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The Potential Weapon of Fundamental Dishonesty in Personal Injury Litigation

Andrew Lawson, Barrister

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In the recent case of Hodgkinson V Axa Insurance UK Plc, at Middlesbrough County Court, barrister Andrew Lawson secured a finding of Fundamental Dishonesty against the Claimant on the grounds that her actions had, “*potentially adversely affected the Defendant in a significant way, judged in the context of the particular facts and circumstances of the litigation*”, following the leading decision of London Organising Committee of the Olympic and Paralympic Games v Sinfield (2018) EWHC 51.

Andrew Lawson said of the decision: “Some practitioners may overlook the fact that in order to secure a finding of fundamental dishonesty, the Court need only find that the Claimant has substantially affected the presentation of the case, in a way which **potentially** adversely affects the Defendant rather than **actually** affecting the Defendant. This claim is a good example of the guidance of Mr Justice Julian Knowles from *Sinfield* being put into effect against a Claimant.”

The facts of the case involved a collision between two motor vehicles being driven towards each other along a narrow residential street. The Defendant’s, insured, was driving a large transit type vehicle and the Claimant her car. She alleged that the Defendant mounted the kerb to avoid her oncoming car, but due to the presence of parked cars, the Defendant had been forced to rejoin his carriageway quickly and, in doing so, had driven into collision with the rear offside of her vehicle.

She claimed personal injury and financial losses from the collision. The Defendant claimed that he had become stationary in the carriageway and as the Claimant moved past his van, she had misjudged the space and clipped the side of his vehicle.

The Claimant and Defendant exchanged witness statements pursuant to the Directions order. The Claimant served and relied upon the evidence of an alleged independent witness who had been walking along the pavement at the time of the accident. The Defendant denied that any witness had been present at the scene.

The Defendant instructed experienced solicitors to defend the claim. An intelligence analyst discovered a potential link between the Claimant and the alleged independent witness which cast doubt upon his true status. Social media posts revealed that the pair had been in a relationship post-accident. One issue at trial was whether they had in fact been in a relationship prior to the accident.

On the morning of trial, neither the Claimant’s alleged independent witness nor the Defendant’s driver turned up to give evidence at court. The Claimant attempted to prove her claim.

After a detailed and thorough cross examination, the Claimant maintained her stance that their relationship was only post-accident, but she could not give any satisfactory answer to the question: “Why has your alleged witness stated, “*I do not know the driver of either vehicle involved in the accident*” when at the time he signed his witness statement the two of you were involved in a relationship?” She accepted that her solicitors had served his evidence in order to rely upon at trial.

Following submissions, the judge made the following express finding of fact: “***I find his evidence troubling: it was used in an attempt to dupe the Court to help find liability for the Claimant. The irony here, of course, is that his evidence was not actually needed, nor does it affect my decision on primary liability since I accept the Claimant’s basic story that the accident happened as she described.***”

In the event, despite establishing liability, the Claimant's claim for damages was dismissed on other grounds. The finding in relation to duping the court allowed Andrew Lawson to make the submission that the claim was, nonetheless, fundamentally dishonest and her QOCS protection should be set aside pursuant to CPR 44.16(1).

He argued that seeking to rely upon an independent witness in a road traffic claim was potentially of the highest persuasive value and insurers would often make admissions of liability upon the strength of such evidence contrary to their insured's position. This would have affected it financially in a significant way.

The issue of liability clearly went to the heart of the claim. Paragraph 62 of *Sinfield* expressly refers to **the potential adverse effect** rather than the actual effect of dishonesty.

On that basis, the Court agreed with Andrew's submissions and made a finding of Fundamental Dishonesty against the Claimant. She was ordered to pay costs on the indemnity basis, in excess of £10,000.

Andrew Lawson was instructed by Nicholas Colgan of Horwich Farrelly Solicitors, Manchester.

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