..'.

12. Pt 45.24 (2) (b) provides that the court **may** order the Defendant to pay no more than the fixed costs. On the face of things, this appears to give the Court an unfettered discretion to award greater costs if the circumstances of the case justify this. However this discretion must be exercised judicially, and in accordance with Pt 45 and the Overriding Objective. Having regard to the principles expressed below (which I have extracted from the case-law and which I accept), there is nothing in the facts of this case, whichjustifi.es me in departing from the default position, which is to allow only fixed costs.

13. On this issue, I accept the submissions of Ms Robson that the provisions should be rigorously applies against the Claimant on the facts of this case. Im reaching that conclusion, I have, in particular, had regard to the numerous authorities (mainly at first instance) presented by the Defendant in their bundle, and appearing in Dividers 2-10.

14. Although most of those authorities are persuasive only, it is appropriate for me to seek guidance from them, as to the correct approach to be taken in respect of such judicial discretion as may exist. I therefore accept that in this case it is not open to me to evaluate retrospectively the steps taken by the Claimant and the Defendant after exiting the Portal (**Tennant v Cottrell; December 2014:** District Judge Jenkinson), and that the issue of whether the Claimant acted reasonably is to be considered at the date of exit from the Portal, not afterwards. Equally, that waiver and affirmation, for example by reason of steps subsequently taken by either party, should not apply (**Kilby v Brown; February 2014:** District Judge Peake).

15. In similar vein I should ignore hindsight and speculation, but instead look at the circumstances which existed at the time the Claimant failed to comply with the Protocol **(Dawrant v Part and Parcel Network Ltd; April 2106:** His Honour Judge Parker).

16. For the reasons given above I consider that the Claimant acted unreasonably by exiting the Portal and commencing a Part 7 claim. The Claimant could have waited to obtain the name of the Defendant's driver before sending the CNF, which in my view could have been obtained through the usual channels mentioned by Ms Robson.

17. Nor can the fact that agreement was reached following the making of Part 36 offers, be relied upon by the Claimant: **Solomon and Cromwell Group PLC; Donna Oliver and Sandra Doughty [2011] EWCA Civ 1584**.

In that case Lord Justice Moore-Bick, responding to the argument that costs should be awarded on the standard basis where a Part 36 offer is accepted, said:

'....If the appellants' argument were correct, the acceptance of a Part 36 offer would always result in an order for costs on the standard basis in low-value road traffic accident cases. That would undermine the fixed costs regime and provide a powerful incentive for defendants not to make Part 36 offers in such cases…'. The Lord Justice further stated that Rule 36(10) was a general provision, which had to give way to the specific provisions contained within Part 45.

Conclusion

18. For the reasons given above I am satisfied that there is nothing in the circumstances of this case which can be seen as 'exceptional' such as to justify departure from CPR 45 and the Protocol. It therefore follows that the Defendant succeeds in their submission that the Claimant's costs should be restricted in accordance with CPR 45.24(2)(a).

19. A copy of this Judgment will be forwarded to each party, and I shall list for further submissions in respect of costs, and any other matters arising, on the first available date after 5/3/2017, with a time estimate of 3 hours.

District Judge Rank.

25/2/2017.