

IN THE COUNTY COURT AT BRADFORD

Bradford Law Courts,
Exchange Square, Drake Street,
Bradford, BD1 1JA

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Before:

DISTRICT JUDGE UNDERWOOD

MR MOHAMMED ASLAM
- and -
MISS TARA GAVIN

Claimant

Defendant

MR HINDS (instructed by **KAIZEN LAW SOLICITORS**) for the **Claimant**
MR YOUNG (instructed by **HORWICH FARRELLY**) for the **Defendant**

TRANSCRIPT OF PROCEEDINGS

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MR HINDS: I am accompanied by Miss Khan of my instructing solicitors.

JUDGE UNDERWOOD: That is fine. Would you mind just shutting the door? It just gets rather noisy, that is all. Thank you. So this is D16YM909 Aslam v Gavin. Yes, who is for whom?

MR YOUNG: I am for the claimant. Mr Hinds ----

JUDGE UNDERWOOD: So you are for the defendant.

MR YOUNG: For the defendant. Indeed, sir.

JUDGE UNDERWOOD: Yes.

MR YOUNG: It is the defendant's application.

JUDGE UNDERWOOD: Yes. I have just received your skeleton, Mr Young, and I have not had chance to read it.

MR YOUNG: Sorry. I was told that it had been filed and served but perhaps it has not made its way to the court file yet. I did only complete it yesterday unfortunately (inaudible).

JUDGE UNDERWOOD: Right, it has not arrived.

MR YOUNG: My learned friend has had, I believe, a chance to look at it.

MR HINDS: I was provided one shortly before the hearing, sir.

JUDGE UNDERWOOD: Yes (inaudible). Yes, then, Mr Young, it is your application.

MR YOUNG: Sir, have you had the opportunity to read the witness statement of Samantha Shaw?

JUDGE UNDERWOOD: Yes, I have.

MR YOUNG: Sir, I would hope it is relatively clear within the defendant takes issue with the fact that the claimant has sought to remove the matter from the portal on the basis of the intervention letter. The defendant at that point was attempting to resolve the issue, clearly had provided information to the claimant by way of offering a comparable other vehicle and sought to deal with the requested information as provided by the claimant's solicitors. Shortly after this, citing that the matter was now too complex, the claimant sought to remove the matter from the portal.

JUDGE UNDERWOOD: Can I just stop you for a moment, just for a point of clarification? This case has been removed from the portal. It has been allocated to the fast track and directions given.

MR YOUNG: Yes.

JUDGE UNDERWOOD: Surely the time for arguing the question of costs and whether or not it should be the fixed portal costs or not should be at the end of the trial, not at this interlocutory stage?

MR YOUNG: Sir, that may be the view taken by the court. I note the issue of jurisdiction raised by my opponent. I can see how that would be a possible solution to the predicament or the order that the defendant seeks. The defendant sought clarification at this stage in relation to their exposure to costs essentially.

JUDGE UNDERWOOD: I have only just noticed it now in the skeleton, but it was a point that I had considered when I was reading the papers earlier today, that we are still at a very early stage. I know the question often arises at the end of a fast track trial as to what the appropriate costs order should be but, of course, you know, the court then has the benefit of having looked at the case as a whole and determining whether it was reasonable in all the circumstances for the case to have dropped out of the portal.

MR YOUNG: Sir, I note those findings. I am struggling to put forward a counter argument on that basis. It is something that could be dealt with at the end of the trial, if indeed a trial is required to resolve this matter. I note, and I will relay, those findings back to those instructing me. Those instructing me were seeking clarification at this stage of proceedings. It may then influence the way the matter runs thereafter, if I can put it as bluntly as that, but my instructions at this stage were to seek the court's clarification in relation to the issue should the matter or has it reasonably been removed from the portal in light of at this stage essentially the claimant's assertion that it has become too complex, a view which is not shared by the defendant. Just because the claim contains credit hire case law suggests that is not an issue to remove it from the portal.

JUDGE UNDERWOOD: Well, quite often the value of the credit hire will be the deciding factor.

MR YOUNG: It is a very high claim. Indeed, indeed.

JUDGE UNDERWOOD: Quite often we get these sorts of cases where the credit hire is a few hundred pounds and it is quite appropriate for that to be dealt with at perhaps a stage 3 hearing, but where it is many thousands of pounds it is more suited to a fast track trial. Certainly if the claim were purely in relation to credit hire alone and not personal injury then it would not fall within the portal and it would be a fast track case. But it seems to

me, unless there is anything else you want to say, that from a jurisdictional point of view this is a premature application and I do not see that it is, even applying the overriding objective and the question of proportionality, that it is appropriate at this stage for the court to be determining the issue of costs and limiting the question of costs at this early stage of the case.

MR YOUNG: Sir, if that is the court's finding I am struggling to try and persuade you otherwise.

JUDGE UNDERWOOD: Is there anything else you would want to add, Mr Hinds?

MR HINDS: No, thank you, sir.

JUDGE UNDERWOOD: Then in those circumstances I am going to dismiss the application.

MR HINDS: Sir, I would, as all may anticipate, make an application for the costs of this application. I do not have instructions to make the application for costs on a wasted costs basis, but the court may consider that appropriate. It is law school 101 that before making an application in litigation you make sure that you have your ducks in a row in terms of ensuring that you have the jurisdiction to make the application and to invite the court to make the order that is sought within the application. This application was so unmeritorious that it did not even satisfy that criterion and, in my submission, therefore, the defendant should be required to pay the claimant's costs of the application on the indemnity basis.

MR YOUNG: Sir, in light of the court's finding I would invite the court to reserve the issue of the application's costs until the resolution at trial. It may be arguments that are raised during the trial may justify the spirit of the application, if I can put it that way, sir, and those instructing me have not received a costs schedule from the claimants in any event. So I would invite the court to find that the costs should be reserved to be dealt with by the trial judge.

JUDGE UNDERWOOD: Well, the issue of costs on any application stands to be dealt with at the application and to be summarily assessed. I do not think it is appropriate simply to be reserving the question of costs to the trial. It does seem to me that this is a case where the defendant should pay the claimant's costs, but I shall order them on a standard basis not an indemnity basis. Is there a costs schedule?

MR HINDS: There is not, no, sir. I think the reason for that is that the costs of interim applications, of which this is one, are fixed by the Civil Procedure Rules.

JUDGE UNDERWOOD: Yes, that is right.

MR HINDS: So my instructions were simply to say please make an order, if not with us on the indemnity basis point for payment by the defendant of the claimant's costs of the application in accordance with CPR 45.29 Sorry, I have lost which particular of the very numerous sub-sections it is that deals with interim applications. Is it (i) or

JUDGE UNDERWOOD: Is it 2.

MR HINDS: Or (h) possibly.

MR YOUNG: (Inaudible).

MR HINDS: Yes. I also, however, seek an order under that same rule which invokes 45.29(i), which deals with disbursements, and the particular sub-paragraph there is 45.29(i)(2)(h), which goes with any particular feature of the dispute you may allow disbursements that have arisen due to any particular feature of the dispute. In my submission this application is a particular feature of the dispute. My fee for today is a disbursement and there is every good reason why the defendant should pay that and not simply the limited amount for the conducting lawyers costs.

JUDGE UNDERWOOD: Your fee is what?

MR HINDS: £1,250, no VAT.

JUDGE UNDERWOOD: Mr Young?

MR YOUNG: Sir, the normal order in relation to interim applications is that the fixed costs are £250 plus VAT. I can see no reason why the court should seek to go behind that. There does appear to be any reason to do so, in my submission.

MR HINDS: So, sir, I have finally found my way to it in the White Book. You may be there already anyway, sir. Page 1405 is interim applications and then, happily, 45.29(i) which deals with disbursements, follows immediately. It is, as I say, paragraph 2(h).

JUDGE UNDERWOOD: Yes. As I have already said, I am going to make an order that the defendant pays the claimant's costs of this application, which will be in the sum of £300, being £250 plus VAT, and in light of the circumstances, following CPR 45.29(i)(h), I am going to make an award for the disbursements, being counsel's fee of £1,250. So total of £1,550.

MR YOUNG: Sir, can I Is it the court's assessment that the sum of £1,250 is an appropriate fee for a 45 minute hearing in relation to an interim application?

JUDGE UNDERWOOD: Yes. Thank you, gentlemen.

MR HINDS: Thank you very much, sir.

MR YOUNG: Thank you, sir. Good afternoon.

JUDGE UNDERWOOD: Good afternoon.

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