

IN THE COUNTY COURT AT CENTRAL LONDON

No. 3YM09078

Royal Courts of Justice
Thomas More Building
Strand
London
WC2A 2LL

24th March 2017

Before:

HIS HONOUR JUDGE LUBA, QC

Between:

ANDREA BROWN

Claimant

and

**THE COMMISSIONER OF POLICE
OF THE METROPOLIS**

Defendant

MS. C. DARWIN (C) appeared on behalf of the Claimant.

MS. C. VENTHAM (C) appeared on behalf of Greater Manchester Police.

MR. A. CLEMENS (C) appeared on behalf of The Commissioner of Police of the Metropolis.

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J U D G M E N T
(As Approved)

J U D G M E N T

1. JUDGE LUBA: This Judgment is concerned with the first of a number of questions relating to costs as between the Claimant and two Defendants in these two actions.
2. The cases were set down today for a three-hour hearing to consider interest, and once that had been determined, the costs of the actions. The time allocation given by the Court's order, at the invitation of the parties, was three hours. Half of the available time was spent dealing with the question of interest.
3. That having been resolved, the matters were called back on to deal with the question of costs. The parties have each presented, helpfully, a written note, one skeleton argument, two speaking notes and I have been provided with a bundle of materials extending to over 90 pages. I have also been provided with a handful of authorities.
4. In making the first representations on the question of costs, Ms. Darwin for the Claimant, beyond identifying that her client wished to recover the costs of the claims against both Defendants, went on to indicate that there are at least four issues in relation to costs falling for determination between the parties, one or more of which included sub-issues. In those circumstances, it was quite plainly impossible to determine all of the costs issues between the parties, each of the Defendants being separately represented and there being a large number of issues on which potentially I would need to hear from all three counsel.
5. At my invitation, therefore, counsel at the Bar acceded to the proposition that the available judicial time should be used to determine at least one of the issues standing between the parties that might be a discrete issue. Ms. Darwin identified

from amongst the issues her fourth issue, namely, the question of the impact or otherwise of the provisions of Section II of Part 44 to the Civil Procedure Rules, that is to say, the regime of Qualified One-Way Costs Shifting.

6. Of course, the application of those provisions only arises if the Claimant is exposed to a Defendant's costs order and that itself is in contention in the proceedings. However, on the assumption that that is or might be so, I am asked to give a Ruling upon the application of the provisions of Part 44, Section II, in the present actions.
7. I am content so to do, and I have heard Ms. Darwin for the Claimant and Mr. Clemens on behalf of both Defendants in argument on the issue.
8. The question arises in this way. This is an action in which the Claimant relied on four separate heads or causes of action. They were in turn, and in no particular order, breach of the Data Protection Act, breach of the Human Rights Act; tortious wrongdoing contrary to the Prohibition on the Misuse of Personal Information and the tort of Misfeasance in Public Office.
9. In my Judgment on liability following trial, I allowed the claims on the first two heads, that is to say, the breach of the statutory provisions, on the basis of concessions made by the Claimant. On the third head, I determined that the Defendants were each liable. On the fourth head, I rejected the proposition that the tort of Misfeasance in Public Office had been made out.
10. Against that background, I turn to look at the provisions of CPR Part 44, Section II. The governing provision is Part 44.13(1). That provides that "This section [of CPR 44] applies to proceedings which include a claim for damages (a) for

personal injuries...” The structure of the second section of Part 44 is that Rule 44.14 then deals with the effect of Qualified One-Way Costs Shifting, ‘QOCS’ and Rules 44.15 and 44.16 are concerned with exceptions.

11. CPR 44.15 provides for exceptions which arise without judicial intervention, and 44.16 provides for exceptions which require the intervention of the Court by the granting of permission.
12. In these cases it is said by Ms. Darwin that the entirety of the actions brought against both Defendants are encapsulated within the meaning of the phrase “A claim for damages...for personal injuries”, as used in CPR 44.13. Accordingly, subject only to the application or availability of any exception, the provisions in the second section of Part 44 apply.
13. On behalf of both Defendants, Mr. Clemens does not demur from that general proposition. However, it is his case that in these proceedings the Defendants are entitled to invite the Court to grant permission for a different consequence to follow. That is because Part 44.16(2) provides that “Orders for costs made against a Claimant may be enforced up to the full extent of such orders with the permission of the Court and to the extent that it considers just, where...(b) a claim is made for the benefit of the Claimant other than a claim to which this section applies”.
14. As is plain from that wording, the structure of CPR 44.16 is such that first there is a preliminary pre-condition, namely that one of the two sub-paragraphs (a) or (b) must be fulfilled. If that pre-condition is met, then the Court may make an order modifying the normal consequences of the QOCS regime where it “considers just”.

15. The argument before me has turned upon whether the pre-condition is satisfied. If I find that it is, then no doubt there will be submissions on the question of what the justice of the case demands.
16. The pre-condition relevant here, as I have already indicated, is that within subparagraph (b). Accordingly, I must ask myself, are these cases in which "A claim is made for the benefit of the Claimant other than a claim to which this section applies"?
17. The true construction of that pre-condition is, I am told by Mr. Clemens in particular, a matter of some controversy amongst practitioners. There appear to be a number of cases, either in or awaiting consideration by the Appellate Courts. One can see how that might arise. One would envisage a number of circumstances or situations in which in addition to bringing a claim for damages for personal injury, a Claimant includes in the same action other claims. Alternatively and additionally, one can envisage a case in which a Claimant brings two separate sets of proceedings against the same Defendant, one of which is a claim for damages for personal injury and the other is not, which claims come to be consolidated. Such a case may be a case in which the pre-condition in 44.16(2)(b) is satisfied.
18. However, I have to ask myself, however, whether in these a claim has been made for the benefit of the Claimant other than a claim to which this section applies. As I have already indicated, pleadings against both Defendants incorporate four heads or causes of action. If any one of them does not include a claim for personal injury damages, then it might be arguable that the terms of 44.16(2)(b) are met. It seems to me, however, that on a consideration of the pleaded case here, set out in

the Statement of Case advanced by the Claimant against each of the two Defendants, what is alleged is that injury has followed as a consequence of each of the four matters that I have already recounted in this Judgment. That much is plain from the language in Paragraph 37 of the Particulars of Claim in the one case, and Paragraphs 49 and 50 of the Particulars of Claim in the other.

19. It is not a case, for example, in which there has been included a separate claim for some other form of damage or loss arising in consequence of that claim alone. It seems to me in those circumstances, on the facts of these particular cases, that the exceptions in CPR 44.16 on which the Defendants would seek to rely if matters came to that point, is not in fact available.

 20. It is sufficient for me simply to declare that should the position be reached on the question of costs that the Claimant is exposed to liability for either of the Defendants' costs, then she will have the benefit of Qualified One-Way Costs Shifting under Part 44 Section II, and she shall have the full benefit, because the pre-condition to any exception for which the Court's permission is required, is not satisfied.
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