Neutral Citation No. [2010] NIQB 116 | *Ref:* **McCL7981**

Judgment: approved by the Court for handing down | *Delivered:* **04/10/10**
*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

On Appeal from a Decision of the District Judge in the County Court for the Division of Belfast

BETWEEN:

JOHN SHORT

Plaintiff/Appellant:

-and-

BELFAST HEALTH AND SOCIAL CARE TRUST

Defendant/Respondent:

McCLOSKEY J

I THE APPEAL

[1] This is an interlocutory appeal, whereby the Plaintiff challenges an order of the District Judge dated 13th April 2010 requiring him to make specific discovery of certain documents to the Defendant (*infra*).

II THE PLAINTIFF'S CLAIM

[2] This is one of the substantial number of *soi disant* "credit hire" cases currently occupying the attentions of the High Court. The Plaintiff claims damages for loss and damage arising out of a road traffic accident which occurred on 18th February 2009. As pleaded and particularised, his claim has three components:

(a) Vehicle hire costs of £2,187.88, in proof whereof the Plaintiff refers to a rental advice note and a credit hire agreement, both generated by "Crash Services".

(b) Vehicle repair costs of £1,021.23, vouched by a Crash Services Repair Advice Note and a preceding engineer's report.

(c) Interest on (a) and (b).

[3] The four aforementioned documents feature in Schedule 1, Part 1 of the Plaintiff's List of Documents, served in response to an order for general discovery of documents.

III THE IMPUGNED ORDER

[4] By the terms of the order under appeal, the District Judge required the Plaintiff to make specific discovery of:

(a) Any correspondence between Crash Services and the repairing garage, to include a copy of the repair notice.

(b) The Plaintiff's indemnity policy, identified in clause 8.2 of the aforementioned credit hire agreement.

[5] The second limb of the order is no longer a matter of contention between the parties, the Plaintiff's solicitors having disclosed a copy of the sample insurance policy in question and this being acceptable to the Defendant.

IV CONSIDERATION AND CONCLUSIONS

[6] In the wake of the impugned order, the Plaintiff's solicitors wrote by letter dated 19th April 2010 to the Defendant's solicitors. In this letter, they articulated their intention to pursue an appeal, the essence of their challenge being that "*… we do not … accept that the Plaintiff should be put to the inconvenience of having to swear an affidavit on a very net point which he is sure to be asked about in cross-examination in any event. It is simply adding to the costs in an unnecessary way …*"

The letter continues:

> "*We have, however, taken instructions from our client and he confirms his vehicle was left in Crash's hands to effect repairs …*
>
> *We do not accept that a repairing garage can be called upon to produce to their customer a copy of their parts invoice and we are strongly of the view that same is not discoverable to the Defendant. However, we understand that His Honour*

District Judge Wells may wish to have the arrangements clarified for him and in keeping with the 'cards on the table' approach the High Court has been encouraging, we have requested that a copy of the parts invoice be supplied by Crash and they have kindly acceded to this request to assist the court in this instant case only."

The document enclosed with this letter is an invoice generated by "Charles Hurst Toyota", dated 26th February 2009 and addressed to Crash Services Limited. It identifies Order No. 34175, which corresponds with the Crash Repair Advice Note and the Plaintiff/Crash credit hire agreement. The Charles Hurst invoice identifies three separate parts, the unit price pertaining to each, the sum of these three unit prices and the total amount, £233.91. This is a "parts only" invoice.

[7] Each of the unit prices specified in the Charles Hurst parts invoice differs from the corresponding figures in the Crash Repair Advice Note, addressed to the Plaintiff. In addition, the latter particularises labour and painting costs of £450, paint material costs of £195.50 and other sundry items, totalling approximately £660. In short, the Plaintiff has discovered to the Defendant the invoice from the repairing garage which documents and vouches the amount charged to Crash Services for the replacement vehicle parts, but has made discovery of no corresponding invoice relating to the amounts charged for labour and painting, paint materials and sundries.

[8] In the aforementioned letter, the justification proffered for the Plaintiff's selective discovery, which constitutes partial compliance only with the impugned order, may be summarised as disproportionate cost and oppression. Notably, there is a virtual concession regarding relevance. In argument, the second objection articulated was that it is not within the Plaintiff's power to secure the relevant invoice. The third objection advanced was that the "missing" invoice is not relevant to any issue.

[9] Addressing each of these contentions in sequence:

(a) In response to the court, it was confirmed that the Plaintiff's solicitors have not sent a letter to Crash Services requesting a copy of the invoice in question. This contrasts with the step which they apparently took, following the court order, to secure a copy of the parts invoice. The court must take into account the commercial realities of the relationship between the Plaintiff and Crash Services and the relationship between the Plaintiff's solicitors and Crash Services. The Plaintiff's arguments attempt to assert elements of distance and remoteness which, in my view, are fictitious and unsustainable.

(b) There is nothing unnecessary, disproportionate or oppressive involved in the Plaintiff's solicitors making a telephone call to their real client or

transmitting a letter, probably of less than fifty words and then relaying the outcome to the Defendant's solicitors.

(c) The Plaintiff's stance concedes that it is appropriate for the Defendant to be aware of the breakdown of the parts element enshrined in the claim for repair costs. Hence, the Plaintiff accepts that this is a relevant issue, which may properly be ventilated and explored at the hearing. The suggestion that the breakdown of the elements relating to labour and painting and paint materials are irrelevant is, in my view, illogical and inconsistent. The Plaintiff's objection is further defeated by the consideration that his claim for repair costs must be adjudicated by reference to the touchstone of *reasonableness* and I consider that the document in question bears on this issue. In ***Burdis*** (etc) [2003] QB 36, the court expressly recorded , in paragraph [85],that there was no dispute about the reasonableness of the repairing garage's charges – unlike the present case.. It must be remembered that the Defendant is a tortfeasor, not an indemnity insurer.

[10] For the reasons elaborated above and giving effect to the parallel reasoning in ***Turley –v- Black and Police Service*** [2010] NIQB 1, paragraphs [18] – [28], the Plaintiff's appeal must be dismissed.